

JRPP No	2011SYW044
DA Number	DA0110/11
Local Government Area	Ku-ring-gai Council
Proposed Development	Demolition of existing dwellings and construction of two residential flat buildings comprising 43 units, landscaping and associated works.
Street Address	6A & 8 Buckingham Road Killara
Applicant/Owner	Aleksandar Design Group Pty Ltd / Urban Peninsula Pty Ltd, Mrs C A M Grundy, Mr J T L Gilroy and Mrs F M Gilroy
Number of Submissions	10 – original DA 12 – amended proposal
Recommendation	Refusal
Report by	Jonathan Goodwill, Executive Assessment Officer

SUMMARY SHEET

REPORT TITLE:	6A & 8 Buckingham Road, Killara
LOT & DP:	Lot 100 DP 1164166 (2-6 Buckingham Road) Lot 3 & 4 DP 414101 (6A Buckingham Road) Lot 1 DP 414101 (8 Buckingham Road)
PROPOSAL:	Demolition of existing dwellings and construction of two residential flat buildings comprising 43 units, landscaping and associated works.
DEVELOPMENT APPLICATION:	DA0110/11
WARD:	Gordon
APPLICANT:	Aleksandar Design Group Pty Ltd
OWNER:	<ul style="list-style-type: none">- 2-6 Buckingham Road: Urban Peninsula Pty Ltd- 6A Buckingham Road: Mrs C A M Grundy- 8 Buckingham Road: Mr J T L Gilroy and Mrs F M Gilroy
DATE LODGED:	10 March 2011
ESTIMATED COST OF DEVELOPMENT:	\$12,096,860
ISSUES:	Inconsistent with the principles of orderly development Unacceptable impact on adjoining heritage item at 10 Buckingham Road, Killara No SEPP 1 for variation to development standard for manageable housing in KPSO
PRE-DA MEETING:	Yes
SUBMISSIONS:	Yes
LAND & ENVIRONMENT COURT:	N/A
RECOMMENDATION:	Refusal

LEGISLATIVE REQUIREMENTS

Zoning	Residential 2(d3) under Ku-ring-gai Planning Scheme Ordinance
Permissible Under	Ku-ring-gai Planning Scheme Ordinance
Relevant legislation	SEPP 1 – Development standards SEPP 55 – Remediation of land SEPP 65 – Design quality of residential flat development SEPP (Sydney Harbour Catchment) 2005 SEPP (BASIX) 2004 SEPP (Infrastructure) 2007 Ku-ring-gai Planning Scheme Ordinance DCP 40 – Construction and Waste Management DCP 47 – Water Management DCP 55 – Multi-Unit Housing DCP 56 – Notification

Integrated Development No

PURPOSE FOR REPORT

To provide an assessment of the amended plans for development application No. 0110/11 which is for the demolition of existing dwellings and construction of two residential flat buildings comprising 43 units, landscaping and associated works at 6A & 8 Buckingham Road, Killara.

The application is required to be determined by the Joint Regional Planning Panel as the capital investment value (CIV) exceeds \$10 million.

HISTORY

Previous Development Applications

21 April 2006	DA1353/04, for amalgamation of three lots, demolition of three dwellings and construction of a 5 storey residential flat building containing 31 dwellings at Nos. 2-6 Buckingham Road Killara was approved by the Land and Environment Court.
16 May 2007	DA0115/07, for amalgamation of three lots, demolition of two single dwellings and construction of two residential flat buildings with basement parking and 32 units, was refused by Council. The reasons for refusal related to the following issues: <ul style="list-style-type: none">• inadequate street frontage

- inadequate car parking
- excessive floor area of top storey
- overshadowing
- privacy
- landscaping
- solar access

17 January 2008

MOD0328/07 which sought to modify development consent No. DA1353/04 (issued by the Land and Environment Court) to allow for basement level vehicle access to a future development on Nos. 6A & 8 Buckingham Road, alter the internal floor layout and change the footprint of the north-eastern corner of the building was refused by Council for reasons relating to:

- inadequate and inaccurate information
- not substantially the same development
- inadequate deep soil landscaping

23 January 2008

DA0744/07 for demolition of the existing dwellings and construction of two residential flat buildings containing 30 units and basement carparking was refused by Council for reasons relating to:

- no vehicular access
- inaccurate and inconsistent information
- not orderly or economic development

5 May 2009

DA0074/09 for demolition of two existing dwellings & construction of two residential flat buildings comprising 32 units, basement car parking & associated landscaping was refused by Council for the following reasons:

1. *Inconsistency with the aims and objectives prescribed under Clause 25C(2) (e) and (g) and Clause 25D(2)(a),(b),(c),(e) and (k) of the Ku-ring-gai Planning Scheme Ordinance in that:*
 - *the development has an unreasonable impact up the adjoining heritage item*
 - *the development does not achieve a high level of residential amenity particularly with respect of solar access*
 - *the rear setbacks are proposed to be used for private open space areas and sufficient area is not provided for tall trees*
 - *the applicant has failed to demonstrate the minimum area of deep soil landscaping is provided on site*
 - *the proposal does not provide complying side setbacks and the area provided is not sufficient to support the required screen landscaping;*
 - *the setbacks provided are insufficient to address privacy impacts; and*
 - *the applicant has not demonstrated adequate solar access is provided*

for future occupants

2. *The development is contrary to the heads of consideration detailed in Clause 25I(1)(a),(b) and (e) of the Ku-ring-gai Planning Scheme Ordinance as follows:*
 - *The applicant has not demonstrated the required deep soil landscaping has been provided;*
 - *The development results in overshadowing and a loss of privacy to the adjoining properties; and*
 - *The built form is excessive, the non-compliant height, number of storeys and floor area and inadequate setbacks prevents adequate landscape screening to be provided.*
3. *Compliance with the minimum deep soil landscaping requirements of Clause 25I(2) of the Ku-ring-gai Planning Scheme Ordinance has not been adequately demonstrated..*
4. *The site frontage of 28.03m does not comply with Clause 25I(3) of the Ku-ring-gai Planning Scheme Ordinance which requires a minimum frontage of 30m for a site of this area.*
5. *The applicant has failed to provide sufficient information to determine whether compliance with the maximum site coverage of Clause 25I(6) of the Ku-ring-gai Planning Scheme Ordinance is achieved. This has not enabled Council to fully assess the impacts of the development to make an informed decision.*
6. *The top floor area of both Buildings does not comply with the maximum 60% floor area control of Clause 25I(7) of the Ku-ring-gai Planning Scheme Ordinance. The applicant has not submitted a SEPP 1 Objection seeking variation to this development standard. The non-compliance with this standard contributes to the excessive scale of the development and impacts upon adjoining properties.*
7. *Building A does not comply with the maximum number of storeys and ceiling height of Clause 25I(8) of the Ku-ring-gai Planning Scheme Ordinance. The applicant has not submitted a SEPP 1 Objection seeking variation to this development standard. The non-compliance with this standard contributes to the excessive scale of the development and results in impacts upon adjoining properties.*
8. *The proposal is contrary to Principles 1, 2, 3, 4, 6, 7 and 8 of State Environmental Planning Policy No. 65. The proposal fails to satisfy these principles for the following reasons:*
 - *The proposal has not adequately addressed the elements which are important to the context of the site which relate to topography, the adjacent heritage item and views from adjoining properties to the Golf Club House.*
 - *The proposal has failed to provide the required side setbacks, stepped the design of the building in response to the topography of the site and reduced the floor area at upper levels. Building A is excessive in scale when viewed from the neighbouring properties.*
 - *The application has failed to demonstrate compliance with the*

- landscaping requirements of the KPSO and DCP 55 and provides inconsistent information.*
- *The proposal results in amenity impacts to the adjoining properties in relation to overshadowing.*
 - *The development has not demonstrated complying solar access is provided to the development.*
 - *The applicant has not submitted a crime risk assessment.*
9. *The proposal is inconsistent with Part 3.5 Development within the vicinity of a heritage item of DCP 55.*
 10. *The information provided does not allow an accurate assessment of the landscaping proposed. Inadequate information has been provided to determine the deep soil landscape area and a BASIX compliance plan for low water use planting. Inadequate setbacks are proposed.*
 11. *The proposal is inconsistent with Part 4.2 Density of DCP 55 as the failure to provide a deep soil landscaping compliance plan prevents Council determining consistency with C-1, C-2 and C-3 of this control provision.*
 12. *The proposal fails to comply with C-1a, C-1b and C-8 of Part 4.3 Setbacks of DCP 55. Complying setbacks are required to enable landscaping to reach a height to screen the proposed built form. This is not achieved in the proposed development.*
 13. *The application results in amenity impacts to adjoining properties and does not provide a high level of amenity for future occupants. The proposal fails to satisfy Principle 7 (amenity) under SEPP65, the provisions of the RFDC and the design objectives under Section 4.5 (Residential amenity) under DCP55, which require residential flat development to provide a high level of living amenity for all occupants.*
 14. *Non-compliance with Australian Standards for Parking Facilities (Part 2: Off-Street commercial vehicle facilities) AS 2890.2:2002, Australian Standard 2890.1 (2004) "Off-Street car parking", and Council's Development Control Plan DCP No.40 and Policy for Construction and Demolition Waste Management (Adopted 5 May, 1998).*
 15. *Error on Plans*

Particulars

1. *The numbering of carparking spaces is inconsistent on the architectural plans to reflect the actual spaces provided.*
16. *Non-compliance with Council's Water Management Development Control Plan DCP No.47 (Adopted 4 May, 2005).*
17. *The proposal development is unsatisfactory with respect of Section 79C(1)(a)(i)(iii) and (b), (c) and (e). The development is inconsistent with environmental planning instruments being SEPP 65, SEPP 1 and KPSO, contrary to DCP 55. The development results in an unacceptable development which is not suitable for the subject site. The development is contrary to the public interest.*

23 July 2009	The applicant lodged an appeal with the Land and Environment Court
7 May 2010	The Land and Environment Court dismissed the class 1 appeal against Council's refusal of DA0074/09.

DA0074/09 - Findings of the Land and Environment Court

The primary issues considered by the Court were:

- the merits of the SEPP 1 objection for the variation to the development standard for street frontage
- whether the 2 metres western boundary setback for the basement would provide sufficient opportunity for deep soil landscaping in scale with the development
- whether the proposal would dominate the heritage item at No. 10 Buckingham Road (Southdean) and its setting and thereby reduce its heritage significance

In dismissing the appeal, the Court made the following findings:

- i. The 2 metres side setback of the basement will not provide deep soil for adequate landscaping so that the built form does not dominate the landscape.
- ii. The basement is not at the minimum width possible and there is an option to provide common access with Nos. 2-6 Buckingham Road and thereby provide greater side setbacks.
- iii. The 2 metres setback of the basement, particularly where this extends up to 5.06 metres above ground level, constrains the growth potential of the trees proposed in the landscape plan to the extent that effective landscaping will not be achieved and the building will dominate the landscape.
- iv. Compliance with the development standard for minimum street frontage is not unreasonable or unnecessary because the objectives of the development standard are not achieved.
- v. The 10 metres street setback of Building A, whilst not complying with the numerical control in C-1iii of Part 3.5 of DCP 55, meets the objectives of this control.
- vi. The proposal will visually dominate No. 10 Buckingham Road (Southdean) due to inadequate landscape screening being provided.

Current development application

12 October 2010 A Pre DA consultation took place and the following advice was provided to the applicant:

- i. The site should be amalgamated with the adjoining property Nos. 2-6 Buckingham Road and a proposal for the entire site submitted.
- ii. The 5m projection of the basement above the natural ground level should be reduced.
- iii. The pedestrian entrances and communal open space should be clearly defined.
- iv. The building at the front of the site should be set back further from the street boundary or stepped back on the western side to respond to the heritage item at No. 10 Buckingham Road.
- v. The presentation of the development to the golf course and heritage item should be improved.
- vi. The provision of vehicle access through Nos. 2-6 Buckingham Road presented a significant amount of risk with little guarantee of orderly development.
- vii. A detailed assessment against the provisions of SEPP 65 could not be carried out as floor layouts and windows locations were not provided.

10 March 2011 DA0110/11 lodged

24 March 2011 Application notified

12 May 2011 Council officers advise the applicant to withdraw the application due to significant design issues.

20 May 2011 Council officers meet with applicant to discuss the issues outlined in the preliminary assessment letter.

30 May 2011 The applicant is requested to provide further information regarding vehicle access through Nos. 2-6 Buckingham Road.

2 June 2011 The applicant lodges additional information regarding formalisation of the access through Nos. 2-6 Buckingham Road.

14 June 2011 Council officers advise the applicant that the development application will be assessed on the basis of the information currently before Council.

22 July 2011 The applicant submits amended plans.

25 July 2011 Council officers advise the applicant that the amended plans are not accepted and that the development application will be assessed on the

basis of the information currently before Council.

3 August 2011

DA0226/11 for a basement connection between Nos. 2-6 Buckingham Road and Nos. 6A & 8 Buckingham Road was refused under delegated authority for the following reasons:

1. *The application proposes works upon No. 6A Buckingham Road and the application has not been correctly made and provided with owners consent.*

Particulars

- (a) *The application seeks approval to remove trees located on the site known as No. 6A Buckingham Road, Killara.*
 - (b) *The owner of No. 6A Buckingham Road Killara, Mrs C A M Grundy has not consented to the lodgement of the development application.*
 - (c) *The absence of owners consent is contrary to the requirements of Clause 49 'Who can make a development application?' of the Environmental Planning and Assessment Regulation 2000.*
2. *The proposal does not achieve the minimum area of deep soil landscaping required under Clause 25I(2) 'Minimum standards for deep soil landscaping' of the KPSO and is thereby prohibited.*

Particulars

- (a) *By operation of Clause 25I(2)(c) of the KPSO 50% of the site area must be deep soil landscaping.*
 - (b) *Whilst the applicant asserts that the proposal achieves 51.4% deep soil landscaping the application has not excluded the following areas from the calculation:*
 1. *landscape areas with a width of less than 2m*
 2. *retaining walls*
 3. *fences*
 4. *paving*
 5. *paths greater than 1m in width*
 - (c) *With these area excluded less than 50% of the site area is deep soil landscaping.*
 - (d) *A SEPP 1 Objection to support the variation to the development standard has not been submitted.*
3. *The development does not comply with the side setback requirement of DCP 55 contributing to an unacceptable landscape outcome on the site.*

Particulars

- (a) *The basement has a nil setback from the western boundary which does not comply with design control C-1(a) of Part 4.3 'Setbacks' of DCP 55. The non compliance contributes to the failure to provide sufficient deep soil landscaping across the site in accordance with Clause 25I(2) of the KPSO.*
 - (b) *The proposal is contrary to the residential zone objectives set out in Clause 25D(2)(c) of the KPSO, which is to provide side setbacks that*

enable effective landscaping, tree planting between buildings, and views from the street to rear landscaping.

- (c) *The proposal is contrary to the residential zone objectives set out in clause 25D(2)(e) of the KPSO, which is to provide built-upon area controls that ensure the provision of viable deep soil landscaping in order to maintain and improve the tree canopy in a sustainable way, so that the tree canopy will be in scale with the built form.*
- (d) *The application is contrary to the heads of consideration for multi-unit housing set out in Clause 25I(1)(e) of the KPSO as adequate landscape has not been provided to ensure that the building form does not dominate the landscape.*

18 August 2011

The JRPP considered a report prepared by Council staff which recommended refusal of the application. The JRPP resolved:

That the matter be deferred and the staff be requested to provide a report that assesses the amended plans submitted by the applicant on the 2nd July 2011; for the following reason:

In light of the submissions made tonight and the request by the applicant to consider the amended plans, given the history of the matter and the claim by the applicant's representative that the amended plans address the concerns of the Council Staff, it is appropriate that the Panel have a report assessing those plans.

2 September 2011

An amended proposal is submitted. The information submitted with the amended DA included amended architectural, landscape and stormwater plans, and supporting documents.

23 September 2011

The amended proposal is notified

THE SITE

Zoning:	Residential 2(d3)
Visual Character Study Category:	1920-1945
Lot Number:	Lot 100 DP 1164166 (2-6 Buckingham Road) Lot 3 & 4 DP 414101 (6A Buckingham Road) and Lot 1 DP 414101 (8 Buckingham Road).
Area:	3792.2m ²
Side of Street:	Southern
Cross Fall:	East to west
Stormwater Drainage:	By gravity to Killara Golf Club
Heritage Affected:	Yes – adjacent to the heritage items No. 10 Buckingham Road (Southdean), Nos. 11-15 Buckingham Road, the Killara Golf Club clubhouse
Integrated Development:	No
Bush Fire Prone Land:	No

Endangered Species:	Yes – Sydney Blue Gum High Forest. No impact.
Urban Bushland:	No
Contaminated Land:	No

THE SITE AND SURROUNDING AREA

The site

The site is comprised of four allotments with the building to be constructed over three allotments and vehicle access to be provided through one allotment. The proposed construction site includes: one allotment with a frontage to Buckingham Road (No. 8 Buckingham Road) and two battleaxe allotments containing one dwelling (No. 6A Buckingham Road). Vehicle access to the development site is through 2-6 Buckingham Road which is located on the south-west corner of Buckingham Road and the Pacific Highway.

The proposed construction site is on the southern (low) side of Buckingham Road and is irregular in shape with a total area of 3792.2m². The site has a frontage of 28.03 metres to Buckingham Road and widens to 64.31 metres at the rear boundary. The site has a depth of 164.72 metres along its irregular eastern boundary and 91.86 metres along its western boundary.

The eastern side of the street frontage is 85 metres from the intersection with the Pacific Highway. This section of the Pacific Highway has three lanes of traffic in each direction divided by a concrete median island. From the Pacific Highway only left turns from the northbound side of the road are permitted. From Buckingham Road only left turns into the northbound side of the Pacific Highway are permitted. A signalised pedestrian crossing is located on the eastern frontage of Nos. 1-9 Buckingham Road, approximately 100m walking distance from the street frontage of the subject site. The street frontage of the site is within 600m walking distance of the entrance to Killara railway station.

The site slopes steeply from Buckingham Road down in a south-easterly direction to the rear of the site. The site also has a cross fall at the Buckingham Road end of the site in a westerly direction. The site has an average gradient of 18.8% in a north-south direction and gradient across the front boundary of 12.3%.

The site contains two detached dwellings, associated ancillary structures including swimming pool and tennis court with established lawns and mature gardens and trees. The site contains 37 trees.

The site through which vehicle access is proposed, Nos 2-6 Buckingham Road is a construction site. This site benefits from an approval issued by the Land and Environment Court for the construction of a 5 storey residential flat development containing 31 apartments and 66 car spaces over 3 levels of basement parking.

Surrounding development

The site interfaces with lower density zones, including the heritage item at No. 10 Buckingham Road which is zoned Residential 2(b), the single dwelling at No. 8A Buckingham Road that is zoned Residential 2(c2), apartments of No. 568 Pacific Highway (Fernleigh Apartments) that are zoned Residential 2(e) and the Killara Golf Club to the rear of the site that is zoned Residential 2(b).

To the south-east of the subject site are 16 residential flat units located at No. 564 Pacific Highway. The residential flat buildings comprise two residential storeys with one storey of ground level parking below. To the rear of the site is the Killara Golf Club and golf course which also contains lawn bowling greens to the south of the subject site. Adjoining the site to the west, is No. 10 Buckingham Road which contains a single storey heritage listed brick dwelling known as 'Southdean' which was constructed in c.1920. To the south-east of the site and adjoining proposed Building B, is No. 8A Buckingham Road which contains a two storey dwelling on a battleaxe allotment.

THE ORIGINAL PROPOSAL

The original application involved the following:

- Demolition of the existing structures and site works. Construction of a residential flat building which consists of 2 x 6 storey buildings over a common basement which provides parking for 62 vehicles. The development contains 43 apartments units comprising 3 x 1 bedroom apartments, 33 x 2 bedroom apartments and 7 x 3 bedroom apartments. Vehicular access to the basement via the basement of an approved building on the neighbouring property at Nos. 2-6 Buckingham Road which has not been built.

The floor layout is as follows:

Northern Residential Flat Building (Building A)

Basement Level 3 RL100.0	7 car parking spaces, stair and lift access
Basement Level 2 RL103.0	4 car parking spaces, stair and lift access
Basement Level 1 RL106.0	2 car parking spaces, stair and lift access
Level 1 RL109.0	Part basement area with vehicle access to an extension of the basement of Nos. 2-6 Buckingham Road. Construction of the development at Nos. 2-6 Buckingham Road has not

commenced and no approval to extend the basement to enable a connection has been granted. The basement area contains a truck loading area and garbage storage area, mechanical plant room, one manageable apartment, lift and stair access to a lobby that is physically separated from the basement.

Level 2 RL113.0	2 x 2 bedroom manageable apartments and 1 x 3 bedroom manageable apartment, lift and stair access
Level 3 RL116.0	1 x 2 bedroom manageable apartment, 2 x 2 bedroom apartments, lift and stair access
Level 4 RL119.0	3 x 2 bedroom apartments, lift and stair access
Level 5 RL122.0	2 x 2 bedroom apartments, stair access
Level 6 RL125.0	1 x 2 bedroom apartment, stair access

Southern Residential Flat Building (Building B)

Basement Level 1 RL100.00	29 car parking spaces of which 8 spaces are in a tandem arrangement, lift and stair access, stormwater detention tanks in south-western corner.
Basement Level RL103.0	Basement area to the north and apartments to the south, 6 resident car parking spaces and 8 visitor car parking spaces, a security gate separates the resident and visitor parking areas, garbage storage room, 2 x 2 bedroom apartments and 1 x 3 bedroom apartment
Level 2 RL106.0	1 x 3 bedroom apartment, 5 x 2 bedroom apartments, 1 x 1 bedroom apartment, lift and stair access, common access to ground level communal open space.

Level 3 RL109.0	1 x 3 bedroom apartment, 5 x 2 bedroom apartment, 1 x 1 bedroom apartment, lift and stair access.
Level 4 RL112.0	1 x 3 bedroom apartment, 5 x 2 bedroom apartment, 1 x 1 bedroom apartment, lift and stair access.
Level 5 RL115.0	4 x 2 bedroom apartments, lift and stair access.
Level 6 RL118.0	1 x 3 bedroom apartment and 1 x 2 bedroom apartment, lift and stair access, access to 125m ² communal roof terrace which faces toward the golf course.

THE AMENDED PROPOSAL

The amended proposal involves the following:

- Demolition of the existing structures and site works. Construction of a residential flat building which consists of 2 x 6 storey buildings over a common basement which provides parking for 62 vehicles. The development contains 43 apartments units comprising 4 x 1 bedroom apartments, 32 x 2 bedroom apartments and 7 x 3 bedroom apartments. Vehicular access to the basement is still proposed via the basement of an approved building on the neighbouring property at Nos. 2-6 Buckingham Road which has not been built.

The floor layout is as follows:

Northern Residential Flat Building (Building A)

Basement Level 3 RL100.0	6 resident car parking spaces, stair and lift access
Basement Level 2 RL103.0	5 resident car parking spaces, stair and lift access
Basement Level 1 RL106.0	2 visitor car parking spaces, stair and lift access
Level 1 RL109.0	Part basement area with vehicle access to an extension of the basement of Nos. 2-6 Buckingham Road. Construction of the development at Nos. 2-6 Buckingham Road has not

commenced and no approval to extend the basement to enable a connection has been granted. The basement area contains a truck loading area and garbage storage area, mechanical plant room, one 3 bedroom apartment, lift and stair access to a lobby that is physically separated from the basement.

Level 2 RL113.0	1 x 1 bedroom manageable apartment, 2 x 2 bedroom apartments, lift and stair access
Level 3 RL116.0	1 x 1 bedroom apartment, 2 x 2 bedroom apartments, lift and stair access
Level 4 RL119.0	3 x 2 bedroom apartments, lift and stair access
Level 5 RL122.0	2 x 2 bedroom apartments, lift and stair access
Level 6 RL125.0	1 x 2 bedroom apartment with direct access from the lift and fire stairs

Southern Residential Flat Building (Building B)

Basement Level 1 RL100.00	34 resident car parking spaces of which 10 spaces are in a tandem arrangement, lift and stair access, stormwater detention tanks in south-western corner.
Basement Level RL103.0	Basement area to the north and apartments to the south, 6 resident car parking spaces and 9 visitor car parking spaces, a security gate separates the resident and visitor parking areas, garbage storage room, 1 x 2 bedroom manageable apartment, 1 x 2 bedroom apartment and 1 x 3 bedroom apartment
Level 2 RL106.0	1 x 3 bedroom apartment, 5 x 2 bedroom apartments, 1 x 1 bedroom manageable apartment, lift and stair access, common access to ground level communal open space.

Level 3 RL109.0	1 x 3 bedroom apartment, 5 x 2 bedroom apartment, 1 x 1 bedroom manageable apartment, lift and stair access.
Level 4 RL112.0	1 x 3 bedroom apartment, 5 x 2 bedroom apartment, 1 x 1 bedroom manageable apartment, lift and stair access.
Level 5 RL115.0	3 x 2 bedroom apartments, 1 x 3 bedroom apartment, lift and stair access.
Level 6 RL118.0	1 x 3 bedroom apartment and 1 x 2 bedroom apartment, lift and stair access

COMMUNITY CONSULTATION (ORIGINAL PROPOSAL)

In accordance with Development Control Plan No. 56, owners of surrounding properties were given notice of the application on 24 March 2011. In response, Council received ten (10) submissions from the following:

1.	Allan and Sharon Hughes	8A Buckingham Road, Killara
2.	Mr George K Tong	17 Buckingham Road, Killara
3.	Mr and Mrs Middleton	10 Buckingham Road, Killara
4.	The Killara Golf Club	556 Pacific Highway, Killara
5.	Mrs M Alexander	3/564 Pacific Highway, Killara
6.	NJ & PA Himsley	3/568 Pacific Highway, Killara
7.	Miss Judith Power	5/568 Pacific Highway, Killara
8.	Mrs Alissa Bartlett	6/568 Pacific Highway, Killara
9.	Mr M & Mrs M A Kirwan	13/568 Pacific Highway, Killara
10.	Mr W Ong and Ms I Chan	14/568 Pacific Highway, Killara

The submissions raised the following issues:

loss of views of the Blue Mountains from No. 568 Pacific Highway (Fernleigh)

Concern has been raised that the development will result in the loss of views of the Blue Mountains from apartments located in Fernleigh. The Blue Mountains are located to the west of Fernleigh and the outlook is across the rear boundary of No. 568 Pacific Highway. The view concerned is a distant landscape view. The Blue Mountains are approximately 50km due west of the subject site.

Views from Fernleigh will be affected by proposed Building B, as this building is located to the west of Fernleigh. The extent of view loss is a function of the

height of the proposed building, the location of the building, and the size of the building's footprint. In this respect, proposed Building B complies with the height, setback, and building footprint controls in the KPSO and DCP 55.

The loss of views will have a negative impact on the amenity of affected apartments, particularly for those people that are particularly fond of the view. Unfortunately, the planning controls are of little comfort to these residents as the proposal is compliant with the controls of the KPSO and DCP 55 that inform the height, setbacks, and footprint of a building.

The issue of view loss has been considered in accordance with the planning principles arising from the decision of the Land and Environment Court in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.

A response to each component of the planning principle is provided below:

1. *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

The affected view is a distant view of the Blue Mountains which appear on the horizon. The Blue Mountains have cultural significance due to the role of explorers in the expansion of early European settlement. The Blue Mountains have geographical significance as they form the western border to the Sydney basin. A view of the Blue Mountains may be considered by some to be an iconic view, however, the view in question is a distant view and this reduces its significance.

2. *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

The views are from west facing windows and balconies of Fernleigh. The views are across the side boundary of 6A Buckingham Road. Fernleigh is a split level building which steps down to the rear in response to the topography of the site. The eastern portion of the building is comprised of two residential levels with FFLs of 118.43 and 121.43 and a level of car parking below. The western portion of the building comprises two residential levels with FFLs of 112.92 and 115.48. Views will be affected by proposed Building B, as this building is located to the west of Fernleigh. The RL for the ridge of Building B is 121.6. Based on this information views from apartments that are on the second floor of the eastern side of Fernleigh and apartments on the first floor towards the southern side of the building should not be affected by the

development. Views from both levels of the western (lower) portion of Fernleigh and views from the first floor of the northern portion of the eastern side of Fernleigh will be significantly affected by the development.

3. *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

The views affected are from multiple rooms and apartments.

4. *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The proposal is substantially compliant with the planning controls that guide the bulk and scale of the development. To reduce view loss, a significant reduction in the height of Building B would be required. To preserve views to one floor of apartments in Fernleigh, one floor in Building B would need to be deleted. To preserve views from all apartments in Fernleigh, the height of Building B would need to be reduced from 6 storeys to 3 storeys. The deletion of 3 floors in Building B would reduce the number of apartments in the development from 43 to 32. It is unlikely that a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on neighbours.

overshadowing of Fernleigh

Due to the site orientation and distance between the proposed development and Fernleigh, the proposal will not result in any shadow impact upon the apartments in Fernleigh between the hours of 9am to 3pm on the Winter solstice.

loss of privacy of Fernleigh

There are five apartments in Building B which have balconies that have a primary orientation towards Fernleigh. The setbacks of Building B from the

boundary shared with Fernleigh comply with the setback requirements of the DCP. The setback of Fernleigh from the boundary shared with the proposed development is a minimum of 22m. The distance between windows/balconies of the proposed development and existing windows/balconies of Fernleigh exceed the minimum separation distances recommended by the Residential Flat Design Code. Accordingly, the proposal is considered satisfactory with respect to privacy impacts.

traffic congestion in the street, impact on entering Pacific Highway and the potential for traffic to back up and causing a traffic hazard

The application was referred to Council's Development Engineer who did not raise any concerns with respect to the impact of the development on traffic in Buckingham Road and Pacific Highway.

increased noise during construction

It is expected with any construction there will be temporary increase in noise. If the application were recommended for approval, conditions of consent would be imposed restricting the hours during which building work is permitted and placing limitations on the noise generated during construction activities.

size of the building is inappropriate for the location

The size of the building is determined by the zoning of the site and the development standards for height and floor space ratio. The development complies with the development standards for height and floor space ratio.

loss of value to adjoining properties

The impact of a development on property values is not a matter for consideration listed under s 79C of the *Environmental Planning and Assessment Act* 1979. The Land and Environment court has consistently held that the impact of a development on property values is not a relevant planning consideration.

street frontage is less than 30 metres

The street frontage of the site is 28.03m which is 1.97m or 6.56% less than the required street frontage of 30m. A SEPP 1 objection to the development standard for street frontage was submitted with the application. The merits of the SEPP 1 objection are discussed elsewhere in this report. The assessment of the SEPP 1 objection concludes that the variation to the development standard is acceptable as the proposal is consistent with the objectives of the development standard.

loss of solar access to No. 8A Buckingham Road

The proposal results in a loss of solar access to four east facing windows of 8A Buckingham Road, two of these windows are at the ground level and two

are at the first floor level. The extent of the overshadowing is affected by the design of Level 6 (the top floor level) of Building B.

Part 4.3 'Setbacks' of DCP 55 states that the design of a top floor is not to result in any overshadowing of adjoining properties. Apartment 42 on level 6 of Building B has a west facing fully enclosed balcony which increases the height of the shadow cast over the eastern wall of 8A Buckingham Road at 9am. Specifically, the balcony shadow affects a 3m long section of the eastern wall where two east facing living room windows are located. The shadow will cover 100% of the surface area of the windows. In terms of overshadowing, the proposal does not comply with the requirements of DCP 55 with respect to overshadowing from the top floor level.

loss of privacy to the rear yard and terraces of 8A Buckingham Road

Privacy screening to all windows on the eastern elevation of Building B is proposed. The potential for overlooking arises from the secondary aspect of the north and south facing balconies. The balconies of Apartments 23, 24, 30, 31, and 37 have the potential to compromise the privacy of 8A Buckingham Road. If approval of the application were recommended this issue could be addressed by the imposition of a condition requiring the addition of privacy screens to the western sides of the balconies.

impacts upon street parking in Buckingham Road

The application was referred to Council's Development Engineer who did not raise any concerns in respect of parking impacts.

Building B is too close to the side boundary of No. 8A Buckingham Road and protrudes 10 metres further south than the dwelling situated on this site

DCP 55 specifies a minimum side and rear setback of 6m. The KPSO requires that the 3rd and 4th storey have a minimum setback of 9m from land that is not zoned 2(d3). Compliance with these setbacks controls is achieved.

Building A's position set high above No. 8A Buckingham Road presents excessive height and bulk

The height, floor area and position of Building A comply with the development standards set by the KPSO. The setback of Building A from 8A Buckingham Road complies with the setback requirements of the KPSO and DCP 55.

compliance with the requirement to provide 3 hours solar access to 70% of the apartments in the development is not achieved

The non compliance with the solar access requirements of DCP 55 forms part of the reasons for the refusal of the application.

proposed privacy screening is unsightly

The privacy screening on the elevations consists of a mix of fixed aluminium screens with adjustable blades and sliding aluminium screens with adjustable blades. The screens to the western elevation of Levels 4, 5, and 6 of Building B have fixed blades to reduce overlooking of No. 8A Buckingham Road. The screens are of a lighter colour than the walls and will reduce overlooking of adjoining dwellings. Council's Urban Design Consultant did not raise any concerns with the privacy screens. The screens do not compromise the aesthetics of the development and are considered acceptable.

stacked car parking spaces will be inconvenient and therefore residents will be attempting to park in the street

There are no controls in part 5 'Parking and vehicular access' of DCP 55 which stipulate that tandem parking is not permitted. For the subject development, tandem parking is only provided where both car spaces are allocated to a single apartment. The overall number of car spaces complies with the requirements of the KPSO.

the proposed rear setback is less than the setback of No. 8A Buckingham Road and does not comply with a covenant on the land that is designed to prevent development from casting a shadow on the bowling greens

Having regard to the 9am shadow diagram for Building B (drawing No. DA29) the rear setback of Building B would need to be increased by 10m to avoid any overshadowing of the bowling green. To avoid any overshadowing of the Golf Club land (i.e. no shadow cast beyond the common boundary) the setback would be to be increased by 16.2m.

Clause 68 of the KPSO 'Suspension of Acts, covenants etc' states that a covenant can be set aside where it is inconsistent with the KPSO. The rear setback required by DCP 55 is 6 metres and the proposed rear setback is 12.8 metres. To fully comply with the terms of the covenant, Building A would need to have a rear setback of 29 metres. To impose a rear setback requirement of 29 metres would be inconsistent with the objectives of the KPSO as the land would be unable to be developed to its reasonable potential.

the building and proposed landscaping will result in overshadowing of the Killara Golf Club's bowling greens to the rear of the development site

The shadow diagrams show that 28% of Bowling Green No. 1 would be overshadowed by Building B at 9am. Based on the 9am shadow diagram for Building B (drawing No. DA29) the rear setback of Building B would need to be increased by 10 metres to 22.8 metres to avoid any overshadowing of the bowling green. The proposed setback of 12.8 metres is already more than double the required setback of 6 metres, accordingly it would be unreasonable to require that the setback be increased or the height of the building be

reduced.

The concerns raised by the Golf Club regarding the impacts of shadowing from proposed tree planting are supported by a letter prepared by a turf expert and shadow diagrams prepared on behalf of the Golf Club which show the shadows that would be cast by the proposed trees. Concern is raised that the shadow diagrams are inaccurate as the shadow cast from the 15 metres tall smooth barked apple tree is shown as having a length of 60 metres at 9am when the true length of a shadow cast by a 15 metres tall tree at 9am is in the order of 45 metres. Additional concerns include that the shadows cast by the proposed trees have been shown as a solid mass which does not reflect the relatively open canopy of a Smooth Barked Apple tree and that the shadows cast by proposed Building B are not included on the plans. It would appear that the majority of the shadow cast by the proposed trees will fall inside the shadow cast by the proposed building.

Clause 25D of the KPSO contains the objectives for residential zones including the zoning of the subject site which is Residential 2(d3). Seven of the nineteen objectives relate to the protection and enhancement of the landscaped character of Ku-ring-gai. As the proposed tree planting is consistent with the objectives for the zone and will provide important landscape screening for the development the deletion of the trees which only partially overshadow the bowling greens is not considered appropriate.

impact upon sewerage easement running through site

A sewer pipe is situated inside the site. If approval of the application were recommended, conditions requiring consultation with Sydney Water would be imposed. If relocation of the pipe is required the developer would be required to adhere to any requirements issues by Sydney Water.

accuracy of the geotechnical report submitted

No concern has been raised by Council's Engineer regarding the submitted geotechnical report.

noise impact upon adjoining properties from increased occupants

The site is zoned for residential purposes and multi-unit housing. The expected noise generation of such a development is not considered to be inconsistent with what would be expected in a residential area zoned for multi-unit housing.

the design of the buildings is not consistent with the character of the streetscape which includes heritage listed buildings

Concern has been raised by Council's Heritage Advisor regarding the proposed development with respect to character. The application is considered unsatisfactory in this regard.

the scale of the development is too large for the size of the site

The site is zoned for multi-unit housing and, due to the topography, there are concessions in the controls which allow for increased height. The scale of such a development can be alleviated through articulation and modulation in addition to landscaping to screen built form and provide relief. The proposal is acceptable in this regard.

impact upon services (local sewerage, water, garbage)

If approval of the application were recommended, conditions would be imposed requiring that consultation with utility providers be carried out prior to the construction of the development.

Building A is located in front of No. 10 Buckingham Road which does not comply with design control No. 1(iii) in part 3.5 'Development within the vicinity of a heritage item' of DCP 55

It is acknowledged that the proposal does not comply with design control C-1 (iii) in part 3.5 of DCP 55. The application is not supported on heritage grounds.

Building B is not on a steep slope as per the definition of site slope contained in the KPSO and Building B should have a maximum height of 5 storeys, not 6 storeys

The site slope measured between the outer edge of the building footprint of the development is 17.35%, accordingly the proposal benefits from the concessions outlined in clause 25K of the KPSO and a maximum height of 6 storeys is permitted for both buildings.

Building B will overlook the formal lounge, main bedroom and garden of No. 10 Buckingham Road.

The north facing windows and balconies of Building B will provide a view towards the rear elevation and backyard of No. 10 Buckingham Road. The distance between the northern elevation of Building B and the rear elevation of No. 10 Buckingham Road is a minimum of 28 metres. Compliance with the minimum separation distance requirements of 12 metres and 18 metres specified in part 4.5.2 'Visual Privacy' of DCP 55 is achieved.

The distance between the northern elevation of Building B and the side boundary of No. 10 Buckingham Road is 17 metres. DCP 55 does stipulate a minimum separation distance between habitable rooms and private open space of adjoining properties. The DCP does state that roof terraces are to be designed to avoid overlooking or neighbour's principal outdoor living areas. The roof terraces for Apartments 41 and 42 have privacy screens to their western sides which would reduce overlooking of No. 8A & 10 Buckingham Road. The primary outlook for the roof terraces is towards the rear elevation of Building A.

As compliance with setback, deep soil landscaping and separation distance controls is achieved, the proposal is considered acceptable in this regard.

the development will severely impact the outlook enjoyed from the verandah on the eastern side of No. 10 Buckingham Road

The loss of views is a consequence of the planning controls which permit the development of the site for the purposes of a multi-storey residential flat building. The loss of views from No. 10 Buckingham Road is not a result of a poorly considered design or a failure to comply with the planning controls. The proposal is acceptable in this regard.

the development will overshadow the front entrance and verandah of No. 10 Buckingham Road

Design control No. 6 in part 4.5.1 'Solar Access' of DCP 55 states that the development shall allow the retention of at least 3 hours of sunlight between 9.00am and 3.00pm on June 21 to the habitable rooms and the principal portion of the outdoor living area of adjoining houses in single house zones (2(c1) and 2(c2) zones). No. 10 Buckingham Road is zoned 2(b) and is not subject to design control No. 6.

The loss of solar access to a front entrance is unlikely to have a significant impact on the amenity of the dwelling. The verandah is highly susceptible to overshadowing and the shadow diagrams show that the verandah is partially overshadowed by the existing 2 storey dwelling at 9am. The preservation of solar access to a verandah which is located on the southern side of the dwelling cannot be achieved in light of the development standards that permit residential flat buildings with a height of up to 6 storeys on adjoining allotments.

Level 5 and Level 6 of Building A do not have lift access and to provide lift access to Levels 5 and 6 a roof level lift room will be required.

The applicant has advised Council that lifts were omitted from the level 5 and 6 floor plans due to a drafting error. If the plans were amended to include lift access to levels 5 and 6 and a roof level lift room, an assessment of the impacts of the roof level lift room would be carried out.

The proposal does not comply with the front setback controls specified by design control No. 1 in part 4.3 'Setbacks' of DCP 55.

Non compliance with the requirements of part 4.3 'Setbacks' of DCP 55 form part of the reasons for the refusal of the application.

the balconies lead themselves to be enclosed and this would increase the floor space ratio

Operable screens have been provided for the majority of the balconies in the

development. A balcony with operable screens does not constitute floor space area. It is common for balconies in apartment buildings to have operable screens for weather protection, noise amelioration, shading, and privacy purposes. The screens enhance the utility of the balconies and do not compromise the aesthetics of the building.

the top storey FSR control is not evenly distributed defeating the purpose of the DCP requirement

The development complies with the controls with respect to the maximum floor area of a top storey.

the proposal does not comply with the minimum street frontage and no concessions of bulk, scale, height, or side setbacks have been given to warrant the acceptance of the SEPP 1 objection

There is no requirement in the KSPO or SEPP 1 to provide concessions to support a variation to a development standard under SEPP 1. The primary objective of the minimum street frontage control is to ensure that the side setbacks are of sufficient dimension to support deep soil landscaping that can attain a height commensurate with the scale of the building. The proposal is acceptable in this regard.

the depth of the basement under Building A is excessive and it is too close to No. 10 Buckingham Road

If approval of the application were recommended, conditions could be imposed to minimise the likelihood of adjoining properties being damaged during construction works.

it is unclear as to whether a new substation will be required for the development

If approval of the application were recommended, conditions would be imposed requiring consultation with service providers such as electricity, gas, water, and telecommunications. No provision has been made for a new substation was required there is sufficient space on site to provide a substation whilst maintaining compliance with the development standard for deep soil landscaping.

the location of the water hydrant has not been nominated on the plans and the water hydrant should not be located within the view corridor of the heritage item

If approval of the application were recommended, conditions could be imposed to resolve this issue.

inadequacies of heritage impact statement submitted

For the reasons outlined elsewhere in this report, Council's Heritage Advisor does not support the proposal.

COMMUNITY CONSULTATION (AMENDED PROPOSAL)

In accordance with Development Control Plan No. 56, owners of surrounding properties were given notice of the amended proposal on 23 September 2011. In response, Council received twelve (12) submissions from the following:

- | | | |
|-----|-------------------------|-----------------------------------|
| 1. | Allan and Sharon Hughes | 8A Buckingham Road, Killara |
| 2. | Mr and Mrs Middleton | 10 Buckingham Road, Killara |
| 3. | Mr John Henderson | 12 Buckingham Road, Killara |
| 4. | Mr Meir Eskinazi | A001/1-9 Buckingham Road, Killara |
| 5. | Mr Singh and Mrs Gill | A005/1-9 Buckingham Road, Killara |
| 6. | Mr Edward Tam | A201/1-9 Buckingham Road, Killara |
| 7. | Ms Alicia Tang | A301/1-9 Buckingham Road, Killara |
| 8. | The Killara Golf Club | 556 Pacific Highway, Killara |
| 9. | Mrs M Alexander | 3/564 Pacific Highway, Killara |
| 10. | Miss Mollie Hodgkinson | 13/564 Pacific Highway, Killara |
| 11. | Miss Judith Power | 5/568 Pacific Highway, Killara |
| 12. | Mr M & Mrs M A Kirwan | 13/568 Pacific Highway, Killara |

The submissions raised the following additional issues:

Loss of views from apartments located in the residential flat building at 1-9 Buckingham Road

Concern has been raised that the development will result in the loss of views from apartments located in the residential flat building at 1-9 Buckingham Road, which is opposite the development site. The primary views from south facing apartments in this development are to trees located within the Killara Golf Course. This view could be described as an open landscaped view. Distant views of Artarmon, St Leonards, and the Anzac Bridge are also available.

The loss of views will have a negative impact on the amenity of affected apartments, particularly for those people that are particularly fond of the view. Unfortunately, the planning controls are of little comfort to these residents as the proposal is compliant with the controls of the KPSO and DCP 55 that inform the height, setbacks, and footprint of a building.

The issue of view loss has been considered in accordance with the planning principles arising from the decision of the Land and Environment Court in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.

A response to each component of the planning principle is provided below:

- The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than*

views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The affected view comprises a heavy tree canopy in the foreground and a city skyline in the distance. The immediate view does not include any icons, however the distant view does include the Anzac Bridge.

2. *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

The views are from south facing windows and balconies. The views are across of the proposed development site known as 6A & 8 Buckingham Road.

3. *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

The views affected are from multiple rooms and apartments.

4. *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The loss of views is a result of a proposal that complies with the planning controls in terms of height, floor space ratio, and setbacks. The apartments which will be affected by a loss of views were approved for construction under the same Environmental Planning Instrument that the current development application is being assessed. The loss of views is a direct consequence of the zoning of the site and it is unlikely that a more skilful design would reduce view loss for adjoining properties.

The number of storeys should be reduced because the street frontage is less than 30 metres

The street frontage of the site is 28.03 metres which is 1.97 metres or 6.56% less than the required street frontage of 30 metres. A SEPP 1 objection to the development standard for street frontage was submitted with the application. The merits of the SEPP 1 objection are discussed elsewhere in this report. The assessment of the SEPP 1 objection concludes that the variation to the development standard is acceptable as the proposal is consistent with the objectives of the development standard.

The development will result in a loss of solar access to No. 8A Buckingham Road and the shadow diagrams are inaccurate

The proposal results in a loss of solar access to four east-facing windows of 8A Buckingham Road, two of these windows are at the ground level and two are at the first floor level. The extent of the overshadowing is affected by the design of Level 6 (the top floor level) of Building A and Building B.

Part 4.3 'Setbacks' of DCP 55 states that the design of a top floor is not to result in any overshadowing of adjoining properties. The top floor level in the amended DA has a setback of 4.25 metres (previous 0m) from the floor below and 13.5-13.8 metres (previously 9.2-9.6m) from the western side boundary. The shadow from the top floor level falls inside the shadow cast by the floor below. The proposal complies with the requirements of DCP 55 with respect to overshadowing from the top floor level.

the proposed rear setback is less than the setback of No. 8A Buckingham Road and does not comply with a covenant on the land that is designed to prevent development from casting a shadow on the bowling greens

On 3 August 2011 the High Court of Australia upheld an appeal which sought to enforce a restrictive covenant over land that was zoned under LEP 194

Having regard to the 9am shadow diagram for Building B (drawing No. DA29) the rear setback of Building B would need to be increased by 10m to avoid any overshadowing of the bowling green. To avoid any overshadowing of the Golf Club land (i.e. no shadow cast beyond the common boundary) the setback would be to be increased by 16.2m.

Clause 68 of the KPSO 'Suspension of Acts, covenants etc' states that a covenant can be set aside where it is inconsistent with the KPSO. The rear setback required by DCP 55 is 6 metres and the proposed rear setback is 12.8 metres. To fully comply with the terms of the covenant, Building A would need to have a rear setback of 29 metres. To impose a rear setback requirement of 29 metres would be inconsistent with the objectives of the KPSO as the land would be unable to be developed to its reasonable

potential.

The decision of the High Court in *Cumerlong Holdings Pty Ltd v. Dalcross Properties Pty Ltd* concerned a site that was zoned 2(d3) under LEP 194. The site was subject to a restrictive covenant that prevented the use of the site for hospital or medical purposes. These uses are allowed under the 2(d3) zoning. The principle issue considered by the Court was whether the Governor of New South Wales was required to approve the LEP because it permitted development that was contrary to the terms of the restrictive covenant. The Court held that the Governor's approval was required and issued orders restraining the respondent from acting on their development consent for a hospital/medical use. The subject situation can be distinguished from the matter considered by the High Court as the restrictive covenant in question relates to impacts from buildings or landscaping rather than the use of land, and that the subject site was zoned 2(d3) under LEP 200 rather than LEP 194. The ramifications of these differences are unknown and untested.

the building and proposed landscaping will result in overshadowing of the Killara Golf Club's bowling greens to the rear of the development site

The Killara Golf Club has submitted an objection to the amended proposal with additional supporting information, including revised shadow diagrams. The Golf Club asserts that the shade caused by the development will have 'devastating results to the quality and playability of the northern quarter of this bowling green'. Concerns regarding leaf litter from the evergreen and deciduous trees falling on the bowling green are also raised. These include additional maintenance requirements and that leaf litter falling on the playing surface would interrupt play.

The concerns raised by the Golf Club regarding the impacts of shadowing from proposed tree planting are accompanied by a letter prepared by a turf expert and revised shadow diagrams which show the shadows that would be cast by the proposed trees at various times during the year. The shadow diagrams indicate the shadows cast by two 20m tall Smooth Barked Apple trees and three 25m tall Sydney Blue Gums at various times of the year.

The overshadowing of the bowling greens from the proposed Building B is a function of the height, bulk, and setbacks of the building. In this respect, the development is compliant with the height, floor space ratio, and setback controls specified in the KPSO and DCP 55. It is an accepted planning practice to assess the environmental impacts of compliant aspects of the development differently to environmental impacts from non compliant aspects of a development. In the subject case, the proposed rear setback of 12.8 metres is more than double the required setback of 6 metres and, accordingly it would be unreasonable to require increased setbacks or a reduction in building height.

As a solution to the problem of overshadowing from proposed trees the Golf Club has suggested that a relatively low hedge be planted to the rear of

Building B and a different species of evergreen trees which obtain a lesser height be specified in the plan. The replacement of the proposed evergreen trees, including Sydney Blue Gums which are characteristic of the critically endangered ecological community Blue Gum High Forest is not supported. Clause 25D of the KPSO contains the objectives for residential zones including the zoning of the subject site which is Residential 2(d3). Seven of the nineteen objectives relate to the protection and enhancement of the landscaped character of Ku-ring-gai. As the proposed tree planting is consistent with the objectives for the zone and will provide important landscape screening for the development the deletion of the trees which only partially overshadow the bowling greens is not considered appropriate.

the geotechnical report is dated 17 January 2007 and has been prepared for a development comprising two 5 storey building with 2-3 common basement levels

The preliminary geotechnical investigation is a brief report designed to inform the preparation of a more detailed report and further geotechnical investigations. No concern has been raised by Council's Engineer regarding the submitted geotechnical report.

the development will have a negative impact on view corridors to and from the heritage item 10 Buckingham Road

Concern has been raised by Council's Heritage Advisor regarding the impact of the development on the heritage item 10 Buckingham Road. The application is considered unsatisfactory in this regard.

hydraulic lift technology cannot service a 10 storey building as is the case for Building A

The lift in Building A services 9 floor levels. It is a matter for the applicant to determine the specifications and type of lift provided in the building and provide sufficient details regarding its feasibility at construction certificate stage.

the development will have an unacceptable impact on the urban conservation area

The site is not located in an urban conservation area.

the floor space ratio calculation is incorrect as it includes the area of the apartments only, and private car spaces, storage space, fire escapes and enclosed balconies have not been included as floor area

The floor space ratio calculation underestimates the floor area of the development as the floor area occupied by the majority of the fire stairs has been included in the calculation. Figure 3 in part 4.2 of DCP 55 shows that fire stairs are not included as floor area. The proposed balconies have sliding permeable screens which are not airtight. The balconies are not included as

floor area. Car spaces and storage spaces in basements are not included as floor area.

the building should be angled so that it is in alignment with the heritage item

Aligning the side elevations of the building to match the heritage item would result in an undesirable built form which would be inconsistent with the prevailing pattern of development in the area.

the development will have a negative impact on the privacy of apartments located within the residential flat building at 1-9 Buckingham Road

The distances between the windows/balconies of the proposed development and the existing windows/balconies of apartments in the the residential flat building at 1-9 Buckingham Road exceed the minimum separation distance requirements specified in DCP 55.

the additional apartments will significantly increase noise levels in the street

Noise resulting from additional traffic is an outcome of a zoning which permits the construction of residential flat buildings which contain a greater number of dwellings per hectare than low density residential development. The application could not be refused on the basis of increased noise.

INTERNAL REFERRALS

Urban design

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

Principle 1: Context

The site, its context and the appropriateness of residential flat development in this location has been discussed in more depth previously. In summary, the site is awkwardly shaped, steep and south-facing and presents substantial challenges to appropriate design. The site is bordered to the north and south by the Killara Links Precinct Urban Conservation Area but is not located within it. It is considered that no substantial heritage impacts are caused to Killara Golf Club and 11 Buckingham Road by this proposal, however the proposal's adjacency to 8A and 10 Buckingham Road is more delicate. Whilst the original LEP 194 2(c2) zoning of the subject site is considered to be more appropriate with regards to a transition of scale to the neighbouring 8A and 10 Buckingham Road, the present 2(d3) zoning under LEP 200 is understood as the 'desired future character' for the site. The relationship and impacts of the proposal to 8A and 10 Buckingham Road will be discussed further under PRINCIPLE 3: BUILT FORM.

The present application is also bound up with the neighbouring site at 2-6 Buckingham Road, on which it is relying upon for vehicular access. It is understood from the correspondence (Letter Aleksandar Design Group 23 August 2011) that construction of 2-6 Buckingham Road has now substantially commenced. Having the proposal tied to the neighbouring site, presumably requiring a S96 or DA for 2-6 Buckingham Road and a deferred commencement condition for the present site, poses the 'risk' that the application could become frustrated. From an inspection of Council's DA Tracking service, it appears that DA 0226/11 has indeed been submitted to amend the basement design of 2-6 Buckingham Road allowing the car park connection to be built, however that this DA has been refused. From the available information, it is unclear at this time what the grounds for refusal are. With regards to the present documentation for 6A-8 Buckingham Road, the issue of garbage truck servicing through the basement levels appears to have been addressed satisfactorily with further information provided by the architect and the traffic engineer (subject to Council's engineer's approval).

Principle 2: Scale

Further information has provided clarification around the extent of impact from overshadowing from the uppermost levels of the proposed buildings upon the neighbouring houses at 10 and 8A Buckingham Road. Winter shadow diagrams on DA45C show that the overshadowing of 10 Buckingham Road by Building A is restricted to between 9.00am and 10.30am, and that the shadow cast on the windows of the house is caused by the first four storeys of Building A, not the uppermost levels. Similarly, the same shadow diagrams show that the overshadowing of 8A Buckingham Road by Building B is also restricted to the hours between 9.00am and 10.30am and also that the shadow cast on the windows of the house is caused by the first four storeys of Building B, not the uppermost levels. Whilst the uppermost levels of Buildings A and B do cause overshadowing of the open space of these houses, this is limited to the first 1.5 hour period and does not cause a significant additional loss of amenity given the quantity of the open space.

There does, however, appear to be an additional hour of shadow between 10.30am and 11.30am cast by Building A on 8A Buckingham Road which is caused by the uppermost levels. This one hour appears to be the only direct non-compliance with DCP55 control 4.3 C-9 ii that can be ascertained (if the control pertains to the house only, not the open space). If this is the case, given the steeply sloping nature of the site, the southern orientation which exacerbates shadow impact, the limited time frames, and priority given the windows of the house over the open space, it is considered that the overshadowing impacts before noon, whilst obviously not desirable, are limited and are reasonable in this circumstance. The concern regarding the width of the site as previously advised, does not appear to affect the overshadowing of windows, only the overshadowing of open space, apart from the one hour mentioned above.

With regard to the view of the southern and western face of Building B from the bowling greens, additional modelling has been incorporated into these facades. They now read as a tripartite composition as opposed to a monolithic whole, albeit by only employing the minimum 600mm articulation. Whilst these facades are still considered to be relatively 'boxy,' they have been broken down satisfactorily with respect to DCP55 control 4.4 C-1 and C-

2, and are a worthwhile improvement on the previous submission.

Principle 3: Built form

With regard to the front setback, Building A has been amended to occupy 37.5% of the setback zone and appears to now comply with DCP55 Figure 4: Site Setbacks. In addition, the front facade has been stepped in plan. This move achieves two important benefits: the flatness of the front facade as previously described has been satisfactorily ameliorated and Building A reveals more of the facade of 10 Buckingham Road to the street. The general content and reasoning of the 'Supplementary Heritage Matters' Letter (Archnex 25 August 2011) regarding presentation to the street is considered to be convincing from an urban design perspective.

With regard to the setback of Level 5 of Building A from 2-6 Buckingham Road (Unit 12), the proposed opaque glass to the service rooms assists with visual privacy. The screening of the living and bedroom room window is satisfactory, however it would be preferable if the eastern window of Bedroom 1 were deleted as it is not needed and directly faces an upper level balcony on 2-6 Buckingham Road. With regard to the setback of Level 6 of Building A from 2-6 Buckingham Road (Unit 13), all of the windows in this facade are now to non-habitable rooms. This requires only a 13m separation under DCP55 control 4.5.2 C-2 v and the RFDC. This setback is shown as 7100mm and is therefore compliant. The previous advice regarding diagonal separation of level 5 Building B (Unit 39) from level 3 of Building A (now Unit 5) was incorrect. Unit 39 did, and still does, incorporate screening to its Bedroom 1 window which addresses this proximity issue. It would be beneficial for bedroom 1 (Units 19, 26, 33, 39) to have a secondary east facing window to the balcony as storage no longer obstructs this possibility.

With regard to the plan for Building A, the plan has been substantially improved by optimising the solar access. Where previously this building only had 5 of 13 units with 3 or more hours of sunlight, it now appears to have 12 of 13 units with 3 hours sunlight or more. This is a clear demonstration, on a compromised site, that it is generally not necessary to resort to a lower standard of 2 hours sunlight, or longer period of 8am-4pm, for the densities contemplated under Ku-ring-gai's controls. In addition, a positive address direct from Buckingham Road has been incorporated through the northern face of the building with the stair lift being removed. These alterations are highly commended. That the entry is not covered is still satisfactory in this instance.

Building B remains far in excess of 18m deep, is too wide and provides relatively poor amenity. This can be seen by comparing the performance of Building A to Building B. Building A achieves 92% solar access, 100% cross ventilation and has a number of kitchens and bathrooms on external walls with windows. By contrast, Building B only achieves 73% solar access, 70% cross ventilation, and has zero bathrooms and kitchens on the external walls on the typical floor plan, plus some internalised spaces (studies/kitchens). This is an inferior result directly related to building depth. This will be discussed further under PRINCIPLE 7: AMENITY.

Principle 4: Density

The difficulties this site poses have been described previously. The proposed

floor space is 1.16:1, which represents 89.2% of the allowable floor space. Where previously a further reduction in floor space was contemplated, the presently proposed amendments suggest that the plans are a reasonable development of the site and are not excessive. This is demonstrated through design improvements in apartment performance, building entry, improvement in the façade treatment, and clarification of the overshadowing impacts.

Principle 5: Resource, energy and water efficiency

As described above for Building B under PRINCIPLE 3: BUILT FORM, deep buildings tend to internalise service rooms. This is detrimental to amenity and increases energy use through requiring artificial lighting and in particular, mechanical ventilation. However, 13 of 43 (30%) of kitchens are now located on, or immediately adjacent to, external walls. This now complies with the RFDC requirement for 25% (p87). Units 17, 24 and 31 still have highly internalised kitchens which are undesirable and that could be argued do not satisfy the objective of having the back of kitchens less than 8m from a window. Similarly, Units 20, 27 and 34 have a portion of their kitchen more than 8m from a window. Both of these are due to deep building footprints. It is still recommended that a door sectioning off the living room area would be beneficial, particularly in units with long corridors.

The proposal includes 4 of 43 (9.3%) single orientation south-facing apartments (Units 15, 22, 29 and 36) which do not comply with DCP55 control 4.5.1 C-4. This number of units, however, does marginally comply with the RFDC Rule of Thumb to 'Limit the number of single-aspect apartments with a southerly aspect to a maximum of ten percent of the total units proposed.' In general, the presence of views does not override the requirement for optimised solar access. However, giving consideration to the specific site shape and orientation, to the improved solar performance of the development as a whole, and to the fact that no other units receive zero sunlight, this non-compliance with the DCP, in light of the RFDC, whilst undesirable, may be considered acceptable within the constraints.

The letter from Don Fox Planning 21 July 2011 suggests the opportunity to include natural ventilation to the garbage room of Building B. This should be included on the drawings. Also the fire stairs in this location are unresolved.

Principle 6: Landscape

It appears from the winter shadow diagrams on DA45C and DA46C that the small communal open space between Buildings A and B receives 3 hours sunlight between 9.00am and 12.00pm and therefore complies with DCP55 control 4.5.1 C-2.

From the correspondence (letter Aleksandar Design Group 23 August 2011), the fence design to private courtyards appears to have been resolved in consultation with Council's landscape architect, although this still appears to be too transparent.

The communal roof terrace to Building B has been deleted and instead incorporated into the terrace area of Unit 42. This is a negative design change which reduces the available amenity for the majority of residents. This terrace area, as currently drawn, is not resolved, having a fire exit egress from it and a privacy conflict with the lobby. It is advised that the communal roof terrace

with barbecue should be reinstated and include some planting to the perimeter.

Screening of roof terraces at the uppermost levels of both buildings to ensure privacy to the east and west has not been addressed. Soft landscaping should also be provided to the large terraces of Building B to contain the space and soften the upper edge of the building.

Letterboxes have been indicated with a note on DA12B, but no further documentation has been provided on the architectural or landscape drawings. They are considered to be in a suitable location, but their design should be careful not to conflict with any of the objectives for the landscaped front setback. Their inclusion may marginally affect the deep soil calculation.

The location of an angophora costata in the southern setback appears to conflict with the new storm water easement. This should be amended.

Principle 7: Amenity

A total of 34 out of 43 (79%) of units are cross ventilated. Whilst previous comments regarding depth, views and best practice still stand, it must be recognised that this figure exceeds the required 60% by some margin.

A total of 34 out of 43 (79%) (not 83% as claimed by the Solar Access Report) of units receive 3 or more hours of sunlight between 9am and 3pm in winter. It is not clear whether this applies to the living space and the private open space as required by the RFDC (p85) or only to one or the other as required by DCP55 control 4.5.1 C-1. It should be clarified with the architect that the provisions of the RFDC is adhered to. If this is the case, it must also be recognised that this figure exceeds the required 70% and is a significant improvement on the previous 56%.

Single orientation east (previously 'west' sic) units 20, 27 and 32 are improved over the previous plan, but are still not ideal. They are 9.6m-10.8m to the rear of the kitchen, which is non-compliant, and still incorporates an internalised room labelled as a study. Whilst this study is of a smaller dimension than previously shown, perhaps the inclusion of sliding doors to the hallway would make it less 'bedroom-like'. It is also unclear what relationship this room has with the kitchen.

Most balconies now appear to comply with the required areas measuring to the inside of the balustrade. One omission appears to be Units 14, 23, 30 which are slightly under due to the corner column. This should be amended.

Poor resolution of storage for apartments remains an issue. Spaces in the basement are provided but they are still not apportioned and allocated. Whilst access to these areas has been improved through the location of shared areas for disabled car spaces, it is unclear what their layout will be and whether there is sufficient basement storage once rooms/cages are installed. Many units also do not provide adequate storage within the apartment. Units 3, 6, 9, 11, 12, 13, 38, 41, 42 and 43 provide storage on their balconies. This is non-compliant. Whilst additional storage could be contemplated on balconies, primary storage must be secure from the elements, located inside, and count towards FSR. Units 19, 26, 33 and 39 do not comply if a laundry tub is included. Several further units appear not to have a laundry tub which

they are required to have under the BCA (Units 4, 7, 10, 11, 13 and 15), provision of which may reduce required storage space. These laundries are unresolved and should be amended.

The issue with access to the top floors of Building A has been resolved.

The issue of ramp width to level 1 of Building A has been resolved.

It is unfortunate that a significant new issue has resulted from amendments to Building A. Common circulation on Levels 2, 4 and 5 has become internalised. This is non-compliant with DCP55 control 4.5.1 C-3 'Entry lobbies and common corridors should be naturally lit and ventilated' and does not correspond with the objectives of the RFDC. Common areas can represent up to 50% of the energy use of a residential flat building. Whilst other changes to Building A are generally very positive, a window should be included to these corridors.

Bedroom 2 of Unit 11 scales at less than 3.0m wide. This can be easily amended.

Principle 8: Safety and security

The address to Building A has been much improved now being directly visible and accessible from the street and overlooked by apartments. This is a desirable outcome. A lighting plan remains to be provided to demonstrate safe circulation at night, particularly with regards to Building B access, which is removed from the street.

Principle 9: Social dimensions

Additional graphic information with regard to the manageable units has been provided to substantiate their compliance with templates overlaid on the plans. However, it is noted that bedroom dimensions of Unit 4 and 15 appear to be marginally under that required by AS4299 given that a standard queen size beds is 1.53m x 2.03m. This should be amended. Disabled car parking spaces appear to have been provided in appropriate locations.

A total of 30 out of 43 (69.7%) apartments have been nominated as visitable with graphic information to substantiate compliance. Of these, units 10, 19, 26, and 33 do not comply with Figure 1.1 of AS4299 due to the door clearance required at the toilet pans. As the percentage visitable is marginally compliant with the 70% required, this should be amended to comply. Also, many of the front doors to the units (17) now open outwards, presumably to achieve accessibility clearances. This is unusual and is suspected to be in breach of BCA egress requirements. This should be verified with Council's building inspectors.

The present documentation includes 4 of 43 (9.3%) 1 bedroom apartments, 7 of 43 (16.3%) 3 bedroom apartments, with the remainder being 2 bedroom apartments. This improves slightly on the previous mix, providing a variety of unit sizes to cater for different household types.

The stair lift to Building A has been resolved through redesign of the entrance facing Buckingham Road. The new ramp caters for prams and bicycles as well as wheelchairs.

The accessible entrance to Building B from the street is unclear. Two options appear to be available but both are compromised. The first option is to enter Building A at Level 3, take the lift down to Level 1 and follow the ramp to the communal open space. From here though the ramp landings seem to collide and then a stair lift is required to traverse the eastern stairs. The second option is to enter Building A at Level 3, take the lift down to Basement 1 and egress through the car park. Whilst this route is more direct and high quality finishes are proposed for this pathway, this is not considered to be a good resolution. Neither access is ideal. Whilst a better resolution is preferable, no ready solution is apparent.

Principle 10: Aesthetics

The size and flatness of the building facades has been addressed through the incorporation of articulation to all facades. This has improved the appearance of the building and all facades now appear to comply with DCP55 control 4.4 C-1 and C-2. The material selection has been described positively previously.

Conclusion/recommendations

It is apparent that genuine regard has been had for the previous SEPP 65 assessment and recommendations and the opportunity has been taken to make moderate revisions to the drawings that have resulted in many worthwhile design changes that satisfactorily address most of the urban design issues that had been raised.

The present set of drawings has: resolved issues of the Building A plan arrangement by flipping the plan north-south; resolved the non-complying front setback by stepping the building, which in turn resolved the facade articulation and improved the street views to 10 Buckingham Road; amended balcony sizes to comply; indicated the location of disabled parking in appropriate locations; provided building articulation that works effectively to break the building facades down; significantly improved the building address to Building A; improved the variety in the unit mix on offer; resolved access via the fire stair; resolved the courtyard fence design; demonstrated solar access to the communal open space with shadow diagrams; and demonstrated that a further reduction in floor space is not necessarily warranted through a closer assessment of overshadowing and privacy impacts.

However, two major issues remain. The first is that storage should be resolved, both within the basement and within the apartments. Whilst notionally a 'small thing,' it is considered that incorporation of storage may have a 'less than small' impact on the apartment and car park layouts when properly integrated. The second issue is that some of the common circulation to Building A has been internalised. This should not be mutually exclusive with the improved 'flipped' plan arrangement. A window should be provided to these corridors.

The minor issues are discussed below for completeness and clarity. The communal roof terrace should be reinstated as it improves the scheme. The vehicular access from the neighbouring site appears to have been technically resolved. The remaining issue here seems to be the dependence on this DA upon another, which is at the applicant's risk as discussed.

Building B remains too deep and this compromises the amenity of the apartments within. Several single orientation apartments are too deep, several kitchens could be considered more than 8m from a window, and there are some internalised studies. However, the building depth controls are relatively open to interpretation under the RFDC. It should be noted that Building B complies with cross ventilation and solar access in its own right, with Building A improving the overall statistics for the project. The overall achievement of 79% for both cross ventilation and solar access is considered to be a good result for a compromised site such as this (subject to verification that the solar access is to the RFDC, not DCP, standard).

Four single-orientation south units do not strictly comply with the DCP, but they are allowable under the RFDC Rules of Thumb. In this instance, it is considered that they are acceptable given the specific site shape, southern orientation, overall solar performance of the development, and the fact that no other units receive zero sunlight. This finding is not connected to the provision of views from the site.

Visitable bathrooms and other minor suggestions throughout the report are considered to be able to be addressed with simple amendments to the documentation. Apartment doors opening out in to the common circulation spaces should be verified. The accessible entrance to Building B is considered to be sub-optimal, but a neater solution is not readily apparent.

Heritage

Council's Heritage Advisor's comments on the original proposal are summarised as follows:

Demolition of the existing houses is acceptable provided photographic recording is undertaken before any works commence. Recycling of stone in the landscape works is recommended.

The proposed development does not comply with several objectives and controls in DCP 55 and would have substantial impacts on the neighbouring heritage item at No 10 Buckingham Road and is not supported.

Council's Heritage Advisor's commented on the amended proposal as follows:

Revised heritage comments

This report is an attachment to my report dated 14/4/2011 and deals with the amended application received by Council, dated 2 September 2011. My comments are primarily restricted to No 10 Buckingham Road because it is the only nearby heritage items that would be adversely affected by the proposed development. There would be minor impacts on No 11 – 15 Buckingham Road, an item located opposite the site and separated by Buckingham Road.

Amendments

The amendments to Building A include removing the pedestrian access from the eastern side to the centre of the building provide further articulation to the

elevations, amendments to the internal layout and minor amendments to the landscape plan.

Comments

The applicant has provided a supplementary heritage report. It takes the view that the item at 10 Buckingham Road, "Southdean" was sited in a manner analogous to a "marine villa" in that it was sited towards the golf course and the current portion of the house orientated to Buckingham Road was of lesser significance as it was "essentially the back of the house". It also notes that the house was accessed from a long sweeping driveway from the Pacific Highway, not Buckingham Road and that the development site is partially over the former driveway entrance and carriage loop to "Southdean". The heritage report claims that the relationship of the item to Buckingham Road is more of an historical accident rather than an original intent to site the house to Buckingham Road.

I agree with the heritage report in that the orientation of "Southdean" was to the golf course and its main front elevation was to its driveway and carriage loop not directly to a street frontage. The rear of "Southdean" which was orientated to Buckingham Road was of less significance. However, the rear elevation of Southdean was never obvious from the street due to the topography of the site which falls steeply to the west along Buckingham Road and screening by vegetation. The views of the heritage item from the public realm are now limited to views along a narrow corridor which includes the driveway to No 10 and the access handle to No 8A and is screened by vegetation. There are some limited views of the item from the golf course itself but being a private golf course, these views can not be considered to be within the public realm. The orientation of Southdean allows a very limited view of the main front of the house from the street. This view corridor is limited but with demolition of the dwellings on the development site, the opportunity of regaining an appropriate setting to the public realm that respects the item and enhances its significance is available.

It is apparent from the C1910 photographs of "Southdean" that the back of the house never had a strong relationship to the street. The main views of it were from the entry loop area, its own gardens, particularly from the south and east and from the golf course. The extensive garden area was largely grassed with some isolated trees. Some remnant bushland was retained to the west of the house but that land was subdivided from the first subdivision which occurred as early as 1935.

The back of the house is now separated from the street by the property at No 12 Buckingham Road (subdivided in 1975) and there are no apparent views of the back of the item from the public realm. This is demonstrated in the subdivision plan and photographs in the applicant's heritage report. The remaining view corridor thus has more cultural sensitivity as this provides the only remaining visual connection between Southdean and the public realm.

The review of the amended application indicates that - Proposed Building A is slightly articulated with an increased setback from the street on the western side but still has a setback between 3 to 5.5m forward of the heritage item. The amended applications still does not comply with the heritage control in DCP 55 which requires new development to be set back from the front boundary so that it is not closer than the heritage item. The objectives behind this control are to

ensure that new development respects the item, does not visually dominate it, does not reduce views to it from the public realm and does not impact on its garden setting.

The limited views of Southdean from Buckingham Road are highly important to its existing setting and any development on the subject site should be located and designed to respect that setting. The applicant has considered that, with demolition of the house at No 8 and construction of the proposed development, the setting of the item from Buckingham Road would be enhanced. The applicant's argument is that the amended scheme would allow additional views of the heritage item from Buckingham Road which is currently obscured by the existing house at No 8 Buckingham. It demonstrates this using the plan and a series of photographs showing the "cut-off" views. I do not dispute this. The issue is whether it is acceptable and what improvement would result if the application was set back in accordance with Council's control.

I have demonstrated what I believe to be an acceptable footprint for any development on the subject site in the attached sketch. The suggested footprint is a compromise between the required heritage setback and the important view corridors that are needed to respect the heritage significance of the item. In addition the improved view corridor would provide a level of conservation by restoring part of view that has been lost in the many subdivisions and development that has occurred around it. I believe the sketch shows the minimum footprint controls that are required to achieve a reasonable compromise between the development opportunities of the subject site and the heritage significance of the nearby heritage item.

Although I do not wish to place a great deal of weight to it, the supplementary heritage report has repeated an error made in an earlier heritage report that incorrectly identifies "Southdean" as being built about 1909/10 for Mr W P Maschwitz. It was in fact built in 1902 for Mrs Robson-Scott. Maschwitz built his house "Littleton" in Buckingham Road in 1909/1910 which is now identified as No 30 Buckingham Road. That site adjoined the western side of Southdean and was never part of its original land holding. Both Mr Maschwitz and Mrs Robson-Scott were involved with the golf club and both their houses were orientated to the golf course. Mr Maschwitz served as the president of the golf club in the 1930s. No 30 Buckingham Road is not a listed item and has had extensive alterations.

Conclusions and recommendations

The proposed development does not comply with several objectives and controls in DCP 55 and would have substantial impacts on the neighbouring heritage item at No 10 Buckingham Road and in its current amended form is not supported.

*I have provided a sketch of what I believe is a minimum footprint that achieves a reasonable compromise between the required heritage setback and the objective of retaining important view corridors to the nearby heritage item "Southdean" (**Attachment 10**). If further amendments are made in line with my suggestions, the application could be supported on heritage grounds.*

Landscaping

Council's Landscape and Tree Assessment Officer commented on the original proposal as follows:

The application is not supported in its current form for the following reasons,

- *incorrect deep soil calculation(KPSO 25I (2)(c))*
- *lack of clearly visible access to building from the street (DCP55 Section 4.6 C-4)*
- *lack of direct access between street frontage and building entrances (DCP55 Section 4.7 C-1(ii))*
- *inadequate communal open space in terms of a consolidated area of deep soil landscape area for tall tree planting that enhances biodiversity while providing recognisable areas with reasonable space and facilities for recreation and social activities (Part 02, RFDC)*
- *insufficient information*

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

Deep Soil

The proposal achieves 53.7% deep soil landscape area and the calculation is considered to satisfactorily meet the standard.

Tree removal and impacts

An arborist report prepared by Urban Forestry, dated February 2011, has been submitted with the application. Tree numbers refer to this report.

Trees to be removed

The following trees on site are proposed to be removed. The trees are not considered significant due to size, location and condition and their removal will not have an adverse environmental impact and is supported.

Trees 5-15, 17, 19, 34, 39, 45-48.

Trees to be retained

Jacaranda mimosifolia (Jacaranda) Tree 23/12H, 10S, 400DBH, TPZ 4.8m.

This tree is located on the adjoining property, adjacent to the western boundary. The proposed retaining wall is 2.5m from the tree, however, due to the existing grades, there will be no excavation within the tree protection area.

Jacaranda mimosifolia (Jacaranda) Tree 49/8H, 8S, 390DBH. This tree is located on the adjoining property, adjacent to the western boundary. The proposed retaining wall is 2.0-3.5m from the tree, however, due to the existing grades, there will be no excavation within the tree protection area.

Melia azedarach 'Australasica' (White Cedar) Tree 50/9H, 12S, 450DBH. This tree is located on the western boundary of the rear yard. The proposed retaining wall is 2.5m from the tree. The arborist recommends removal due to possible structural instability due to proximity on three sides of retaining walls, however, the landscape proposal is to provide more stable conditions around

the tree by extending the soil volume at the base of the tree. The proposal is considered acceptable, subject to conditions.

Of the trees shown to be retained, two are recommended in the arborist report for removal and are exempt under Council's Tree Preservation Order (Trees 40,41).

Street trees to be removed

Both of the existing street trees are proposed to be removed. Both trees are less than 5m high and display normal form and vigour. Replacement planting is proposed.

Landscape plan

Front setback

The planting layout to the front setback has considered the objectives of the zoning and the views to the adjoining property heritage property at no. 10 Buckingham Road.

Driveway

The proposed 7-14 metres width basement connection to 2-6 Buckingham Road is located within the eastern side setback of Building A. The location of such a large structure within the side setback restricts the provision of approximately 8m width of effective landscape treatment to eastern elevation of Building A and should be avoided. (KPSO LEP194, Clause 25D(2)(c), DCP55 Section 5.1 C-7(v))

Common open space

The proposal provides communal open spaces to the central and rear setback.

Communal open space – between Building A and B

The central open space area is a small terrace with disabled access via the basement of Building A.

Communal open space – along southern boundary

The rear setback includes an 8 metre wide linear communal open space with disabled access via the basement of Building B.

The proposed communal open space provision meets the relevant objectives.

On-slab planting

*The proposed 800mm depth of soil over the basement connection to no. 2-6 Buckingham Road including subsurface drainage, is suitable for shrubs only and is considered insufficient for tall tree planting (RFDC Planting on Structures). This would mean that a section of approximately 8m of Building A side setback will have insufficient deep soil for the proposed planting of *Eucalyptus paniculata* (Grey Ironbark). To ensure long term viability of the proposed canopy planting along the side setback, the proposed planting of *Eucalyptus paniculata* (Grey Ironbark) may be conditioned to be relocated south of the proposed basement driveway.*

The proposed on-slab planting shown located directly to the north of Building B, conflicts with the proposed architectural sections that show no soil depth in these locations (refer Section A, Part 2 DA21, Alexsander Design Group,

18/02/11). Planters of sufficient size and depth that can achieve the proposed planting may be required by condition.

Screen planting

Building A

Eastern boundary –Polyscias sambucifolia(Elderberry Panax)3m, Alphitonia excelsa (Red Ash) 6-10m

Western boundary – Kunzea ambigua (Tick Bush)2-4m, Alphitonia excelsa (Red Ash) 6-10m

Building B

Eastern boundary –Polyscias sambucifolia (Elderberry Panax)1.5m, Melaleuca decora (White Feather Honey Myrtle)5m, Backhousia myrtifolia (Grey Myrtle) 6m

Western boundary– Melaleuca decora (White Feather Honey Myrtle)5m, Ceratopetalum gummiferum (NSW Christmas Bush) 4m

Southern boundary – Ceratopetalum gummiferum (NSW Christmas Bush) 4m

The screen planting species are adequate in height and depth in relation to the proposed development.

Tree replenishment

DCP55 requires for a site of this size one tall tree per 300sqm of the site area. With a site area of 3792sqm DCP55 requires a minimum of thirteen (13) tall trees to be planted on site. A total of 24 have been proposed. All are located within the communal open space.

Basix

The 1041m² indigenous or low water use species nominated within the common area landscape has been indicated on the Basix Landscape Plan. There is no indigenous/low water use planting nominated within private open space areas.

Stormwater Plan

There is no landscape objection to the stormwater plan.

Conclusion

The proposal is considered acceptable on landscaping grounds subject to conditions

Engineering

Council's Team Leader Engineering Assessment commented on the original proposal as follows:

The following matters must be addressed:

- *lack of disabled resident parking*
- *non-compliant dimensions of parallel parking space A3*
- *proposed traffic lights to be shown on the architectural plans*

- *uncertainty about the access across the adjoining property and apparently incompatible levels between the approved ramps within that property and the proposed ramp bridge to the subject site*
- *a continuous longitudinal section along the whole path of travel for the small waste collection vehicle, showing a minimum headroom of 2.6 metres and maximum gradient of 20%*
- *clarification of whether the Council pipe is to be relocated (and if so, a design for the relocated pipe) or the easement?*
- *approval of Killara Golf Club to grant easement.*
- *a Construction Traffic Management Plan addressing the matters listed above*

Council's Team Leader Engineering Assessment commented on the amended proposal as follows:

It would be possible to support the application on engineering grounds, if the matter of vehicular access through 2-6 Buckingham Road can be satisfactorily resolved.

Water management

The BASIX water commitments are for a 43 000 litres rainwater tank, with re-use for toilet flushing in all units. The stormwater plans and the architectural plans show the on site retention and detention tanks in Basement B01 of Building B.

Overlaying the architectural and stormwater plans indicates that the retention tank encroaches into parking space B29. The retention component of the storage can be deepened to reduce the plan area and this may be amended on the Construction Certificate plans, subject to conditions.

Discharge is to the existing 525mm diameter pipe within the property. The stormwater management plans still show the pipe within the easement and the letter from ABC Consultants states "the existing pipe and drainage easement at rear of site are to be maintained and are shown on the DA plans. A peg out of the existing pipe will be undertaken prior to construction to verify the exact location."

The pits shown on the stormwater plans are not in the same location as those shown on the architectural plans, which presumably have been taken from the survey plan.

From information submitted with a previous application, it is likely that the pipe is closer to the southern boundary than indicated. This would be acceptable – the concern would be if it were further north, as the basement excavation would be affected.

The Council pipe through the Golf Course does not have an easement over it, which is required for runoff from the subject development to be connected to the pipe. It is understood that negotiations are underway with the Golf Club to acquire an easement. This can be the subject of a Schedule A deferred commencement condition.

Traffic and parking

The gradients and levels on Drawing DA08 are now consistent with those on the drawings submitted with DA226/11 (which was refused). This resolves the purely technical issues associated with the connecting ramp between the two buildings.

The site is further than 400 metres from Killara Station. Under the KPSO, 51 resident and 11 visitor parking spaces are required, including five accessible resident and 1 accessible visitor space. The correct number of spaces has now been provided, and the dimensions of the spaces are compliant with the appropriate Australian Standards.

Waste collection

The waste storage area is adequate for the number of containers required. The longitudinal section on Drawing DA44 indicates that satisfactory access for the small waste collection vehicle would be available. However this section relies on DA226/11, which was refused.

Construction Traffic Management

The supplementary letter from Traffix contains a section titled "Construction Traffic Management". It is stated that construction employee parking be provided on site. This is difficult with a conventional site and with the proposed shared access with 2 Buckingham Road, is considered to be impossible.

Nevertheless, it may be possible to address this matter with a properly prepared Construction Traffic Management Plan prior to commencement of work.

Environmental Health

Council's Environmental Health Officer reviewed the proposal and advised that it was acceptable, subject to standard conditions.

STATUTORY PROVISIONS

Environmental Planning and Assessment Act 1979

- Section 5(a)(ii) - Orderly Development

The statement of environmental effects states that:

'This proposed development will rely upon the creation of an easement for the purposes of right of carriageway from the subject site through 2-6 Buckingham Road to provide vehicular access from Buckingham Road to the subject site'.

By way of letter, dated 2 June 2011, the applicant's planning consultant provided the following advice regarding the mechanism for formalising vehicle access through 2-6 Buckingham Road:

'Further to our recent meeting and telephone conversation, we understand that Council are seeking to clarify the best mechanism to ensure that should development consent be granted for the proposed residential flat building at 6A–8 Buckingham Road, Killara that the vehicular access through the basement level of 2–6 Buckingham Road, Killara, would actually be constructed. We understand that Council want to ensure that the basement connection was constructed and that Council would not be left in the position of a partially or near completed residential flat building on 6A–8 Buckingham Road where no legal easement had been created.

Don Fox Planning (DFP) understands Council's issue in this regard and is also of the opinion that it would not be in the interest of orderly and economic development if construction of the residential flat building on 6A–8 Buckingham Road commenced prior to the vehicular access through 2–6 Buckingham Road being lawfully created and physically constructed. In our conversation it was indicated that Council may require that a deferred commencement condition be issued on a consent for 6A–8 Buckingham Road that the easement and basement connection through 2-6 Buckingham Road be physically constructed prior to satisfying the deferred commencement condition. DFP has discussed this option with Mr Tony Merhi of Globe Capital Pty Ltd and he has indicated that the construction programme would propose that 2-6 Buckingham Road will be constructed first and the basement connection would be constructed, prior to work commencing on 6a-8 Buckingham Road, however he has advised that his financial lending institution would not fund the purchase of 6A–8 Buckingham Road if a deferred commencement condition requiring the construction and registration of the easement prior to determination was imposed.

Therefore Globe Capital, would not be in a position to complete the purchase of 6A–8 Buckingham Road if such a deferred commencement condition was imposed.

It is therefore the suggestion of DFP that should Council be of a mind to approve 6A–8 Buckingham Road that a condition of development consent could be imposed requiring the construction and registration of the vehicular easement burdening 2–6 Buckingham Road in favour of 6A–8 Buckingham Road to allow vehicular access from 6A–8 Buckingham Road through 2–6 Buckingham Road onto Buckingham Road prior to the issuing of a Construction Certificate.

This condition would ensure that Globe Capital could complete the purchase of the land, but would also ensure that construction of the residential flat building on 6A–8 Buckingham Road could not commence until the vehicular connection was constructed and the easement registered.

This mechanism would ensure that the scenario of a partially constructed residential flat building on 6A–8 Buckingham Road could not occur as the basement connection at 2-6 Buckingham Road would need to be constructed prior to any physical commencement of work on 6a-8 Buckingham Road. This

would ensure that the redevelopment of 2-6 and 6A–8 Buckingham Road was undertaken in an orderly and economic fashion.'

By way of letter dated 31 August 2011, the applicant's planning consultant provided the following advice which contradicts the previous advice that due to financing issues the issue of vehicle access could not be resolved through a deferred commencement condition:

'This letter is to confirm that it is the opinion of Don Fox Planning that the best way to resolve the basement connection from 6A-8 Buckingham Road to 2-6 Buckingham Road would be to impose a deferred commencement condition requiring the registration of an easement.

This would then provide the applicant with the opportunity to obtain development consent for the construction of the basement connection and to have the easement registered. Once this had occurred a full development consent could be issued. This will provide Council with the confidence that construction on 6A-8 Buckingham Road could not occur until such time as the basement connection easement was registered with the Department of Lands. A further condition of consent could be imposed requiring the basement connection to be completed prior to the release of the occupation certificate.'

The subject application is proposing vehicular access through Nos. 2-6 Buckingham Road. To provide vehicle access through Nos. 2-6 Buckingham Road, the basement of the building will need to be constructed and an easement for a right of carriageway benefitting No. 6A & 8 Buckingham Road will need to be registered on the certificate of title.

On 17 January 2008, a section 96 application (MOD0328/07) that included a proposal for a basement link between Nos. 2-6 Buckingham Road and the subject site was refused. A recent development application (DA0226/11) for a similar basement link proposal was also refused. Both refusals identify the failure to comply with the development standard for deep soil landscaping as a reason for refusal.

Certainty in obtaining vehicular access for a development is a fundamental issue that should not be resolved through the imposition of conditions. At the time of lodgement of a development application there should be a high degree of certainty that vehicular access to the development can and will be provided.

There is significant uncertainty as to if and when vehicle access for the proposed development will be available. The proposal does not satisfy the aims and objects of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the principles of orderly development.

State Environmental Planning Policy No. 1 – Development Standards

SEPP 1 provides flexibility in applying development standards and enables a consent authority to vary a standard where strict compliance would be unnecessary, unreasonable or tend to hinder the objectives of the

Environmental Planning & Assessment Act, 1979. Where there is a variation to a development standard, the application must be accompanied by a SEPP 1 Objection.

The application seeks to vary the development standard for street frontage and manageable housing.

- **Street frontage**

The subject site has an area in excess of 1800m² and therefore requires a minimum street frontage of 30 metres. The site has a frontage of 28.03 metres and the applicant has submitted a SEPP 1 Objection seeking variation to the development standard. The following assessment has been undertaken.

whether the planning control in question is a development standard

Clause 25I(3) of the KPSO requires a minimum street frontage of 30 metres for sites with an area greater than 1800m². The minimum street frontage requirement sets a standard in relation to the carrying out of development. The minimum street frontage requirement is a development standard.

the underlying objective or purpose behind the standard

The KPSO does not contain any objectives that specifically relate to the development standard for minimum frontage. General objectives that relate to all the development standards under clause 25I are outlined in clause 25I(1). Clause 25I(1) 'Heads of consideration for consent authority', states that:

Before granting consent to development for the purpose of multi-unit housing on land to which this Part applies, the consent authority must take into account the following:

- (a) the desirability to provide a high proportion of deep soil landscape to the site area,*
- (b) the impact of any overshadowing, and any loss of privacy and loss of outlook, likely to be caused by the proposed development,*
- (c) the desirability to achieve an appropriate separation between buildings and site boundaries and landscaped corridors along rear fence lines,*
- (d) the environmental features that are characteristic of the zone in which the site is situated by requiring sufficient space on-site for effective landscaping, (e) the desirability of adequate landscaping so that the built form does not dominate the landscape,*
- (f) how the principles of water cycle management can be applied to limit the impacts of runoff and stormwater flows off site.*

To determine the objectives that have the strongest correlation to the street frontage standard it is necessary to determine the differences in the development standards that apply to sites that have an area of between 1200m² and 1800m² and sites that have an area of greater than 1800m².

Site Area	Height	Deep Soil	Minimum Frontage
1200m ² - 1800 m ²	3 storeys	40%	23 metres

1800m ² - 2400m ²	4 storeys	50%	30 metres
2400m ² or more	5 storeys	50%	30 metres

The most significant difference in terms of the development standards is that sites with an area of 1800m² or more may accommodate development to a maximum height of 5 storeys. It is reasonable to assume that the minimum street frontage requirement is designed to ensure that developments will be capable of providing adequate setbacks and sufficient deep soil area for landscape screening in proportion with the height of the development. Adequate setbacks are designed to ensure that development does not result in significant overshadowing of adjoining sites, have an adverse impact on the streetscape, compromise the privacy of adjoining sites, and unreasonably alter the outlook enjoyed by the occupants of adjoining sites.

In *Global Capital Properties Ltd v Ku-ring-gai Council* [2010] NSWLEC 1105 the Land and Environment Court considered a SEPP 1 objection to the development standard for minimum frontage. The Court made the following observations regarding the underlying objectives of clause 25I(3):

It would appear that the cumulative purpose of the controls in cl25I, including cl25I(3), is to ensure that sites are of sufficient size and dimension to accommodate residential flat buildings of a particular size to achieve the relevant heads of consideration in cl25I(1). These are similar in intent to the objective of the residential zone in cl 25D(2)(c) referred to by the experts as being the underlying purpose of the control. In relation to the frontage control the relevant heads of consideration relate to providing a site with sufficient width for deep soil landscape area (a), amenity impacts (b), separation between buildings and side boundaries (c), characteristics of the zone and effective landscaping (d), and adequate landscaping so the built form does not dominate the landscape (e).

The street frontage control should be considered in relation to the likely outcomes that would result from permitting development of 4-5 storeys on sites with a street frontage of less than 30 metres. Whilst the term street frontage is used in clause 25, in practice the development standard effectively refers to site width. It is likely that the scenario envisaged by the drafter of the Instrument was that the street frontage width would be carried through to the rear boundary of deep allotments, thus resulting in inappropriate row style residential flat buildings that would be inconsistent with the landscape character of Ku-ring-gai. Another objective of the development standard may be to ensure the orderly development of land. Requiring a minimum street frontage discourages the development of constrained sites with narrow street frontages and encourages the consolidation of allotments.

whether compliance with the development standard is consistent with the aims of the policy and, in particular, whether compliance with the development standard hinders the attainment of the objectives specified under section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979

The aims and objectives of SEPP 1 are:

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

The objectives specified under section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* are:

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*

Compliance with the development standard cannot be achieved for a development site only incorporating Nos. 6A & 8 Buckingham Road because the street frontage is a characteristic of the site rather than a characteristic of the development. To comply with the street frontage control, an amended development application which incorporated Nos. 2-6 Buckingham Road and the development approved for this site would need to be submitted.

A consequence of the non compliant street frontage is that it is difficult to provide a driveway that does not encroach into the side setback area in accordance with design control C-7(v) in Part 5 'Parking and vehicular access' of DCP 55. In this regard, the proposal seeks to provide vehicular access through Nos. 2-6 Buckingham Road via an underground basement connection. This proposal requires a variation from the side setback requirements of DCP 55 as the underground basement link has a nil setback from the eastern side boundary and a minimum side setback of 6 metres is required for all structures including those located underground.

The variation to the DCP control must be considered in light of the fact that consolidation of vehicle access is encouraged by DCP 55 (part 5.1,C-7(ii)) and the creation of an underground link in the side setback provides greater opportunities for landscaping in the front setback where landscape screening is desirable and where the interface with lower density development to the west of the site is located. The variation does not result in a net loss of landscaping and the proposal actually provides more deep soil landscaping than required by clause 25I(2) of the KPSO.

Where compliance with the deep soil landscaping development standard is achieved, the advantages of the underground link outweigh the impacts of not achieving compliance with the side setback control. On the basis of the footprint of the underground link being a mere 65m² and that it is located entirely underground, the departure from the side setback control of the DCP is not considered to be a major issue that would be fatal to the SEPP 1 objection.

The objectives of the street frontage control of the KPSO, as identified by the Land and Environment Court, are not offended by reason of the non compliance with the side setback control of DCP 55.

Despite the non compliance with the development standard for street frontage, the site is considered to be suitable for a residential flat building. The issues arising out of the previous application DA0074/09 with respect to inadequate side setbacks for deep soil landscaping have been resolved as compliance with the deep soil landscaping development standard has been achieved.

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

The applicant submits that compliance with the development standard is unreasonable and unnecessary for the following reasons:

Strict compliance with the 30 metre minimum street frontage development standard is considered to be unreasonable and unnecessary in this case as the subject site is the last remaining land on the southern side of Buckingham Road that is either not developed for residential flat buildings or does not have an approved residential flat building on it in the Residential 2(d3) zone. Land adjoining the site to the east at 2 - 6 Buckingham Road is zoned 2(d3) and extends up to the Pacific Highway. This site has had a 5 storey residential flat building approved and as such, the land is not available to be consolidated with the subject site. Despite this the owner of the subject site has been able to negotiate with the owner of 2-6 Buckingham Road to allow an easement to be registered for the purposes of a right of way to facilitate vehicular access to the subject site via the approved basement at 2- 6 Buckingham Road.

The subject site shares a common boundary with a residential flat building located on the Pacific Highway and as such is not available for consolidation. The heritage listed property being 10 Buckingham Road to the west is zoned Residential 2(b) whilst the land adjoining the subject site to the south west is zoned Residential 2(c2). It is therefore considered unreasonable and unnecessary to comply with the 30 metre street frontage requirement as it is essentially impossible to comply with given that the subject site is the last remaining section of land zoned Residential 2(d3) in this section of Buckingham Road which is not subject to a development consent or already developed for residential units. Approval of a residential flat building on the subject site would complete the redevelopment in this section of Buckingham Road in accordance with the KPSO.

It is however essential to ensure that a residential flat building located on land with a street frontage of less than 30 metres does not adversely impact on adjoining properties. As discussed in the Statement of Environmental Effects submitted with the development application, the proposed development complies with the building separation distances in SEPP 65.

A 6 metre side setback is provided on the lower levels to the western and eastern side boundary in accordance with DCP 55. This results in a 15.265 metre building separation to the adjoining heritage listed property at 10 Buckingham Road.

The Heritage report prepared by Archnex Designs indicates that the proposal does not affect the heritage significance of the adjoining heritage item at No. 10 Buckingham Road.

The subject site is irregular in shape and is 28.3 metres wide for the first 35 metres of the length of the site. The rear 55 metres of the site ranges in width from 42.5 metres to 63 metres. Therefore the majority of the subject site has a width of greater than 42 metres which exceeds the minimum street frontage of 30 metres.

The funnel shaped allotment has dictated the design of the proposal with a slender residential flat building located in the front section where the width of the allotment is 28.3 metres, whilst at the rear of the site, a residential flat building with a larger footprint has been provided responding to the increase in width of the subject site. The construction of two separate residential flat buildings improves the solar access and cross ventilation capabilities of the individual units.

It is not agreed that Nos. 2-6 Buckingham Road is not available to be consolidated with the subject site. The proposed development seeks approval to provide access through the basement of the approved development at Nos. 2-6 Buckingham Road and it would be logical to consolidate the two sites to resolve the uncertainties relating to the vehicular access arrangements. However, the role of a consent authority is to assess the merits of the application before it and the issue of the potential for consolidation do not strictly relate to the non compliance with the development standard for street frontage.

It is not agreed that the proposal is acceptable from a heritage impact perspective. The proposal has an unacceptable impact on the heritage item at No. 10 Buckingham Road. However, this issue does not strictly relate to the non compliance with the development standard for street frontage.

It is agreed that the proposal has an acceptable level of impact on adjoining properties in terms of solar access and privacy. However, these issues do not strictly relate to the non compliance with the development standard for street frontage.

It is agreed that a relevant factor to consider is the proportion of the site that has a width of more than 30 metres. In this respect, it is agreed that the majority of the site depth (47.595 metres or 51.79%) has a width of more than 30 metres. The manner in which the site width is utilised must be considered, in this regard adequate side setbacks at the ground floor level are provided and compliance with the development standard for deep soil landscaping is achieved. Of particular importance is that the side setback of proposed Building A from the eastern boundary of No. 10 Buckingham Road complies with the requirements of DCP 55, thus ensuring that deep soil landscaping capable of screening the development can be provided.

whether the objection is well founded

For the reasons outlined above, the variation of the street frontage development standard is considered to be acceptable. The proposal complies with the underlying objectives of the standard, therefore compliance is unnecessary and unreasonable in the circumstances of the case and the SEPP 1 objection is well founded.

- **Manageable housing**

The proposal fails to comply with the manageable housing requirements specified in clause 25N(2)(a) of the KPSO as the bedrooms in units 4 and 15 are undersized and therefore the apartments do not qualify as manageable apartments as per the definition of manageable housing contained in the KPSO. A SEPP 1 objection to the variation to the development standard has not been submitted. In the absence of a SEPP 1 objection the application cannot be lawfully approved.

State Environmental Planning Policy No. 55 - Remediation of Land

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

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

A BASIX certificate was submitted with the amended application and is considered satisfactory.

State Environmental Planning Policy (Infrastructure) 2007

Pursuant to clause 101 of the SEPP, a consent authority is required to consider the impact of development on traffic flows along classified roads.

The development proposes vehicle access to the basement of an approved (but not built) development that has vehicle access to Buckingham Road and frontage to the Pacific Highway. The development was not required to be referred to the RTA as the number of apartments is less than 75. Council's Development Engineer did not raise any concerns regarding the impact of the development on Buckingham Road and the Pacific Highway.

It is likely that the upper levels of the development will be affected by traffic noise, if approval of the application were recommended, this issue could be addressed through conditions.

State Environmental Planning Policy No. 65 - Design quality of residential flat development

In accordance with Clause 50 of the *Environmental Planning and Assessment Regulation 2000*, a design verification statement was submitted with the application. The statement was prepared by Aleksandar Jelcic (Registered Architect No. 7167).

The primary objective of SEPP 65 is to improve the design quality of residential flat development in NSW. In determining a development application for consent to carry out residential flat development, a consent authority must

take into consideration the design quality of the residential flat development when evaluated in accordance with the design quality principles. A consent authority must also consider provisions of the Residential Flat Design Code (RFDC). The amended proposal has been comprehensively assessed in this regard by Council's Urban Design Consultant and has been found to be unsatisfactory. The issues raised by the urban design consultant include:

- communal roof terrace in original proposal should be retained
- vehicle access / reliance on neighbours DA
- depth of Building B
- distance of kitchens from windows in Building B
- internalised studies/kitchen
- sunlight access to RFDC standard
- design of visitable bathrooms
- accessible path of travel for Building B
- apartment entry doors in Building A opening out into common corridors

The overall performance of the development with respect to cross ventilation and solar access is good. The proportion of apartments in the development which receive no solar access is low at 6.9%, and the apartments which do receive less than 3 hours solar access (such as 14, 23, 30, 37) are dual-aspect with a western orientation which will receive an additional hour of solar access between 3pm to 4pm that will be protected into the future by the low density zoning that applies to the adjoining site 8A Buckingham Road. Whilst it would be desirable to retain the communal roof terrace, the ground level communal space and private open spaces will adequately cater for the recreational needs of the residents and the provision of a roof terrace is not a requirement of the planning controls.

The concerns raised regarding internal planning have been reasonably addressed by the amended DA, it is noted that generally there is a favourable proportion of glazing to floor area and this will maximise natural daylight and enhance amenity.

It is unfortunate that the applicant has not resolved the non compliances with accessibility standards despite these issues having been raised in the previous assessment report and preliminary assessment letter. These issues form part of the reasons for refusal.

Residential Flat Design Code Compliance Table

Pursuant to Clause 30(2) of SEPP 65 in determining a development application for a residential flat building the consent authority is to take into consideration the Residential Flat Design Code (RFDC). The following table is an assessment of the proposal against the guidelines provided in the RFDC.

	Guideline	Consistency with Guideline
PART 02 SITE DESIGN		
Site Configuration		
<i>Deep Soil Zones</i>	A minimum of 25 percent of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, stormwater treatment measures must be integrated with the design of the residential flat building.	YES
<i>Fences + walls</i>	Define the edges between public and private land to provide privacy and security and contribute positively to the public domain.	YES
<i>Open Space</i>	The area of communal open space required should generally be at least between 25 and 30 percent of the site area. Larger sites and brown field sites may have potential for more than 30 percent.	YES Area of communal open space is greater than 30 percent of the site area.
	The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park, is 25m ² .	YES Ground floor apartments provided with courtyards which are ≥25m ² in area.
<i>Orientation</i>	Optimise solar access, contribute positively to desired streetscape character, support landscape design with consolidated open space areas, protect amenity of existing development and improve thermal efficiency.	YES The development has an unacceptable impact on solar access to No. 8A Buckingham Road.
<i>Planting on Structures</i>	In terms of soil provision there is no minimum standard that can be applied to all situations as the requirements vary with the size of plants and trees at maturity. The following are recommended as minimum standards for a range of plant sizes: Medium trees (8 metres canopy diameter at maturity) - minimum soil volume 35 cubic metres - minimum soil depth 1 metre - approximate soil area 6 metres x 6 metres or equivalent	YES Council's Landscape Officer has advised that the landscape plans are satisfactory.
<i>Stormwater management</i>	Minimise impact on the health and amenity of natural waterways, preserve existing topographic and natural features and minimise the discharge of sediment and other pollutants to the stormwater drainage system.	YES Council's Team Leader Development Engineering has advised that the stormwater concept plans are satisfactory.
<i>Safety</i>	Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	YES A crime risk assessment was carried out. The development

		satisfactorily responds to the principles of CPTED.
<i>Visual Privacy</i>	<p>Refer to Building Separation minimum standards</p> <ul style="list-style-type: none"> - up to four storeys/12 metres - 12 metres between habitable rooms/balconies - 9 metres between habitable/balconies and non-habitable rooms - 6 metres between non-habitable rooms - five to eight storeys/up to 25 metres - 18 metres between habitable rooms/balconies - 13 metres between habitable rooms/balconies and non-habitable rooms - 9 metres between non-habitable rooms 	YES
<i>Building Entry</i>	Create entrances which provide a desirable residential identity, provide clear orientation for visitors and contribute positively to the streetscape and building façade design.	<p>YES</p> <p>In the amended proposal the entry for Building A is located on the street elevation.</p>
<i>Parking</i>	Provide adequate parking for occupants, visitors and disabled.	<p>YES</p> <p>The number of resident and visitor car space complies with KPSO requirements. Disabled car spaces have been provided for the manageable apartments.</p>
<i>Pedestrian Access</i>	Identify the access requirements from the street or car parking area to the apartment entrance.	<p>YES</p> <p>The entry for Building A is located on the street elevation.</p>
	<p>Follow the accessibility standard set out in Australian Standard AS 1428 (parts 1 and 2), as a minimum.</p> <p>Provide barrier free access to at least 20 percent of dwellings in the development.</p>	<p>YES</p> <p>The proposed disabled access path between Building A and Building B includes the traffic aisle of the basement which is undesirable however a superior solution is not readily apparent.</p>
PART 03 BUILDING DESIGN		
Building Configuration		
<i>Apartment layout</i>	Single-aspect apartments should be limited in depth to 8 metres from a window.	<p>NO</p> <p>11 of 43 apartments are single aspect and have a depth greater than 8m.</p>
	The back of a kitchen should be no more than 8 metres from a window.	NO

		6 of 43 apartments have kitchens that are more than 8m from a window.
	The width of cross-over or cross-through apartments over 15 metres deep should be 4 metres or greater to avoid deep narrow apartment layouts.	N/A Development utilises single aspect and corner apartments only.
	If Council chooses to standardise apartment sizes, a range of sizes that do not exclude affordable housing should be used. As a guide, the Affordable Housing Service suggest the following minimum apartment sizes, which can contribute to housing affordability: (apartment size is only one factor influencing affordability) - 1 bedroom apartment 50m ² - 2 bedroom apartment 70m ² - 3 bedroom apartment 95m ²	YES All apartments meet the minimum size requirements.
<i>Apartment Mix</i>	Include a mixture of unit types for increased housing choice.	YES The proposal includes: 4 x 1 bedroom, 32 x 2 bedroom and 7 x 3 bedroom units.
<i>Balconies</i>	Provide primary balconies for all apartments with a minimum depth of 2 metres. Developments which seek to vary from the minimum standards must demonstrate that negative impacts from the context-noise, wind – can be satisfactorily mitigated with design solutions.	YES All balconies within the development satisfy the minimum depth provisions of the RFDC.
<i>Ceiling Heights</i>	The following recommended minimum dimensions are measured from finished floor level (FFL) to finished ceiling level (FCL). - in residential flat buildings or other residential floors in mixed use buildings: - in general, 2.7 metres minimum for all habitable rooms on all floors, 2.4 metres is the preferred minimum for all non-habitable rooms, however 2.25m is permitted.	YES All habitable rooms have a floor to ceiling height of 2.7m exclusive of the slab.
<i>Ground Floor Apartments</i>	Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site.	YES The number of ground floor apartments has been optimised.
	Provide ground floor apartments with access to private open space, preferably as a terrace or garden.	YES All ground floor apartments have direct access to private open space areas which

		include balconies and courtyards.
<i>Internal Circulation</i>	In general, where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to eight.	YES A maximum of 3 apartments per corridor in Building A. A maximum of 7 apartments per corridor in Building B.
<i>Storage</i>	In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: - studio apartments 6m ³ - one-bedroom apartments 6m ³ - two-bedroom apartments 8m ³ - three plus bedroom apartments 10m ³	YES
Building Amenity		
<i>Acoustic Privacy</i>	Ensure a high level of amenity by protecting the privacy of residents within apartments and private open space	YES Noise sensitive rooms have been appropriately located and POS is adjoined by living areas.
<i>Daylight Access</i>	Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter.	YES 72.09% of units within the development receive a minimum of three hours direct sunlight to living rooms and private open space between 9am and 3pm.
	Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units proposed.	YES 9.3% of apartments are single aspect units with a south-west / south-east aspect
<i>Natural Ventilation</i>	Building depths, which support natural ventilation typically, range from 10 to 18 metres.	NO The depth of Building B is 26m
	Sixty percent (60%) of residential units should be naturally cross ventilated.	YES 74.41% of units are cross ventilated.
Building Performance		
<i>Waste Management</i>	Supply waste management plans as part of the development application submission as per the NSW Waste Board.	YES
<i>Water Conservation</i>	Rainwater is not to be collected from roofs coated with lead- or bitumen-based paints,	YES

	or from asbestos- cement roofs. Normal guttering is sufficient for water collections provided that it is kept clear of leaves and debris.	
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Apartment layout – depth of single-aspect apartments

There are 11 single aspect apartments within the development which have a depth of greater than 8m. Four of the apartments face south, 3 face north, and 4 face east.

The east facing apartments include three 1 bedroom + study apartments with a floor area of 81m² and one 2 bedroom apartment with a floor area of 94m². The 1 bedroom + study apartments have a maximum depth of 14.6m, however the rear of the apartments contains a bathroom/laundry and study. The kitchen is located behind the living room, however, the back of the kitchen is less than 8m from a window. The 2 bedroom apartment has an internalised ensuite bathroom and bathroom/laundry which will require mechanical ventilation and artificial illumination. The floor area and balcony area of the apartments exceeds the minimum requirements stipulated by DCP 55. The living rooms have north facing and east facing windows that will receive solar access during winter. Having regard to solar access performance, generous floor area and compliant balcony area, the amenity of these apartments will be acceptable.

The south facing apartments are 2 bedroom apartments with a total floor area of 89m² each and a maximum depth of 8.6 metres. The living room has a depth of 6.3 metres from the south facing glass doors to the balcony and the back of the kitchen is less than 8 metres from the window. A glass balustrade has been selected for the balcony which maximises daylight inside the apartment. The shallow depth of the living room is an appropriate response to the solar orientation of the site and will ensure that adequate levels of natural internal illumination are achieved. The apartments are significantly larger than the minimum requirement specified by the RFDC. The amenity of these apartments will be acceptable.

The north facing apartments are similar to the south facing apartments in that the living room is shallow in depth (6.8 metres) and the back of the kitchen is less than 8 metres from a window. The apartments have 2 bedrooms and a floor area of 87m². It is noted that the project architect has nominated these apartments as being compliant with SEPP 65 cross ventilation criteria. It is disputed as to whether compliance with cross ventilation criteria is achieved because these apartments do not have two major external walls facing in different directions and the secondary window to the living room (which is assumed to be the reason why the architect described the apartment as being cross ventilated) opens into a multi-storey lightwell that has a width of 1.67 metres and depth of up to 6.4 metres. The applicant has not demonstrated how the inclusion of a single living room window to a lightwell will facilitate cross ventilation of the apartment. Nevertheless, the area of the apartment that is greater than 8 metres in depth is used for non-habitable purposes (bathrooms) which are used less frequently than the living areas and are

suitable for mechanical ventilation and artificial illumination. The amenity of these apartments will be acceptable.

Apartment layout – distance of kitchen from a window

Apartments 17, 24 and 31 are dual-aspect apartments which have highly internalised kitchens that do not have a line of sight to a window. Whilst the layout is not ideal, a clean solution to this problem is not apparent as the non habitable rooms (bathroom/laundry/ensuite) have already been internalised. Replanning of the apartment to allow for the relocation of the kitchen could be carried out, however, this is likely to require a west facing balcony that would be undesirable due to visual privacy impacts and sun shading requirements. The variation to the kitchen depth control can be supported as an appropriate solution to the issue is not apparent and the amenity of these apartments is acceptable, having regards to compliance with solar access and cross ventilation criteria.

Apartments 20, 27 and 34 are east facing, single-aspect apartments which have kitchens that are more than 8m from an opposite window facing east and less than 8m from an adjacent window facing north. The north facing window is on the southern side of a covered balcony, however, its orientation and lack of shading from adjoining development should see it receiving good solar access in the winter months. The solar access report lends support to this view, stating that these apartments will receive between 5 and 5.5 hours direct solar access on the winter solstice. The amenity of these apartments will be acceptable.

Natural ventilation - building depth

The Residential Flat Design Code rule of thumb states that building depths which support natural ventilation typically range from 10-18 metres. The depth of Building B at 26 metres does not comply with the rule of thumb. Despite the depth of the building exceeding 18 metres, the proposal exceeds the rule of thumb for natural ventilation with over 60% of apartments in the development meeting the criteria for a cross ventilated apartment.

Ku-ring-gai Planning Scheme Ordinance

Zoning and permissibility:

The site is zoned Residential 2(d3).

Under clause 25B (definitions) of the KPSO a residential flat building is defined as '*a building containing three or more dwellings.*' The proposed development is consistent with the definition of residential flat building and is permissible with Council's consent pursuant to the development control table under clause 23 of the KPSO.

Residential zone objectives:

The development is inconsistent with the aims and objectives prescribed under clauses 25C(2) and 25D(2) of the Ku-ring-gai Planning Scheme Ordinance in that:

- the development has an unreasonable impact on the adjoining heritage item 10 Buckingham Road, Killara

Development standards:

Development standard	Proposed	Complies
Clause 25E(1) - Site area (min): 1200m ²	3792.2m ²	YES
Clause 25I(2) - Deep landscaping (min): 50%	53.7%	YES
Clause 25I(3) - Street frontage (min): 30m for sites >1800m ²	28.03m	NO (SEPP 1 submitted)
Clause 25I(5) - Number of storeys (max): buildings on sites with an area of 2400m ² or more may have a maximum height of 5 storeys	Building A - 6 storeys	YES (additional storey permitted by cl 25K)
	Building B – 6 storeys	YES (additional storey permitted by cl 25K)
Clause 25I(6) - Site coverage (max): 35%	1317m ² = 34.72%	YES
Clause 25I(7) - Top floor area (max): 60% of level below	Building A = 60% Building B = 60%	YES
Clause 25I(8) – Building Height: 4 th storey must have a maximum perimeter ceiling height of 13.4m Subject to subclause (5) and clause 25K the number of storeys is not to exceed the maximum number of storeys specified in Column 2 of the table	Building A = 12.35m	YES
	Building B = 12.04m	YES
	Building A = 6 storeys	YES
	Building B = 6 storeys	YES
Clause 25K - Steep slope sites: For a building on a site with a site slope greater than 15% one storey or 3m may exceed the number of storey controls in clause 25I	17.35% site slope	
	Building A, one storey & 23.44% of footprint	YES
	Building B, one storey & 24.94% of footprint	YES
Clause 25J – Car parking:		

1 car space per dwelling plus an additional car space for each 3 bedroom dwelling (50)	51	YES
1 visitor car space for every 4 dwellings (11)	11	YES
Clause 25L(2) - Zone interface The 3 rd and 4 th storey must have a minimum setback of 9m from any land (other than a road) that is not zoned 2(d3)	Building A = 9m Building B = 9m	YES YES
Clause 25L(3) - Zone interface Landscaping required to screen development from any adjoining property must be provided on the site and must not rely on landscaping on the adjoining property.	Landscaping for screening purposes is located on the site	YES
Clause 25N(2)(a) - Manageable housing: at least one dwelling comprises manageable housing for each 10 dwellings (or part thereof) comprising the multi-unit housing,	Two of the apartments claimed to be manageable apartments do not comply with the definition of manageable housing provided by the KPSO as compliance with the requirements of AS4299 has not been achieved	NO (no SEPP 1 submitted)
Clause 25N(2)(b) – Manageable housing: wheelchair access is provided to all dwellings comprising the manageable housing.	Wheelchair access to the apartments that are intended to be manageable apartments has been provided.	YES
Clause 25N(3) – A lift must be provided in all multi-unit housing of more than 3 habitable storeys in Zone No. 2(d3).	Lift access proposed	YES

- **Street frontage – Clause 25I(3)**

The site has a frontage of 28.03 metres and does not comply with the minimum street frontage of 30 metres required under clause 25I(3) of the KPSO. The applicant has lodged a SEPP 1 Objection to seeking variation to clause 25I(3) of the KPSO which has been assessed as well founded.

- **Manageable housing – Clause 25M(2)(a)**

Manageable housing is defined by the KPSO to mean:

manageable housing means housing in accordance with Class C – Adaptable Housing Features as set out in Australian Standard AS 4299 – 1995 – Adaptable Housing and must contain a bedroom, kitchen, dining area and bathroom on the ground floor or, where not on the ground floor, on a level to which lift access is provided.

The amended plans include additional graphical information with regard to the manageable apartments and the requirements of AS4299-1995. It is a requirement of AS4299-1995 that a manageable apartment must have one bedroom of sufficient area to accommodate a queen size bed and wardrobe and comply with the clearance and circulation space requirements specified in clause 6.2 of AS1428.2-1992.

The circulation space requirements for a 180° wheelchair turn is 2070mm in the direction of travel and 1540mm wide. A minimum clearance of 1000mm is required at either side of the bed. A queen sized bed has minimum dimensions of 1.53m x 2.03m. The main bedroom in units 4 and 15 has dimensions of 3.5m by 3.5m. To accommodate a queen sized bed, circulation space and wardrobe, the bed would need to be relocated to the southern end of the room and the depth of the room increased to 3.57m.

As less than 10% of the apartments in the development comply with the definition of manageable housing the proposal does not comply with the development standard contained in clause 25M(2)(a). A SEPP 1 objection supporting the variation to the development standard has not been submitted, accordingly the application cannot be lawfully approved.

POLICY PROVISIONS

Development Control Plan No. 55 – Railway/Pacific Highway Corridor & St Ives Centre

COMPLIANCE TABLE		
Development control	Proposed	Complies
Part 3 Local context:		
Development adjacent to a heritage item:		
• 10m setback (1 st & 2 nd storeys)	15.2m	YES
• 15m setback (3 rd & 4 th storeys)	18.2m	YES
• No closer than heritage item from front boundary	Building A is closer to the front boundary than the heritage item (No. 10 Buckingham Road)	NO
• Screen planting of all boundaries with an item to achieve a height of at least 4 metres	Screen planting will achieve a height of greater than 4m	YES
Part 4.1 Landscape design:		

Deep soil landscaping (min)		
<ul style="list-style-type: none"> 150m² per 1000m² of site area = 568.8m² 	760m ² to the rear of Building B	YES
No. of tall trees required (min): 13 trees	24 trees	YES
Part 4.2 Density:		
Building footprint (max):		
<ul style="list-style-type: none"> 35% of total site area (1327.27m²) 	34.72% (1317m ²)	YES
Floor space ratio (max):		
<ul style="list-style-type: none"> 1.3:1 (4929.86m²) 	1.16:1	YES
Part 4.3 Setbacks:		
Street boundary setback (min):		
<ul style="list-style-type: none"> Setback zone between 10-12m from boundary, no more than 40% of this zone may be occupied by building footprint 	39%	YES
Rear boundary setback (min):		
<ul style="list-style-type: none"> 6m 	min. 11.8m	YES
Side boundary setback (min):		
<ul style="list-style-type: none"> 6m 	0m for underground connection to Nos. 2-6 Buckingham Road	NO
Setback of ground floor courtyards to street boundary (min):		
<ul style="list-style-type: none"> 8m 	min. 8m	YES
Maximum portion of the front setback area occupied by private courtyards (max):		
<ul style="list-style-type: none"> 15% 	< 15%	YES
Part 4.4 Built form and articulation:		
Façade articulation:		
<ul style="list-style-type: none"> Wall plane depth >600mm 	Min. 600mm	YES
<ul style="list-style-type: none"> Wall plane area <81m² 	The front elevation has a maximum wall plane area of 90m ²	NO
Built form:		

<ul style="list-style-type: none"> The width of a single building on any elevation facing the street shall not exceed 36 metres 	10m to 15.935m	YES
<ul style="list-style-type: none"> Balcony projection <1.2m 	<1.2m	YES
Part 4.5 Residential amenity		
Solar access:		
<ul style="list-style-type: none"> 70% of apartments shall receive a minimum of 3 hours direct sunlight on the winter solstice 	72.09%	YES
<ul style="list-style-type: none"> At least 50% of the principal area of common open space of the development shall receive direct sunlight for at least 3 hours between 9am and 3pm on the winter solstice 	> 50%	YES
<ul style="list-style-type: none"> Entry lobbies and common corridors should be naturally lit and ventilated 	Three lobbies in building A are not naturally lit and ventilated	NO
<ul style="list-style-type: none"> No single-aspect units shall have a southern orientation 	Apartments 15, 22,29 and 36 are single-aspect units with a southern orientation.	NO
<ul style="list-style-type: none"> Not more than 15% of the total units shall be single aspect with a western orientation 	No single aspect apartments with a western orientation.	YES

<ul style="list-style-type: none"> The development shall allow the retention of at least 3 hours of sunlight between 9am and 3pm on the winter solstice to the habitable rooms and the principal portion of the outdoor living area of adjoining house in single house zones (2(c1) and 2(c2)). Where existing overshadowing is greater than this sunlight is not to be reduced by more than 20% 	Less than 3 hours solar access to habitable room windows of 8A Buckingham Road	NO
Visual privacy:		
Separation b/w windows and balconies of a building and any neighbouring building on site or adjoining site:		
Storeys 1 to 4 <ul style="list-style-type: none"> 12m b/w habitable rooms 9m b/w habitable and non-habitable rooms 6m b/w non-habitable rooms 	Separation distances comply	YES
5th Storey <ul style="list-style-type: none"> 18m b/w habitable rooms 13m b/w habitable and non-habitable rooms 9m b/w non-habitable rooms 	Separation distances comply	YES
Roof terraces are to be designed to avoid overlooking of neighbours' principal outdoor living areas (e.g. roof terraces facing side boundaries are generally inappropriate).	Upper level terraces will have distant views towards the gold course and surrounds. Roof terraces do not face boundaries.	YES
Internal amenity:		
<ul style="list-style-type: none"> Habitable rooms have a minimum floor to ceiling height of 2.7m 	Minimum 2.7m	YES

<ul style="list-style-type: none"> Non-habitable rooms have a minimum floor to ceiling height of 2.4m 	Minimum 2.7m	YES
<ul style="list-style-type: none"> 1-2 bedroom units have a minimum plan dimension of 3m in all bedroom 	>3m	YES
<ul style="list-style-type: none"> 3+ bedroom units have a minimum plan dimension of 3m in at least two bedrooms 	>3m	YES
<ul style="list-style-type: none"> Single corridors: <ul style="list-style-type: none"> - serve a maximum of 8 units - >1.5m wide - >1.8m wide at lift lobbies 	7 units 1.5m >1.8m	YES YES YES
<ul style="list-style-type: none"> Storage space shall be provided for each unit at the following minimum volumes: <ul style="list-style-type: none"> - 6m³ for studio and one bedroom unit - 8m³ for two bedroom units - 10m³ for units with three or more bedrooms <p>At least 50% of the required storage space must be provided inside the dwelling.</p>	8-12m ³	YES
Outdoor living:		
<ul style="list-style-type: none"> ground floor apartments have a terrace or private courtyard greater than 25m² in area 	>25m ² (min. 27m ²)	YES

<ul style="list-style-type: none"> Balcony sizes: <ul style="list-style-type: none"> - 10m² – 1 bedroom unit - 12m² – 2 bedroom unit - 15m² – 3 bedroom unit <p>NB. At least one space >10m²</p>	<p>min. 10m²</p> <p>min. 11.5m² (units 14,23,30)</p> <p>min. 15m²</p>	<p>YES</p> <p>NO</p> <p>YES</p>
<ul style="list-style-type: none"> primary outdoor space has a minimum dimension of 2.4m 	Min. 2.4m	YES
<ul style="list-style-type: none"> At least 30% of the site area is to be common open space principally for tall tree planting. 	More than 30% of the site area is common open space	YES
Part 4.7 Social dimensions:		
Each adaptable dwelling must be provided with at least one disabled car parking space designed in accordance with AS2890.1	Car spaces for adaptable dwellings have been provided	YES
At least 70% of dwellings are to be 'visitable' in accordance with the definition prescribed in appendix F	<70% (visitable bathrooms in units 10,19,26, and 33 do not comply with 900mm door swing clearance requirement specified in AS4299-1995)	NO
A range of unit sizes and types is to be provided	Mix of 1, 2 and 3 bedroom units	YES
Part 5 Parking and vehicular access:		
Car parking (min):		
<ul style="list-style-type: none"> 50 resident spaces 11 visitor spaces 61 total spaces 	<p>51 spaces</p> <p>11 spaces</p> <p>62 spaces</p>	<p>YES</p> <p>YES</p> <p>YES</p>

Part 3 Local context

3.3 Landscape and visual character

The proposal is generally consistent with the requirements of this part of the DCP. Council's Landscape Officer has not raised any concerns regarding the proposed tree removal or the proportion of new plantings that are locally indigenous trees.

3.5 Development within the vicinity of a heritage item

Medium density development adjacent to a heritage item is required to be set back from the front boundary so that it is no closer than an adjoining heritage building. Calculating the setback required by this control is difficult because the front boundary of No. 10 Buckingham Road is not in alignment with the front boundary of the subject site. The front boundary of No. 10 Buckingham Road is 1.8 metres to the north of the front boundary of 6A & 8 Buckingham Road. As the objective of the control is to ensure that multi unit development has a similar setback from the street as existing heritage items, the required setbacks can be measured to a common point in the road.

The heritage item No. 10 Buckingham Road has a 23.2 metres setback from the kerb on the southern side of Buckingham Road and the proposed building has a setback of 18.2 metres from this same point. The proposal does not comply with the requirement that the street setback of the development must be the same or greater than the setback of the heritage item. With respect to the original DA, the advice of Council's Heritage Advisor was that the non compliance was not supported and that:

'The forward location of the proposed development would affect the heritage significance of the item, would provide a level of visual dominance and impacts on its setting in general'.

In the amended proposal the front wall of Building A has been stepped in plan to improve views of the heritage item from the street. The minimum setback of the building from the front boundary has been increased from 10 metres to 11.7m. Council's Heritage Advisor reviewed the amended proposal and summarised his reasons for not supporting the application as:

'The proposed development does not comply with several objectives and controls in DCP 55 and would have substantial impacts on the neighbouring heritage item at No 10 Buckingham Road and in its current amended form is not supported.'

I have provided a sketch (Attachment 10) of what I believe is a minimum footprint that achieves a reasonable compromise between the required heritage setback and the objective of retaining important view corridors to the nearby heritage item "Southdean". If further amendments are made in line with my suggestions, the application could be supported on heritage grounds.'

Part 4 Design principles and controls

4.3 Setbacks

The proposal does not comply with the following control:

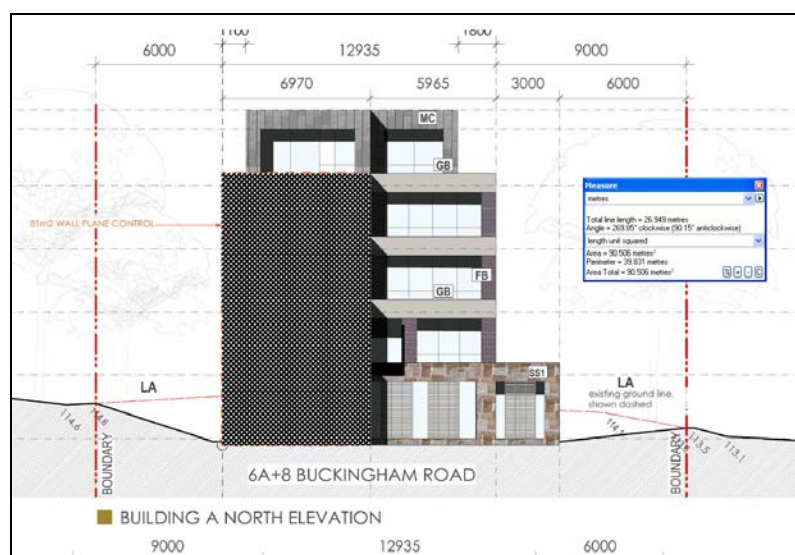
- C-1(a) Side and rear boundary setbacks: 6m

As per design control No. 3, the required setbacks extend both above and below ground and apply to all built elements of the development including car parking. Accordingly, the underground connection to Nos. 2-6 Buckingham

Road which has no setback from the eastern boundary does not comply with the 6 metres side setback control. In the amended proposal the natural soil profile over the underground connection will be retained as the pedestrian entry path and stair ascender is no longer required. Adequate soil depth over the underground connection can be achieved and it is unlikely that the absence of canopy trees from a small section of the side setback would be perceptible from the street. The variation to the side setback control is supported.

4.4 Built form and articulation

All facades to the public domain are required to be articulated with wall planes varying in depth by not less than 600mm. Wall planes are not permitted to exceed an area of 81m². The maximum wall plane of the front elevation has an area of 90 m².



The design objectives for the wall plane depth and wall plane area controls include:

- Residential flat buildings in Ku-ring-gai of a high architectural quality.
- A predominance of soft landscape features.
- Mitigated change in scale between new development and existing lower density housing.
- Varied articulation in building design.
- Building elements that are integrated into the overall building form.
- Visual connection between dwellings and the public domain

The variation is relatively minor and if the wall plane area excluded the area located below street level compliance with the control would be achieved. The front elevation of the development is narrow in comparison to nearby residential flat buildings and the building has well defined base, middle, and top. The front elevation is articulated in plan and section and Council's Urban Design Consultant has raised no concerns with the aesthetics of the

development. The front entry to the building is located at street level and is clearly visible from the public domain. The variation to the maximum wall plane control is supported in this instance.

4.5 Residential amenity

4.5.1 Solar access

Design control No. 1 – solar access to apartments

The letter, written by Aleksandar Design Group and dated 17 June 2011, advises that 83% of apartments within the amended development are SEPP 65 solar compliant. A review of the 3D shadow diagrams (Drawing No. DA45 Issue A) and the elevational shadow diagrams (Drawing No. DA40 Issue B) reveals that three apartments in Building A (units 2, 5, and 8) for which solar access compliance is claimed have east facing living rooms which are in 100% shadow at 9am and do not receive any solar access at or after 12pm. The true number of apartments that receive a minimum of 3 hours solar access to living rooms and private open space is 34, this represents 72.09% of the apartments in the development and complies with the requirements of the RFDC.

Design control No. 3 – common corridors

The design control states that entry lobbies and common corridors should be naturally lit and ventilated. The entry lobby and common corridor on the level 03 Building A has the potential to be naturally lit if glass entry doors are selected. A degree of natural ventilation is also possible through the operation of the doors. The common corridors on Levels 02, 04, and 05 are fully enclosed and would require mechanical ventilation and artificial lighting. Level 06 contains only one apartment and is not classified as a common corridor.

It is difficult to achieve natural light and ventilation to the common corridors whilst providing two apartments per floor with a northerly aspect. The failure to provide natural light and ventilation for common corridors that serve a total of nine apartments in the development is unfortunate but it is not an issue that in of itself would warrant refusal of the application.

Design control No. 4 – single aspect south facing apartments

The design control states that no single aspect units shall have a southern orientation. The equivalent control in the RFDC allows a maximum of 10% of apartments in a development to be single aspect with a southern orientation. The proposal complies with overall standards for solar access and cross ventilation, with a favourable proportion of apartments having a northern orientation and receiving 4 to 6 hours solar access to living rooms and private open spaces. Of the 43 apartments in the development only 4 are single aspect with a southern orientation, this represents 9.3% of the apartments in the development. The variation to the design control can be supported in this instance.

Design control No. 6 – solar access to adjoining dwellings

The design control states:

The development shall allow the retention of at least 3 hours of sunlight between 9.00am and 3.00pm on June 21 to the habitable rooms and the principal portion of the outdoor living area of adjoining houses in single house zones (2(c1) and 2(c2) zones). (Note: where existing overshadowing by buildings is greater than this, sunlight is not to be reduced by more than 20%.)

The adjoining dwelling No. 8A Buckingham Road is zoned Residential 2(c2) and solar access to the dwelling is protected by design control No. 6. The shadow diagrams (Drawing No. DA40 Issue B) indicates that six east facing habitable room windows of this dwelling will be overshadowed at 9am and that two of these windows currently overshadowed by the existing dwelling. For east facing windows to receive 3 hours solar access they must not be overshadowed at any time between 9am and 12pm. Even in the absence of shadow diagrams for 10am and 11am, it can be concluded that the proposal reduces solar access to less than 3 hours.

At the ground floor level of 8A Buckingham Road there are six windows on the eastern elevation. Moving from north to south these windows serve a bedroom, entry, office, kitchen, and living room. The living room has two windows and the greatest glazed area of all the rooms. Whilst shadow diagrams for the existing situation have only been provided for 9am, 12pm, and 3pm, it can be deduced from the diagrams that the living room windows currently receive 2 hours solar access and the other 4 windows receive 3 hour solar access. The 3D shadow projections of the proposed development are at 30 minute intervals and show that the bedroom window will receive 30 minutes solar access, entrance window 3 hours solar access, office window 2.5 hours solar access, kitchen window 1.5 hours solar access and living room windows 1.5 hours solar access. The overall reduction in solar access is in the order of 52.5%, significantly greater than the maximum 20% reduction stipulated by the DCP.

The northern elevation of 8A Buckingham Road has windows at both the ground and first floor level. The shadow diagrams show that the windows at the ground floor level will be overshadowed by Building A from 9am to 11.30am, and the windows at the first floor level will be overshadowed from 9am to 11am. Solar access to ground floor windows will be available from 11.30am to 2pm. After 2pm the windows will be shaded by the heritage item at 10 Buckingham Road. Solar access to first floor windows will be available from 11am to 3pm.

The private open space to the rear of 8A Buckingham Road will receive more than 3 hours solar access, however the area immediately to the rear of the dwelling will be shaded between 9am to 3pm due to shadows cast by the dwelling.

The provision of 2.5 hours solar access to north facing windows at the ground floor level and 4 hours solar access to north facing windows at the first floor level is considered to be an acceptable outcome having regard to the zone interface situation.

Whilst the development will result in a loss of solar access to 8A Buckingham Road, the east facing rooms of this dwelling are particularly vulnerable to overshadowing from development on the adjoining site and currently receive good levels of solar access due to the existing dwelling at 6A Buckingham Road being 2 storeys in height and having a setback of 8 metres from the shared boundary. The side setback of 6A Buckingham is much greater than that required by DCP 38 for a new single dwelling and even greater than the side setback required for a 5 storey residential flat building.

The overshadowing of 8A Buckingham is from a building which complies with the planning controls for height, setbacks, and floor space ratio. In the circumstances, it is considered that the preservation of 1.5 hours solar access to the kitchen and living room windows is an acceptable outcome having regard to the density of development allowed under the planning controls.

4.5.2 Acoustic privacy

The design of the development has attempted to ensure that noise-generating rooms of one apartment are not located next to quiet rooms of other apartments. In Building A, the lift is separated from bedrooms and shares walls with hallways and bathrooms. In Building B, the lift is separated from the apartments by the fire stairs.

Apartments on the upper levels of the development are likely to be affected by traffic noise from the Pacific Highway. If approval of the application were recommended, this issue could be addressed through conditions.

4.5.3 Internal amenity

Four storage areas are located in the basement levels and additional storage is located on balconies and inside the apartments. The method of securing and allocating basement storage areas has not been identified. Council's Urban Design Consultant has raised concern that storage cupboards on balconies are unlikely to be suitable unless they are weatherproofed. If approval of the application were recommended this issue could be addressed through conditions of consent.

4.5.5 Outdoor living

The DCP states that a 2 bedroom apartment must have a private open space area of at least 12m² in size. Apartments 14, 23, and 32 have south and west facing balconies that are 11.5m² in size. The dimensions of the balconies are suitable for a table and four chairs and the variation to the design control is in the order of 4%. The minor variation to the design control can be supported in this instance.

4.7 Social dimensions

The development does not comply with the requirement of clause 25N(2)(a) of the KPSO which requires that 10% of dwellings in a residential flat development must be designed as adaptable housing. Whilst 5 apartments within the development have been identified on the plans as 'manageable units' the design of two of these apartments fails to satisfy the criteria outlined in AS4299-1995.

The development does not comply with the requirement for at least 70% of the dwellings to be visitable. This non compliance arises due to four of the 'visitable units' not having at least one bathroom which satisfies the criteria for classification as an 'accessible' or 'visitable' toilet.

4.8 Building sustainability

If approval of the application was recommended, conditions could be imposed to ensure compliance with the design controls under part 4.8.1 'Building materials and finishes'.

Part 5 Parking and vehicular access

Design control No. 7(ii) states that vehicular access to multi-unit developments is to be consolidated where possible. The proposal to provide vehicle access through Nos. 2-6 Buckingham Road is consistent with this requirement, however there is a significant lack of certainty regarding the feasibility of this proposal, given that the properties are in separate ownership and that the construction of the approved residential flat building at Nos. 2-6 Buckingham Road has not commenced.

Development Control Plan No. 40 - Construction and Demolition Waste Management

A waste management plan was submitted with the application.

A construction traffic management plan was not submitted.

Development Control Plan No. 43 - Car Parking

Matters for assessment under DCP 43 have been taken into account in the assessment of this application against KPSO and DCP 55.

Development Control Plan No. 47 - Water Management

Matters for consideration under DCP 47 have been taken into account in the assessment of this application against KPSO and DCP 55.

Section 94 Plan

If approval of the application were recommended a condition would be imposed requiring the payment of section 94 contributions.

LIKELY IMPACTS

The above assessment demonstrates that the proposal fails to comply with the requirements of the KPSO and DCP 55. As a result of these non-compliances the proposal does not represent a sound environmental planning outcome and is not supported.

SUITABILITY OF THE SITE

The site is zoned Residential 2(d3) and multi-unit housing is permissible. The site is considered suitable for a residential flat development, however, the development has an unacceptable impact on the adjoining heritage item and fails to comply with the development standard for manageable housing. The proposal is not suitable for the site.

ANY SUBMISSIONS

The submissions have been considered in the above assessment.

PUBLIC INTEREST

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised. The proposal has been assessed against the provisions of the relevant Environmental Planning Instruments and is deemed to be unacceptable. On this basis, the proposal is considered to be contrary to the public interest.

OTHER RELEVANT MATTERS

There are no other matters for consideration.

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 proposal fails to achieve compliance with the requirements of the relevant instruments and policies and is inconsistent with the principles of orderly development. Refusal of the application is recommended.

RECOMMENDATION

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

THAT the Sydney West Joint Regional Planning Panel, as the consent authority, refuse development consent to Development Application No. 0110/11 for the demolition of the two existing dwellings and construction of two residential flat buildings for 43 units with basement car parking (accessed via Nos. 2-6 Buckingham Road) and associated landscaping at 6A & 8 Buckingham Road, Killara as shown on plans DA00 – DA47 prepared by Aleksandar Design Group Pty Ltd and Landscape plans DA-LS01 to DA-LS07 prepared by Melissa Wilson landscape architect, for the following reasons:

1. The proposal is contrary to the principle of orderly development as expressed in section 5(a)(ii) of the *Environmental Planning and Assessment Act 1979*.

Particulars

- i. The proposal seeks approval to construct a building with vehicular access provided solely through the basement of a building on a neighbouring property that has not yet been built. There is no certainty as to whether the building approved for the adjoining site will be built.
 - ii. Nos. 6A & 8 Buckingham Road Killara do not benefit from an easement for a right of carriageway through Nos. 2-6 Buckingham Road Killara. Nos. 6A & 8 Buckingham Road Killara do not have a legally binding entitlement for vehicular access through Nos. 2-6 Buckingham Road Killara.
 - iii. A development consent authorising building works which would facilitate the provision of vehicular access between Nos. 6A & 8 Buckingham Road Killara and Nos. 2-6 Buckingham Road Killara does not exist.
2. The development is inconsistent with the aims and objectives prescribed under clauses 25C(2) and 25D(2) of the Ku-ring-gai Planning Scheme Ordinance:

Particulars

- i. The development has an unreasonable impact upon the adjoining heritage item at 10 Buckingham Road.
3. The development does not provide 'manageable housing' in accordance with the requirements of clause 25N of the Ku-ring-gai Planning Scheme Ordinance. A SEPP 1 Objection in respect of the variation to the development standard has not been submitted.

Particulars

- i. Two of 'manageable units' shown on the plans do not comply with the definition of 'manageable housing' contained in Part IIIA of the Ku-ring-gai Planning Scheme Ordinance.

4. The proposal is contrary to the Design Quality Principles of State Environmental Planning Policy No. 65.

Particulars

The proposal fails to satisfy these principles for the following reason:

- i. The failure to provide manageable and visitable apartments that comply with the requirements of AS4299-1995 demonstrate that the proposal does not provide housing that suits the current and future needs of the neighbourhood and an ageing population.
5. The proposal is inconsistent with Part 3.5 'Development within the vicinity of a heritage item' of DCP 55.

Particulars

- i. The street setback does not comply with design control No. 1(iii) as the building is closer to the front boundary than the heritage item at No. 10 Buckingham Road.
6. The proposal is inconsistent with Part 4.7 'Social dimensions' of DCP 55.

Particulars

- i. In contravention of design control C-3, less than 70% of the dwellings in the development are 'visitable' by persons with a disability.
7. The proposal is unsatisfactory with respect of Section 79C(1)(a)(i)(iii) and (b), (c) and (e). The development is inconsistent with environmental planning instruments being SEPP 65, SEPP 1 and the KPSO. The proposal is contrary to the requirements of DCP 55. The proposal is an unacceptable development that is not suitable for the subject site. The development is contrary to the public interest.

Jonathan Goodwill
**Executive Assessment Officer –
South**

Shaun Garland
**Team Leader Development
Assessment – South**

Corrie Swanepoel
**Manager
Development Assessment Services**

Michael Miocic
**Director
Development & Regulation**

Attachments:

1. Location Sketch
2. Zoning Extract
3. Basement Plans
4. Site Plan
5. Floor Plans
6. Elevations
7. Sections
8. Landscape Plans
9. SEPP 1 Objection
10. Sketch of recommended street setbacks
prepared by Council's Heritage Advisor
11. Section 79C assessment report and
attachments for original proposal.