

<b>JRPP No</b>	<b>2011SYW044</b>
<b>DA Number</b>	<b>DA0110/11</b>
<b>Local Government Area</b>	<b>Ku-ring-gai Council</b>
<b>Proposed Development</b>	<b>Demolition of existing dwellings and construction of two residential flat buildings comprising 43 units, landscaping and associated works.</b>
<b>Street Address</b>	<b>6A &amp; 8 Buckingham Road Killara</b>
<b>Applicant/Owner</b>	<b>Aleksandar Design Group Pty Ltd</b>
<b>Number of Submissions</b>	<b>10</b>
<b>Recommendation</b>	<b>Refusal</b>
<b>Report by</b>	<b>Jonathan Goodwill, Executive Assessment Officer</b>

## SUMMARY SHEET

<b>REPORT TITLE:</b>	6A & 8 Buckingham Road, Killara
<b>LOT &amp; DP:</b>	Lot 3 & 4 DP 414101 (6A Buckingham Road) Lot 1 DP 414101 (8 Buckingham Road)
<b>PROPOSAL:</b>	Demolition of existing dwellings and construction of two residential flat buildings comprising 43 units, landscaping and associated works.
<b>DEVELOPMENT APPLICATION:</b>	DA0110/11
<b>WARD:</b>	Gordon
<b>APPLICANT:</b>	Aleksandar Design Group Pty Ltd
<b>OWNER:</b>	<ul style="list-style-type: none"><li>- 6A Buckingham Road: Mrs C A M Grundy</li><li>- 8 Buckingham Road: Mr J T L Gilroy and Mrs F M Gilroy</li></ul>
<b>DATE LODGED:</b>	10 March 2011
<b>ESTIMATED COST OF DEVELOPMENT:</b>	\$12,096,860
<b>ISSUES:</b>	No owner's consent for proposed vehicular access through Nos. 2-6 Buckingham Road Inconsistent with the principles of orderly development No SEPP 1 for variation to clause 25N(2)(a) of the KPSO Contrary to the aims and objectives of the KPSO Inconsistent with the design quality principles of SEPP 65 Poor amenity for future occupants Insufficient and inadequate information
<b>PRE-DA MEETING:</b>	Yes
<b>SUBMISSIONS:</b>	Yes
<b>LAND &amp; ENVIRONMENT COURT:</b>	N/A
<b>RECOMMENDATION:</b>	Refusal

## LEGISLATIVE REQUIREMENTS

<b>Zoning</b>	Residential 2(d3) under Ku-ring-gai Planning Scheme Ordinance
<b>Permissible Under</b>	Ku-ring-gai Planning Scheme Ordinance
<b>Relevant legislation</b>	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 determine development application No. 0110/11 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 reported to the Joint Regional Planning Panel as the cost of works (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"><li>• inadequate street frontage</li></ul>

- 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	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 metre western boundary setback for the basement would provide sufficient opportunity for deep soil landscaping in scale with the development; and
- 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:

- 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;
- 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;
- 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;
- Compliance with the development standard for minimum street frontage is not unreasonable or unnecessary because the objectives of the development standard are not achieved;
- 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; and
- 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:
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- 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 submit 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.*

## THE SITE

Zoning:	Residential 2(d3)
Visual Character Study Category:	1920-1945
Lot Number:	Lot 3 & 4 DP 414101 (6A Buckingham Road) and Lot 1 DP 414101 (8 Buckingham Road).
Area:	3792.2m <sup>2</sup>
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 impacts.
Urban Bushland:	No
Contaminated Land:	No

## THE SITE AND SURROUNDING AREA

### The site

The subject site consists of three allotments; one with a frontage to Buckingham Road (No. 8 Buckingham Road) and two battleaxe allotments containing one dwelling (No. 6A Buckingham Road).

The site is on the southern (low) side of Buckingham Road and is irregular in shape with a total area of 3792.2m<sup>2</sup>. 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.

### **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). Adjoining the subject site to the north-east, is a construction site at Nos. 2-6 Buckingham Road. 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.

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 PROPOSAL**

The application 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 3 x 1 bedroom apartments, 33 x 2 bedroom apartments and 7 x 3 bedroom apartments. Vehicular access to the basement is proposed via the basement of an approved building 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 <sup>2</sup> communal roof terrace which faces toward the golf course.

## **COMMUNITY CONSULTATION**

In accordance with Development Control Plan No. 56, owners of surrounding properties were given notice of the application. 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:

- 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 a significant shadow impact upon the apartments in Fernleigh between the hours of 9am to 3pm on the Winter solstice. At 3pm on the Winter solstice, the shadow diagrams for both buildings show that the new development will not shade any part of Fernleigh. It is noted that the 3pm solar azimuth angle used for Building A appears to be different to that used for Building B. For Building A the shadow is shown falling to the east, for Building B the shadow falls due south, which would be consistent with the shadowing impact at 12pm. A review of the plans confirms that the 12pm shadow diagram for Building B on drawing No. DA31 is the same as the 3pm shadow the Building B on drawing No. DA33.

In the absence of accurate shadow diagrams an accurate assessment of the shadowing impact of the development cannot be made, however it is likely that the development would only result in overshadowing of the area adjacent to the rear boundary of Fernleigh. This area is a steep section of the site that is densely vegetated, relatively inaccessible, and has not been configured for use as a communal open space area. Overshadowing of this area would not result in a non compliance with the requirements of DCP 55 and is considered acceptable.

### ***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.

***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 3<sup>rd</sup> and 4<sup>th</sup> 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 KSPO. 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***

Council's records do not show a sewerage easement running through the site but do show a drainage easement. If approval of the application were recommended, conditions requiring consultation with Sydney Water would be imposed.

***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 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.

## **INTERNAL REFERRALS**

### **Urban design**

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

#### **Summary:**

*This proposal should not be approved in its present form. Of major concern is the reliance on the neighbouring site for vehicular access - vehicular access*

*should be resolved wholly within the site. With regards to the buildings, Building A is slender and can potentially achieve much better amenity and address should the plan be amended as discussed. Building B is too wide, significantly compromising the amenity, and is not acceptable in its present form. It is suggested that a thinner building section, a decrease in floor space, and potentially a mix incorporating larger units would greatly assist to improve the performance of building B.*

*The buildings are non-compliant on points of: front setback; setback of uppermost levels; solar access to living rooms and private open space (additional documentation should also be provided); south-facing apartments; ventilated kitchens; apartment depth; balcony size; storage within basement; storage within apartments; access via fire stair; disabled access to apartments; disabled resident parking; visitable apartments; and building articulation. It is acknowledged that this is a difficult site with substantial challenges to appropriate design. However, with the exception of the vehicular access issue, it is considered that many of the points discussed here could be resolved through moderate adjustment of the submitted scheme rather than a complete redesign.*

### **Principle 1: Context**

*The site was zoned 2(d3) under LEP 200 in 2005 which aimed to 'provide additional opportunities for the provision of medium density residential development in the Ku-ring-gai Local Government Area', allowing for the construction of residential flat buildings on this site. Previously, this land was zoned 2(c2) under LEP 194. It is considered that the previous zoning of 2(c2) is more appropriate for this site given the adjacency to the heritage item at 10 Buckingham Page 2 of 10 Street. The maximum two-storey scale allowed by 2(c2) would have provided a suitable transition from the 4-5 storey scale allowed by the 2(d3) zone of 2-6 Buckingham Road. The current zoning of 2(d3) allows for four storeys plus a fifth set back storey for sites over 2,400m<sup>2</sup> in area and means that there will be an abrupt change in scale between the site and 10 Buckingham Road regardless of the proposal's design quality. However, given the current zoning controls of 2(d3), the 4-5 storey scale of this zoning can be taken as 'the desired future character'.*

*This site has been the subject of a recent refusal from the Land & Environment Court (7 May 2010). From a reading of the case and the present Statement of Environmental Effects (but without the benefit of the drawings from the previous scheme) one of the key grounds for refusal seems to have been the driveway location on the western boundary. The previous location of the vehicular access on the narrowest part of the site within the setback adjacent to the heritage listed neighbour at 10 Buckingham Street limited the ability to grow screening vegetation of an appropriate scale. In the current proposal, this has been amended so that vehicular access is made underground from the neighbouring property to the east 2-6 Buckingham Road. This solution appears to address the issue of setbacks and vegetation, but becomes troublesome for several new reasons.*

*Firstly, the site is no longer self contained and relies on consent from the neighbouring owners and amendment of the neighbour's approval for the basement through a S96/DA process for a project that is understood to have not, as yet, achieved substantial commencement. This process and timing is*



*not 'neat', involves unknowns, and appears that it could readily become frustrated.*

*Secondly, there are questions around compliance of the basement design of 2-6 Buckingham Road and whether, for instance, a garbage truck can adequately service 6A-8 Buckingham Road through the basement levels. On this, the traffic impact assessment concludes '...it is assumed that the design of the adjoining development will comply with AS 2890.1 (2004) and in particular with Council's requirement for their waste collection vehicle to access the site' (p18). Inadequate documentation of the neighbouring basement has been provided and there appears to be no graphic demonstration of this being workable.*

*Thirdly, the location of the driveway entrance to 6A-8 Buckingham Road will no longer be within the site frontage at this address. This alternative location in a neighbouring building will be counterintuitive for first time visitors, service and emergency vehicles etc and will need to be well sign-posted. This aspect does not appear to have been addressed in the documents.*

## **Principle 2: Scale**

*The upper levels of the proposed buildings are not sufficiently set back. The outline of the 9am shadow diagrams for both the winter solstice and equinox in plan indicate the uppermost storeys are contributing to the overshadowing of the adjoining properties. The proposal overshadows the south-west facing balcony of 10 Buckingham Road and some of the western windows 8A Buckingham Road in the mornings and is detrimental to their amenity. This does not comply with DCP55 control 4.3 C-9 ii which describes the purpose of the uppermost level setbacks to be so that the building does not result in the overshadowing of adjoining properties. This is exacerbated here by the presence of the sixth level of building on this steeply sloping site. This non-compliance can also be tied to the non-complying width of the site.*

*The site is 27.935m (measured perpendicularly across the site) and is less than the 30m width required for sites over 1,800m<sup>2</sup>. Whilst the width non-compliance was considered in the Land & Environment Court hearing, this aspect of overshadowing caused by lesser width was not. The lesser width contributes to the inability of the uppermost levels to be sufficiently setback as to not overshadow adjoining properties whilst trying to achieve the full 60% of the floor space of the floor below (as is proposed here). As described below under PRINCIPLE 3: BUILT FORM, the uppermost levels of both buildings also do not comply with an 18m separation from the neighbouring 2-6 Buckingham Road or each other.*

*In terms of scale, the most visible parts of the proposed Buildings from the public domain will be the southern and western face of Building B, as seen in the photomontage 'view from the bowling green'. Although offset from the golf course facilities somewhat, both of these faces will present imposing long facades that are not broken down with building elements as required by the controls (a minimum of 600mm difference in the plane of the facade). They are flat, punctuated only by window and balcony openings. This will also be discussed further under PRINCIPLE 10: AESTHETICS. Trees to screen the building should not be relied upon to address this matter. It was found in the Land & Environment Court decision that the users of bowling green indicated a preference for solar access rather than trees which would overshadow the*

green and damage the grass. The articulation should be resolved in the building design.

### **Principle 3: Built form**

*The building setbacks provided are non-compliant in several instances. Firstly, Building A occupies approximately 74% of the front setback zone, in excess of the 40% allowed, and is non-compliant. This control is seemingly to encourage modelling and articulation of the front facade in plan as per DCP55 control 4.4 C-1 & C-2. The front facade is flat for the first 4 storeys and is not volumetrically articulated. Only window and balcony openings break up the facade. Again, this will be discussed further under PRINCIPLE 10: AESTHETICS.*

*Secondly, Building A also sits forward of the adjacent heritage item by between 5.0-20.7m (the heritage item is set at an angle). The controls state that it should not sit closer to the front boundary than the heritage item. However the implications of this aspect have already been considered in the Land & Environment Court decision, and if Building A is positioned in the same manner as in the previous application, then this non-compliance has already been deemed acceptable. 12 Buckingham Street also wraps the northwest frontage of 10 Buckingham Street, is zoned 2(c2) and indeed could also pose similar issues to heritage impact if redeveloped.*

*Thirdly, the distance between the habitable rooms of levels 5 and 6 of Building A from 2-6 Buckingham Road are 6.0m and 7.8m respectively. Similarly, Level 5 of Building B is only setback 7.3m from the 2-6 Buckingham Road boundary. These should all be a minimum of 9m to provide a minimum of 18m separation. Level 5 of Building B is also set back less than 18m from Level 3 of Building A diagonally between Apartments 6 and 39.*

*The proposal is comprised of two buildings. Building A is a slender, 12.535m wide building running north/south which has the potential to achieve good amenity. However, the current plan for this building does not optimise the potential solar access it could receive (only 5 of 13 apartments receive 3 or more hours of sunlight between 9am and 3pm in winter) and it does not present an obvious or positive address to the street, the access instead being located down the eastern side passage. This building could be easily improved by flipping the plan from north to south, having two units per floor face north and one unit face south. This would increase the number of units receiving adequate solar access and also provide the opportunity for the front door to be located facing the street between the two north-facing apartments (address will be discussed further under PRINCIPLE 8: SAFETY AND SECURITY).*

*At up to 27.6m deep, Building B is too wide and provides poor amenity. The maximum building depth recommended by SEPP65 is 18m. Building B has a tower-type plan with seven units per typical floor arranged around a central core. Tower-type plans put pressure on the amenity derived from the building frontage by enclosing a maximum amount of area within the minimum length of perimeter wall. Service rooms such as bathrooms and kitchens become internalised, long corridors become required within units and, in this instance, even a bedroom is internalised. These concerns are discussed further under PRINCIPLE 7: AMENITY. This situation is exacerbated by the desire for a mix of smaller 1 and 2 bedroom units compared to the previous applications mix of 2 and 3 bedrooms units.*

#### **Principle 4: Density**

*This is a difficult site. It is an awkwardly shaped parcel, on a south-facing slope, at a transition in zoning from 2(d3) to 2(c2), adjacent a heritage item and highly visible from the public domain of the golf course. Whilst the proposed floor space is 89.6% of the allowable floor space, a further reduction should be investigated. In particular, the project would benefit most from less floor space at the uppermost levels, causing less overshadowing, and a thinner section for Building B which would improve amenity. A mix incorporating more three bedrooms apartments (ie similar floor area, but less apartments) would also assist in improving amenity.*

*The proposal performs particularly poorly in terms of achieving adequate solar access. Only 24 of 43 apartments (56%) achieve 3 or more hours of sunlight between 9am and 3pm in winter (discussed further under PRINCIPLE 7: AMENITY). Whilst the application argues that a lesser standard of solar access is required as the site is located in a 'dense urban area' and has 36 of 43 apartments (84%) achieving this standard, the site is in no way considered to be capable of warranting this definition. Indeed, a good description of the proposal can be found in the opening sentence of the architectural design statement included in the submission: 'The form of the proposed development is two buildings separated + surrounded by landscaped areas'. This is not the dense inner-city built form envisaged by SEPP65 when considering a lower solar access standard.*

#### **Principle 5: Resource, energy and water efficiency**

*As described above, deep tower-type plans with large footprints tend to internalise service rooms. This is detrimental to amenity and increases energy use. Artificial lighting is required to use these spaces throughout the day and mechanical ventilation is required for air change. Of the 43 kitchens in the proposal, only 5 (12%) are located on external walls and are capable of being naturally ventilated. This is less than the 25% required by SEPP65. Apartments 17, 24 and 31 have highly internalised kitchens which provide particularly poor amenity. In addition, of the 82 bathrooms in the proposal only 11 (13%) have, or are capable of having, a window. A thinner section building would allow more of these service rooms to occupy a frontage on the external wall and gain access to natural light and air.*

*The apartments have not been designed to be sectioned off for heating and cooling purposes. Particularly in apartments with long corridors, a door sectioning off the living room area would improve the energy use employed for heating and cooling space. Solar access also affects heating and cooling. The poor solar performance of the proposal, and in particular apartments 15, 22, 29 and 36 which are single orientation and face due south, will also require additional energy use to heat and cool the Apartments.*

#### **Principle 6: Landscape**

*It is unclear whether from the shadow diagrams whether the communal open space receives more than 3 hours sun to 50% of the space in winter as it is overshadowed by Building A. The communal open space needs to be delineated on the shadow diagrams and additional hourly diagrams provided to give graphic demonstration of compliance.*

*The fences to the private courtyards fronting the communal open space are very open in design and may not provide adequate privacy to Apartments 14, 15 and 16.*

*Roof terraces at the uppermost levels of both buildings should ensure they are adequately screened to assist with privacy to the east and west, and provide soft landscaping to soften the appearance of the building. The communal roof terrace at level 6 of Building B in particular should include some additional landscape treatment in these respects.*

*No letterboxes appear to be shown in either the architectural or landscape documentation. These should be provided at the Buckingham Road frontage and oriented at 90 degrees to the street.*

### **Principle 7: Amenity**

*Some 33 of the total 43 apartments (77%) of apartments are cross ventilated. The contrast between Building A, which is 100% cross ventilated and thin in section, and Building B, which is only 67% cross ventilated, relying on the corner apartments and penthouses to make up the numbers, highlights the poorer amenity provided by the large footprint and deep building section of Building B. Building B has 10 apartments which are single orientation and not cross ventilated, four of which are single orientation south and do not comply with the provisions of DCP55 control 4.5.1 C-4. It seems that in this instance, priority has been given to views of the golf course over achieving a standard of environmental amenity. This is not considered best practice.*

*Only 24 of 43 apartments (56%) receive 3 or more hours of sunlight between 9am and 3pm in winter. The argument that a lesser standard of 2 or more hours is applicable to this site based on the urban density has been addressed above under PRINCIPLE 4: DENSITY. A second argument is put in the application that 33 of 43 apartments (77%) receive 3 or more hours of sunlight in winter if the hours are extended from 9am to 4pm. This is more convincing given the change in zoning to 2(c2) (of lower height) to the immediate west and the possibility of gaining additional sunlight, albeit at a low and uncomfortable afternoon angle. However, even given this argument, there is no graphic demonstration of the hours of sunlight received by living areas and private open space which one would expect to accompany the submission given the inherent difficulties with the site. Further three-dimensional documentation of shadows to each apartment is required to substantiate these claims.*

*Single orientation east Apartments 20, 27 and 34 have living spaces which scale at 8.6-10.5m deep to the rear face of the kitchen. This is in excess of 8m allowed and these units are therefore non-compliant. These units also include an internalised room labelled as a study. This room measures 3.0 x 3.8m, includes a joinery unit, and should be classed as bedroom. This room borrows its natural light and air from the living room, and can only be enclosed with sliding doors. This design is far from optimal. For a bedroom it has very poor amenity, compromised privacy and an awkward, direct relationship with the living spaces. Altering the classification of this unit to 2 bedroom affects the mix and also means that there are no 1 bedroom apartments in the project.*

*Apartments 15, 22, 29, 36 have balconies which measure at less than required area, falling short of the required 12m<sup>2</sup> for 2 bedroom apartments. Also, most balcony calculations include the thickness of the balustrade and the enclosing*

wall. If the area of these are not included, then most balconies are less than the required area by 1m<sup>2</sup> or more.

Storage for the apartments is poorly resolved. Some spaces in the basement are provided but they not apportioned and allocated. It appears that there will be insufficient basement storage once rooms/cages are installed and access is provided to them. The storage area on level 1 of Building B also potentially obstructs the fire escape. Upstairs, seven units (7, 10, 12, 18, 25, 32, 42) appear to have less than the required volume of storage. Also, 21 of the 43 units have their storage located externally on the balcony. DCP55 4.5.4 C-6 specifies that storage can be in the form of cupboards in halls, living rooms, laundries, flexible spaces (studies/media rooms), but it does not mention balconies. The required storage needs to be secure from the elements. Storage, in addition to the required, but not in lieu of, located on balconies is considered to be acceptable however.

Access to Apartments 11, 12, and 13 on Levels 5 and 6 of Building A appear to be via the fire stair only. Whilst it is assumed that the lift has been accidentally omitted from the drawing, page 18 of the Statement of Environmental Effects confirms that access is indeed via the fire stair. This is not allowable under the BCA and should be corrected. Also unit 13 is only 69m<sup>2</sup> and is smaller than the required 70m<sup>2</sup>. This can be easily amended with minor changes to the design. The laundries in Apartments 7, 10, and 11 appear to not have a laundry tub which they are required to have under the BCA. The corridor containing the access ramp on Level 1 of Building A scales at 1.2m wide, less than the required 1.5m.

#### **Principle 8: Safety and security**

The address provided to Building A is poor. It is located down the eastern side passage and the entry door is not visible from the street or overlooked by apartments. It is potentially an entrapment area. The address to Building A should face the street as described in PRINCIPLE 3: BUILT FORM and be clearly identifiable from the public domain, articulated with architectural elements to denote entry. Also, there does not appear to be a lighting plan to demonstrate that site circulation, particularly access to the buildings, is safe at night.

#### **Principle 9: Social dimensions**

The assertion of the access report that 'five of the thirty two [sic] proposed apartments are not only accessible to Council "access" requirements for people with a disability but fully compliant with the enhanced requirements/features of AS4299-1995 Adaptable Housing' is unfounded. No graphic demonstration of compliance or adaptability of manageable units has been made with templates. Within the nominated manageable Apartments 1, 2, 3, 4 and 5, several critical dimensions such as bathroom sizes, bedroom sizes and door clearances do not appear to be able comply. Each of these apartments must also be provided with at least one disabled car parking space. The access report states that 'Dedicated accessible (disabled) car spaces (one for each of the required accessible apartments) are provided in close proximity to the lift (adjacent to the accessible/adaptable apartments)'. There are no nominated disabled car parking spaces for residents shown on the drawings and the car spaces labelled as belonging to Building A do not appear to be able to accommodate

*the appropriate clearances. However, 1 accessible visitor parking space is present on Level 1 of Building B.*

*At least 70% of units are to be visitable. Only between 8 (19%) and possibly 11 (26%) of 43 apartments appear to have bathrooms with sufficient clearance in front of their pan to be classed visitable. Access to unit living areas is often via long 1m wide corridors (between 7.2-13.7m) and sometimes include tight corners in them. The clearances provided at door locations to these corridors also do not permit ready access for wheelchair dependent visitors.*

*The stair lift provided for disabled access to Building A is not ideal. A ramp within the front setback would be preferable as this would cater for prams and bicycles as well as wheelchairs. This would also sit comfortably with a relocated entry to Building A which faces the street.*

*DCP55 control 4.7 C-5 requires that residential flat developments are to include a range of unit sizes and types. As discussed under PRINCIPLE 7: AMENITY, the 3 units nominated as 1 bedroom should actually be classed 2 bedroom apartments. Given this, 36 of 43 apartments (84%) are 2 bedroom apartments, the remainder being 3 bedroom. This does not provide an adequate variety of unit sizes to cater for different household types.*

#### **Principle 10: Aesthetics**

*As referred to in PRINCIPLE 2: SCALE and PRINCIPLE 3: BUILT FORM, the building facades are generally large and flat expanses without volumetric articulation, punctuated only by window and balcony openings. The submission argues that changes in construction material articulate the buildings, which it can assist in doing, however, overall the buildings remain severe and boxy, a quality that is clearly not in keeping with the intention of the DCP controls. Many wall planes exceed 81m2 without a minimum of 600mm change in plane and therefore do not comply.*

*The colours and materials chosen are considered to be appropriate. They are of reasonable quality, and are recessive and sympathetic in tone. They will be far superior to the materials being used to construct the neighbouring 1-9 Buckingham Street located diagonally across the street. It is crucial that they be retained in construction and not substituted for alternative materials.*

#### **Heritage**

Council's Heritage Advisor's comments on the 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.*

The full comments of Council's Heritage Advisor are provided as an attachment to this report (**Attachment 9**).

## Landscaping

Council's Landscape and Tree Assessment Officer commented on the 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*

The full comments of Council's Landscape and Tree Assessment Officer are provided as an attachment to this report (**Attachment 10**).

## Engineering

Council's Team Leader Engineering Assessment commented on the 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*

The full comments of Council's Team Leader Engineering Assessment are provided as an attachment to this report (**Attachment 11**).

## **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 advised that, if Council were of the mind to approve the development application a condition could be imposed requiring that the construction of the basement and registration of the easement burdening Nos. 2-6 Buckingham Road be completed prior to the issuing of a construction certificate.

The subject application is proposing vehicular access through Nos. 2-6 Buckingham Road, however owner's consent for the use of this site was not provided with the development application. 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. Construction of the approved development at Nos. 2-6 Buckingham Road has not commenced and owner's consent for the use of this site for vehicle access has not been 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.

### **Environmental Planning and Assessment Regulation 2000**

- Clause 49 – Who can make a development application?

The development application form and statement of environmental effects identify the site as Nos. 6A & 8 Buckingham Road. The owners of 6A & 8 Buckingham Road have provided their consent for the lodgement of the development application. Despite vehicular access to the development being through Nos. 2-6 Buckingham Road consent from the owner of this property has not been provided.

Clause 49 of the *Environmental Planning and Assessment Regulation 2000* states that a development application may be made by the owner of the land to which the development application relates, or by any other person, with the consent in writing of the owner of that land. Council's records indicate that the owner of Nos. 2-6 Buckingham Road is Urban Peninsula Pty Ltd. Consent from the Urban Peninsula Pty Ltd for the lodgement of the application has not been provided. The application does not comply with the requirements of clause 49 of the *Environmental Planning and Assessment Regulation 2000*.

### **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 developments standards for street frontage and manageable housing.

- **Street frontage**

The subject site has an area in excess of 1800m<sup>2</sup> 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 using the criteria established by the Land and Environment Court.

#### ***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 1800m<sup>2</sup>. 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 standards 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 1200m<sup>2</sup> and 1800m<sup>2</sup> and sites that have an area of greater than 1800m<sup>2</sup>.

Site Area	Height	Deep Soil	Minimum Frontage
1200m <sup>2</sup> - 1800 m <sup>2</sup>	3 storeys	40%	23 metres
1800m <sup>2</sup> - 2400m <sup>2</sup>	4 storeys	50%	30 metres
2400m <sup>2</sup> or more	5 storeys	50%	30 metres

The most significant difference in terms of the development standards is that sites with an area of 1800m<sup>2</sup> 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 65m<sup>2</sup> 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 has an acceptable level of impact on adjoining properties. The proposal has an unacceptable impact on solar access to No. 8A Buckingham Road and inadequate separation from the

approved flat building at Nos. 2-6 Buckingham Road. However, these issues 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 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 control, therefore compliance is unnecessary and unreasonable in the circumstances of the case.

- **Manageable housing**

The proposal fails to comply with the manageable housing requirements specified in clause 25N(2)(a) of the KPSO as none of the manageable apartments comply with the definition of manageable housing. 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 must be refused.

#### **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 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. The proposal has been comprehensively assessed in this regard by Council's Urban Design Consultant and has been found to be unsatisfactory.

### 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.

	<b>Guideline</b>	<b>Consistency with Guideline</b>
<b>PART 02 SITE DESIGN</b>		
<b>Site Configuration</b>		
<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	YES  The proposal provides 52 percent of the site area as deep soil landscaping.

	measures must be integrated with the design of the residential flat building.	
<i>Fences + walls</i>	Define the edges between public and private land to provide privacy and security and contribute positively to the public domain.	NO  Council's Landscape and Tree Assessment Officer has advised that there is insufficient space between the front boundary and front courtyards for the planting of <i>Eucalyptus saligna</i> (Sydney Blue Gum) indicated in the landscape plan.
<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 <sup>2</sup> .	YES  Ground floor apartments provided with courtyards which are ≥25m <sup>2</sup> 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.	NO  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	NO  Council's landscape officer has advised that the depth of soil over the basement connection to Nos. 2-6 Buckingham Road is not suitable for the species proposed in the landscape plan.
<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.	NO  The proposed stormwater management plan contains errors.
<i>Safety</i>	Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	NO  A crime risk assessment was carried out however the location of the entry to Building A is not consistent with the principles of CPTED.



<i>Visual Privacy</i>	<p>Refer to Building Separation minimum standards</p> <ul style="list-style-type: none"> <li>- up to four storeys/12 metres</li> <li>- 12 metres between habitable rooms/balconies</li> <li>- 9 metres between habitable/balconies and non-habitable rooms</li> <li>- 6 metres between non-habitable rooms</li> <li>- five to eight storeys/up to 25 metres</li> <li>- 18 metres between habitable rooms/balconies</li> <li>- 13 metres between habitable rooms/balconies and non-habitable rooms</li> <li>- 9 metres between non-habitable rooms</li> </ul>	<p>NO</p> <p>Separation between the eastern living room window of Apartment 13 and the balcony of Apartment A304 in the approved development at Nos. 2-6 Buckingham Road is less than 18m.</p>
<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>NO</p> <p>The entry for Building A is located on a side elevation below street level.</p>
<i>Parking</i>	Provide adequate parking for occupants, visitors and disabled.	<p>NO</p> <p>No 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>NO</p> <p>The entry for Building A is located on a side elevation below street level.</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>NO</p> <p>The proposed disabled access path between Building A and Building B includes the traffic aisle of the basement which is contrary to the requirements of the Disability Discrimination Act.</p>
<b>PART 03 BUILDING DESIGN</b>		
<b>Building Configuration</b>		
<i>Apartment layout</i>	Single-aspect apartments should be limited in depth to 8 metres from a window.	<p>NO</p> <p>Apartments 18, 20, 22, 25, 27, 34, 32, 29, and 36 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.	<p>NO</p> <p>Apartments 16, 17, 20, 21, 24, 27, 28, 31, 34, 35 and 40 have kitchens that are more than 8m</p>

		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 <sup>2</sup> - 2 bedroom apartment 70m <sup>2</sup> - 3 bedroom apartment 95m <sup>2</sup>	YES  All apartments meet the appropriate size requirements.
<i>Apartment Mix</i>	Include a mixture of unit types for increased housing choice.	YES  The proposal includes: 3 x 1 bedroom, 33 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/NO  All balconies within the development satisfy the minimum depth provisions of the RFDC but fail to comply with the minimum depth and minimum area requirements of DCP 55.
<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:  <ul style="list-style-type: none"> <li>- studio apartments 6m<sup>3</sup></li> <li>- one-bedroom apartments 6m<sup>3</sup></li> <li>- two-bedroom apartments 8m<sup>3</sup></li> <li>- three plus bedroom apartments 10m<sup>3</sup></li> </ul>	NO  The utility of storage spaces located on the balconies is questionable as weather-proof storage is required.
<b>Building Amenity</b>		
<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.	NO  Only 51.16% of units within the development receive a minimum of three hours direct sunlight 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  The number of single aspect units with a south-west / south-east aspect is less than 10%.
<i>Natural Ventilation</i>	Building depths, which support natural ventilation typically, range from 10 to 18 metres.	NO  The depth of Building B exceeds 18m and this contributes to a high proportion of single aspect apartments with a depth greater than 8m.
	Sixty percent (60%) of residential units should be naturally cross ventilated.	YES  77% of units are cross ventilated.

<b>Building Performance</b>		
<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, or from asbestos- cement roofs. Normal guttering is sufficient for water collections provided that it is kept clear of leaves and debris.	YES

## 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
- the development does not achieve a high level of residential amenity particularly with respect of solar access
- the amenity of the development is poor with respect to the excessive depth of the single aspect apartments
- the setbacks provided are insufficient to address privacy impacts; and

The development is contrary to the heads of consideration detailed in Clause 25I(1) of the Ku-ring-gai Planning Scheme Ordinance in that:

- the development will result in excessive overshadowing of No. 8A Buckingham Road
- the development will result in a loss of privacy for the approved development at Nos. 2-6 Buckingham Road

### Development standards:

<b>Development standard</b>	<b>Proposed</b>	<b>Complies</b>
<b>Clause 25E(1) - Site area (min):</b>	3792.2m <sup>2</sup>	<b>YES</b>

1200m <sup>2</sup>		
<b>Clause 25I(2) - Deep landscaping (min):</b> 50%	52.53%	<b>YES</b>
<b>Clause 25I(3) - Street frontage (min):</b> 30m for sites >1800m <sup>2</sup>	28.03m	<b>NO (SEPP 1 submitted)</b>
<b>Clause 25I(5) - Number of storeys (max):</b> buildings on sites with an area of 2400m <sup>2</sup> or more may have a maximum height of 5 storeys	Building A - 6 storeys  Building B – 6 storeys	<b>YES (additional storey permitted by cl 25K)</b>  <b>YES (additional storey permitted by cl 25K)</b>
<b>Clause 25I(6) - Site coverage (max):</b> 35%	1317m <sup>2</sup> = 34.72%	<b>YES</b>
<b>Clause 25I(7) - Top floor area (max):</b> 60% of level below	Building A = 60% Building B = 60%	<b>YES</b>
<b>Clause 25I(8) – Building Height:</b> 4 <sup>th</sup> 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 Building B = 12.04m  Building A = 6 storeys Building B = 6 storeys	<b>YES</b>  <b>YES</b>  <b>YES</b>  <b>YES</b>
<b>Clause 25K - Steep slope sites:</b> 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  Building B, one storey & 24.94% of footprint	<b>YES</b>  <b>YES</b>
<b>Clause 25J – Car parking:</b> 1 car space per dwelling plus an additional car space for each 3 bedroom dwelling (50) 1 visitor car space for every 4 dwellings (11)	50 11	<b>YES</b> <b>YES</b>
<b>Clause 25L(2) - Zone interface</b> The 3 <sup>rd</sup> and 4 <sup>th</sup> 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	<b>YES</b> <b>YES</b>
<b>Clause 25L(3) - Zone interface</b> Landscaping required to screen	Landscaping for	

development from any adjoining property must be provided on the site and must not rely on landscaping on the adjoining property.	screening purposes is located on the site	<b>YES</b>
<b>Clause 25N(2)(a) - Manageable housing:</b> at least one dwelling comprises manageable housing for each 10 dwellings (or part thereof) comprising the multi-unit housing,	None of the manageable apartments comply with the definition of manageable housing provided by the KPSO as compliance with the requirements of AS4299 has not been achieved	<b>NO (no SEPP 1 submitted)</b>
<b>Clause 25N(2)(b) – Manageable housing:</b> 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.	<b>YES</b>
<b>Clause 25N(3) – A lift must be provided in all multi-unit housing of more than 3 habitable storeys in Zone No. 2(d3).</b>	Lift access proposed	<b>YES</b>

- **Deep soil landscaping – Clause 25I(2)**

Deep soil landscaping calculation plans were submitted with the application, the plans are drawing No. DA-LS04 and DA-LS05 prepared by Melissa Wilson landscape architect. The drawings claim that the total deep soil area is 2050m<sup>2</sup> or 54% of the site area. Council's Landscape Officer does not agree with the deep soil calculation for the following reasons:

*Areas to be excluded,*

- *stair lift and path of travel*
- *screening to windows*
- *proposed new interallotment drainage easement along rear eastern boundary*
- *area of deep soil landscape area less than 2m width*
- *retaining walls where soil gradients greater than 1:3 including the following; to runs of steps over 1m in height, between proposed entry path and eastern side boundary, between tree 23 and proposed retaining wall*

The stair lift and path of travel occupies an area of 2m<sup>2</sup>, the screening to windows occupies an area of 9.05m<sup>2</sup>, the drainage easement contains a 375mm pipe which occupies an area of 4.35m<sup>2</sup>, there are 3 stormwater pits which occupy an area of 1.83m<sup>2</sup>, the area to the eastern side of the entry path is 19m<sup>2</sup>, the area between Tree 23 and the retaining wall is 19m<sup>2</sup>. The total area that should be excluded from the deep soil calculation is 55.2m<sup>2</sup>. This will reduce the deep soil area to 1994.8m<sup>2</sup> or 52.53% of the site area,

nevertheless, compliance with the development standard for deep soil landscaping is achieved.

- **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. Discussion regarding the SEPP 1 objection is provided elsewhere in this report.

- **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.*

All the 'manageable apartments' are situated in Building A. The design of the 'manageable' apartments in Building A does not comply with the requirements of AS4299-1995. Specific concerns with the submitted plans include, but are not limited to:

- i. Despite the statement on page 8 of the access report, dedicated car spaces for the manageable apartments have not been provided.
- ii. The access report refers to AS2890.1-2004 as the relevant Australian Standard for the design of disabled car spaces. The correct standard for disabled parking is AS2890.6-2009.
- iii. The location of the WC pan must comply with AS4299-1995 at the time of construction.
- iv. The design of the kitchens in the manageable apartments does not comply with clause 4.5.2 of AS4299-1995 which specifies that a minimum clearance of 1550mm between kitchen cupboards/benches is required.
- v. All manageable apartments must have one bedroom of sufficient area to accommodate a queen size bed and wardrobe and comply with the clearance and circulation space requirements of AS1428.2. No bedrooms in the manageable apartments comply with these requirements.
- vi. Entry doors are to have a minimum clear opening width of 850mm as per clause 11.5.1 of AS1428.2-1991 and clause 13.2 of AS1428.1-2009.

- vii. Circulation spaces at door approaches for the manageable apartments do not comply with the requirements of clause 13.3.2 of AS1428.1-2009.

The proposed development does not contain any apartments which comply with the definition of manageable housing contained in the KSPO. Accordingly 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 may not be approved.

## POLICY PROVISIONS

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

COMPLIANCE TABLE		
Development control	Proposed	Complies
<b>Part 3 Local context:</b>		
<b>Development adjacent to a heritage item:</b>		
• 10m setback (1 <sup>st</sup> & 2 <sup>nd</sup> storeys)	15.2m	<b>YES</b>
• 15m setback (3 <sup>rd</sup> & 4 <sup>th</sup> storeys)	18.2m	<b>YES</b>
• No closer than heritage item from front boundary	Building A is closer to the front boundary than the heritage item (No. 10 Buckingham Road)	<b>NO</b>
• 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	<b>YES</b>
<b>Part 4.1 Landscape design:</b>		
<b>Deep soil landscaping (min)</b>		
• 150m <sup>2</sup> per 1000m <sup>2</sup> of site area = 568.8m <sup>2</sup>	760m <sup>2</sup> to the rear of Building B	<b>YES</b>
<b>No. of tall trees required (min): 13 trees</b>	24 trees	<b>YES</b>
<b>Part 4.2 Density:</b>		
<b>Building footprint (max):</b>		
• 35% of total site area (1327.27m <sup>2</sup> )	34.72% (1317m <sup>2</sup> )	<b>YES</b>
<b>Floor space ratio (max):</b>		
• 1.3:1 (4929.86m <sup>2</sup> )	1.17:1	<b>YES</b>
<b>Part 4.3 Setbacks:</b>		
<b>Street boundary setback (min):</b>		



<ul style="list-style-type: none"> <li>Setback zone between 10-12m from boundary, no more than 40% of this zone may be occupied by building footprint</li> </ul>	71.38%	<b>NO</b>
<b>Rear boundary setback (min):</b>		
<ul style="list-style-type: none"> <li>6m</li> </ul>	12.8m	<b>YES</b>
<b>Side boundary setback (min):</b>		
<ul style="list-style-type: none"> <li>6m</li> </ul>	0m for underground connection to Nos. 2-6 Buckingham Road	<b>NO</b>
<b>Setback of ground floor courtyards to street boundary (min):</b>		
<ul style="list-style-type: none"> <li>8m</li> </ul>	7.7m	<b>NO</b>
<b>Maximum portion of the front setback area occupied by private courtyards (max):</b>		
<ul style="list-style-type: none"> <li>15%</li> </ul>	10.81%	<b>YES</b>
<b>Part 4.4 Built form and articulation:</b>		
<b>Façade articulation:</b>		
<ul style="list-style-type: none"> <li>Wall plane depth &gt;600mm</li> </ul>	Recessed balconies have been utilised to reduce the size of the wall plane of the front elevation.	<b>NO</b>
<ul style="list-style-type: none"> <li>Wall plane area &lt;81m<sup>2</sup></li> </ul>	The wall plane of the front elevation has an area of 174m <sup>2</sup>	<b>NO</b>
<b>Built form:</b>		
<ul style="list-style-type: none"> <li>The width of a single building on any elevation facing the street shall not exceed 36 metres</li> </ul>	9.335m to 15.935m	<b>YES</b>
<ul style="list-style-type: none"> <li>Balcony projection &lt;1.2m</li> </ul>	<1.2m	<b>YES</b>
<b>Part 4.5 Residential amenity</b>		
<b>Solar access:</b>		
<ul style="list-style-type: none"> <li>70% of apartments shall receive a minimum of 3 hours direct sunlight on the winter solstice</li> </ul>	51.16%	<b>NO</b>

<ul style="list-style-type: none"> <li>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</li> </ul>	Insufficient information to determine compliance	<b>NO</b>
<ul style="list-style-type: none"> <li>Entry lobbies and common corridors should be naturally lit and ventilated</li> </ul>	All entry lobbies and common corridors are naturally lit and ventilated	<b>YES</b>
<ul style="list-style-type: none"> <li>No single-aspect units shall have a southern orientation</li> </ul>	Apartments 36, 29, 22, and 15 are single aspect units with a southern orientation.	<b>NO</b>
<ul style="list-style-type: none"> <li>Not more than 15% of the total units shall be single aspect with a western orientation</li> </ul>	There are no single aspect apartments with a western orientation.	<b>YES</b>
<ul style="list-style-type: none"> <li>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%</li> </ul>	Less than 3 hours to No. 8A Buckingham Road	<b>NO</b>

<b>Visual privacy:</b>		
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"> <li>• 12m b/w habitable rooms</li> <li>• 9m b/w habitable and non-habitable rooms</li> <li>• 6m b/w non-habitable rooms</li> </ul>	Minimum 12m between Building A and the approved building at No. 2-6 Buckingham Road. Minimum 13.725m between southern elevation of Building A and northern elevation of Building B.	<b>YES</b>
5th Storey <ul style="list-style-type: none"> <li>• 18m b/w habitable rooms</li> <li>• 13m b/w habitable and non-habitable rooms</li> <li>• 9m b/w non-habitable rooms</li> </ul>	An 18m separation distance is required between the eastern living room window and the eastern side of the balcony of apartment 13 and apartment A304 in the approved building at 2-6 Buckingham Road, the separation distance proposed is 13.8m	<b>NO</b>
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).	The communal roof terrace on level 6 of Building B faces towards the golf course. Private roof terraces are orientated internally and have screens to the eastern or western sides where overlooking could occur.	<b>YES</b>
<b>Internal amenity:</b>		
<ul style="list-style-type: none"> <li>• Habitable rooms have a minimum floor to ceiling height of 2.7m</li> </ul>	Minimum 2.7m	<b>YES</b>
<ul style="list-style-type: none"> <li>• Non-habitable rooms have a minimum floor to ceiling height of 2.4m</li> </ul>	Minimum 2.7m	<b>YES</b>
<ul style="list-style-type: none"> <li>• 1-2 bedroom units have a minimum plan dimension of 3m in all bedroom</li> </ul>	>3m	<b>YES</b>
<ul style="list-style-type: none"> <li>• 3+ bedroom units have a minimum plan dimension of 3m in at least two bedrooms</li> </ul>	>3m	<b>YES</b>

<ul style="list-style-type: none"> <li>Single corridors: <ul style="list-style-type: none"> <li>- serve a maximum of 8 units</li> <li>- &gt;1.5m wide</li> <li>- &gt;1.8m wide at lift lobbies</li> </ul> </li> </ul>	7 units  1.2m (level 1 of Building A) >1.8m	<b>YES</b>  <b>NO</b> <b>YES</b>
<ul style="list-style-type: none"> <li>Storage space shall be provided for each unit at the following minimum volumes: <ul style="list-style-type: none"> <li>- 6m<sup>3</sup> for studio and one bedroom unit</li> <li>- 8m<sup>3</sup> for two bedroom units</li> <li>- 10m<sup>3</sup> for units with three or more bedrooms</li> </ul> </li> </ul> <p>At least 50% of the required storage space must be provided inside the dwelling.</p>	Insufficient information	<b>NO</b>
<b>Apartment Layout:</b>		
<ul style="list-style-type: none"> <li>single aspect units are to have a maximum depth of 8m under RFDC</li> </ul>	12.5m (apartments 20,27,34) 9.7m (apartments 18,25,32) 8.6m (apartments 22,29,36)	<b>NO</b>
<ul style="list-style-type: none"> <li>The back of a kitchen should be no more than 8m from a window under RFDC</li> </ul>	>8m (apartments 16,17, 20, 21,24 27, 28,31,34,35,40)	<b>NO</b>
<ul style="list-style-type: none"> <li>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 under RFDC</li> </ul>	No cross-over or cross-through apartments over 15 metres deep	<b>N/A</b>
<b>Natural Ventilation:</b>		
<ul style="list-style-type: none"> <li>Building depths which support natural ventilation typically range from 10 to 18 metres under RFDC</li> </ul>	Building A = 12.8 metres Building B = 26m	<b>YES</b> <b>NO</b>
<ul style="list-style-type: none"> <li>25% of kitchens should have access to natural ventilation under RFDC</li> </ul>	80%	<b>YES</b>

<ul style="list-style-type: none"> <li>60% of units to have natural cross ventilation under RFDC</li> </ul>	77%	YES
<b>Outdoor living:</b>		
<ul style="list-style-type: none"> <li>ground floor apartments have a terrace or private courtyard greater than 25m<sup>2</sup> in area</li> </ul>	>25m <sup>2</sup> (min 40.8m <sup>2</sup> )	YES
<ul style="list-style-type: none"> <li>Balcony sizes: <ul style="list-style-type: none"> <li>- 10m<sup>2</sup> – 1 bedroom unit</li> <li>- 12m<sup>2</sup> – 2 bedroom unit</li> <li>- 15m<sup>2</sup> – 3 bedroom unit</li> </ul> </li> </ul> <p>NB. At least one space &gt;10m<sup>2</sup></p>	16m <sup>2</sup>  10-10.9m <sup>2</sup> (apartments 2,3,5,7,8,10,12,17,19,22,23,24,26,29,30,31,33,36,37,39)  10.8m <sup>2</sup> (apartments 21,28,35)	YES  NO  NO
<ul style="list-style-type: none"> <li>primary outdoor space has a minimum dimension of 2.4m</li> </ul>	2.3m (apartments 2,3,5,6,8,9)	NO
<ul style="list-style-type: none"> <li>At least 30% of the site area is to be common open space principally for tall tree planting.</li> </ul>	More than 30% of the site area is common open space	YES
<b>Part 4.7 Social dimensions:</b>		
Each adaptable dwelling must be provided with at least one disabled car parking space designed in accordance with AS2890.1	No adaptable dwellings provided	NO
At least 70% of dwellings are to be 'visitable' in accordance with the definition prescribed in appendix F	<70%	NO
A range of unit sizes and types is to be provided	Mix of 1, 2 and 3 bedroom units	YES
<b>Part 5 Parking and vehicular access:</b>		
<b>Car parking (min):</b>		
<ul style="list-style-type: none"> <li>50 resident spaces</li> <li>11 visitor spaces</li> <li>61 total spaces</li> </ul>	50 spaces 11 spaces 61 spaces	YES YES YES

## **Part 2 Elements of good design:**

Part 2.1.3 'Building Entry' states that the building entry should provide a clear identity for the development and that entries should be located to relate to the existing street and be a clearly identifiable element of the building in the street.

The entry to the proposed development is located below street level on the eastern side elevation of Building A. The entry does not provide a clear identity for the development, does not relate to the street, and is not a clearly identifiable element of the building in the street.

The site configuration is not conducive to having a side entry and the location of the entry creates an entrapment spot and results in a poor visual connection between the street façade and the public domain. The location of the entry also results in a poorly resolved pedestrian entrance path which would require pedestrians to negotiate a set of stairs with 15 steps every time they enter and exit the site. The selected design also detracts from the street appeal of the development as the lack of a street facing entry means that the façade of the building is missing an element that is common to the majority of buildings in the streetscape.

A superior design would place a covered pedestrian entry in the centre of Level 3. Based on the levels shown on the site plan, a ramp between the front boundary and the front wall of Level 3 would comply with the gradient requirements for a disabled access ramp. This option would eliminate the need for a stair lift and provide a better street address for the building.

## **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.

### **3.4 Development with an Urban Conservation Area**

The site is not located within an Urban Conservation Area.

### **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 the kerb on the southern side of Buckingham Road. 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. Council's Heritage Advisor does not support this non compliance and has advised 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'*.

## **Part 4 Design principles and controls**

### **4.1 Landscape design**

Council's Landscape Officer has raised concerns with the design of the communal open space area to the rear of Building B, the amenity of the communal open space area between the two buildings and the depth of the soil over the basement link to Nos. 2-6 Buckingham Road.

### **4.3 Setbacks**

The proposal does not comply with the following controls:

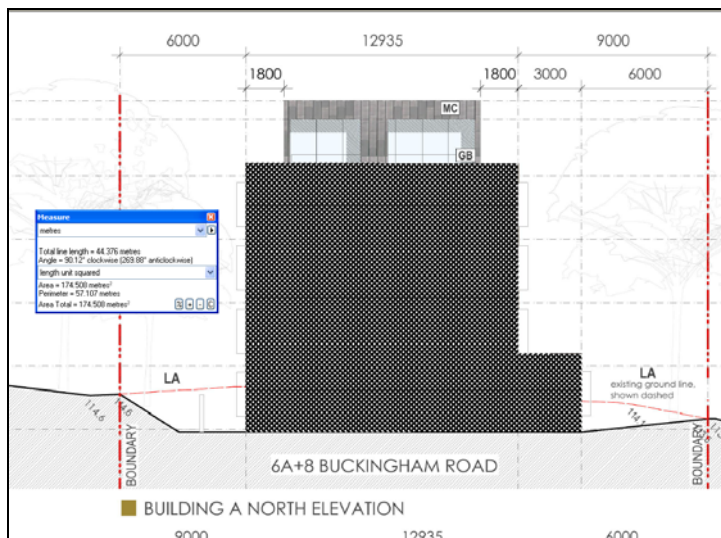
- C-1(a) Side and rear boundary setbacks: 6m
- C-1 (b) Street boundary setback: setback zone between 10-12 metres from boundary, no more that 40% of this zone may be occupied by building footprint
- C-7 Ground floor private terraces/courtyards must be set back 8 metres from the street boundary or 11m where the setback is 13-15 metres to allow for deep soil planting within the common area

The footprint of the development occupies more than 70% of front setback zone. 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. A minor departure from the ground floor private terraces/courtyards control is also proposed as the setback is 7.7 metres in lieu of the required 8 metres. Of greatest significance, is the failure to comply with the front setback requirements. This non compliance reduces the amount of deep soil landscaping in the front setback area and further erodes views of the heritage item from the public domain.

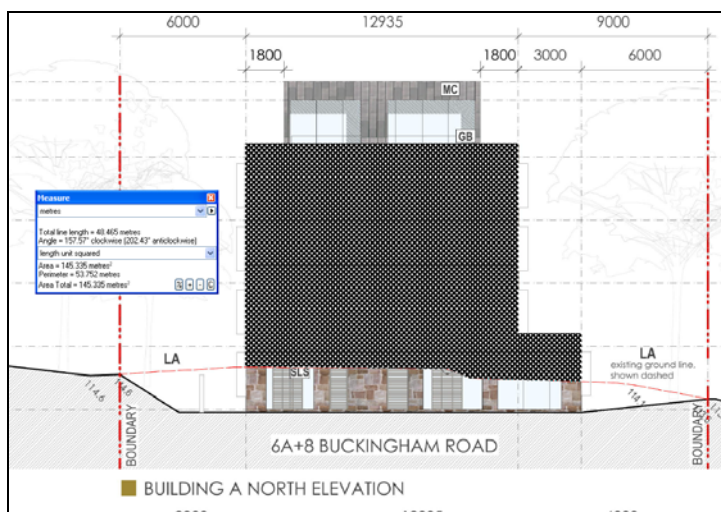
### **4.4 Built form and articulation**

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 81m<sup>2</sup>. Various methods of calculating the maximum wall plane area of the front elevation are illustrated on the diagrams below:

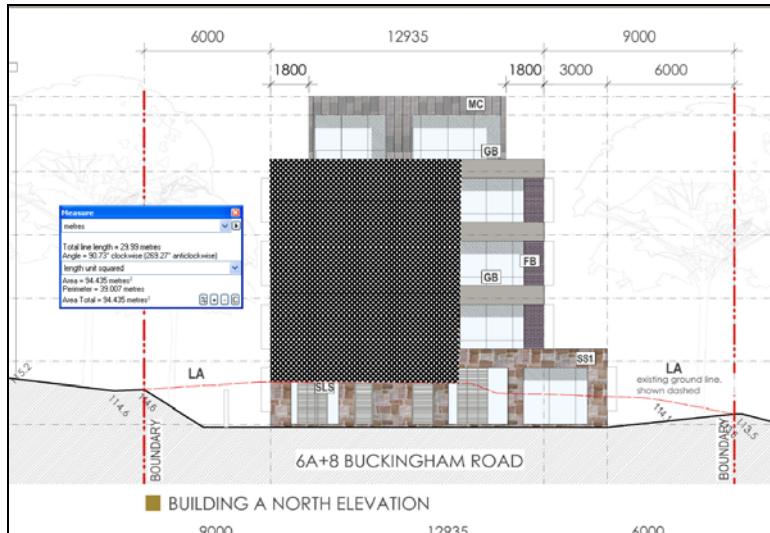


**Figure 1 - when measured from the finished ground level of the courtyard of apartment 4 the wall plane has an area of 174m<sup>2</sup> before stepping back at the top floor level. This wall plane includes the open terrace on Level 2 and three balconies on Levels 3-5.**



**Figure 2 - The building plane has an area of 145m<sup>2</sup> measured above the natural ground level at the front boundary**





**Figure 3 - the solid component of the front facade has an area of 94m2 above the existing natural ground level at the front boundary**

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 to the wall plane depth and wall plane area controls is unacceptable because the development fails to achieve a visual connection between the dwellings and the public domain and the elements of the articulation do not have a strong relationship to the characteristics of existing buildings in the area. The primary concern is that the development fails to include a pedestrian entry that is visible from the street. The development could be improved by incorporating a pedestrian entry into the centre of Level 3. This option would avoid the need for a stair ascender at the side of the building and an access ramp could be centrally located in the front setback area. This option would give the development a clear identity and street address whilst improving safety through minimising entrapment and concealment spaces.

## **4.5 Residential amenity**

### **4.5.1 Solar Access**

#### **Design control No. 1 – solar access to apartments**

The applicant claims that 24 apartments (56%) receive 3 hours solar access. However, Council's assessment has revealed that Apartments 17, 24, and 31 for which 3 hours solar access is claimed would be overshadowed by Building

A at 12pm and do not appear capable of receiving solar access between 9am to 12pm due to the living room window being recessed 3m from the building facade. Accordingly, 3 hours of solar access between 12pm and 3pm cannot be achieved. It is likely that Apartment 11 which is on Level 5 of Building A and has a 3.4m long east facing living room window can achieve 3 hours solar access between 9am and 12pm rather than 2 hours as indicated in the statement of environmental effects. In fact, only 22 apartments (51.16%) receive 3 hours solar access.

### **Design control No. 2 – solar access to common open space**

The common open space requirement is 30% of the site area which is 1137.66m<sup>2</sup>. At least 50% of this area (568.83m<sup>2</sup>) must receive 3 hours solar access. It is difficult to determine compliance with the control as the shadow diagrams do not show the shadows cast by the approved building at Nos. 2-6 Buckingham Road in plan form, hourly shadow diagrams have not been provided, and the 3pm shadow diagram for Building B is the same as the 12pm diagram.

### **Design control No. 6 – solar access to adjoining dwellings**

The adjoining dwelling No. 8A Buckingham Road is zoned Residential 2(c2). The shadow diagrams (DA40) indicate that six east facing 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.

#### **4.5.2 Visual Privacy**

An 18 metres separation distance is required between the eastern living room window of apartment 13 and the eastern side of the balcony of apartment A304 in the approved building at Nos. 2-6 Buckingham Road, the separation distance proposed is only 13.8 metres.

#### **4.5.3 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 shares a wall with three bedrooms. 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.

#### **4.5.4 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 and concern is raised that storage cupboards on balconies are unlikely to be suitable unless they are weatherproofed. To confirm compliance with storage space controls further details would be required.

#### **4.5.5 Outdoor Living**

The proposal fails to provide adequately sized balconies to 23 (53.48%) of the apartments within the development. In addition, 6 apartments have balconies which do not comply with the minimum depth requirement of 2.4 metres.

#### **4.6 Safety and security**

The pedestrian entrance to Building A is located on the side elevation in a narrow lightwell that is approximately 3 metres below the street level. The pedestrian entrance is not clearly visible from the street in accordance with design control No. 3.

The applicant has not provided a formal crime risk assessment of the proposed development in accordance with the recommendations of the Residential Flat Design Code.

#### **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 apartments' the design of each apartment fails to satisfy the criteria outlined in AS4299-1995.

No car spaces designed in accordance with AS2890.1 have been provided for the 'manageable apartments'. This does not comply with the requirements of design control No. 2.

The development does not comply with the requirement for at least 70% of the dwellings to be visitable. This non compliance predominantly arises out of the failure to ensure that at least one bathroom in each dwelling satisfies for criteria for classification as an 'accessible' or 'visitable' toilet.

A further concern arises out of the design of the disabled access, in particular the requirement for a disabled person to traverse the traffic aisle of Basement Level 1 in order to get from Building A to Building B (or vice versa) whilst able bodied people are able to use a corridor access from the rear of Level 1 in Building A. The submitted design is not only considered to be unsafe but also fails to provide equitable and dignified access in accordance with the objects of the Disability Discrimination Act.

#### **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'.

Council's Team Leader Development Engineering has reviewed the proposal and has raised concern with the ability of a garbage truck to access the development through Nos. 2-6 Buckingham Road as a long section demonstrating access was not provided. A garbage truck requires a minimum ceiling height of 2.6 metres and only the upper level basement of the development of the approved development at Nos. 2-6 Buckingham Road has a minimum ceiling height of 2.6 metres. In a separate development application to extend the approved basement of Nos. 2-6 Buckingham Road, the applicant advised that the construction certificate plans had been modified to facilitate access for a garbage truck. Whilst it is possible that substantial modifications to the design of a basement are permissible at the construction certificate stage, the fact that formal approval from a consent authority for the modified basement has not been obtained adds to Council's concerns that the proposal to provide access through the basement of a development that does not exist is inconsistent with the principles of orderly development.

#### **Part 5 Parking and vehicular access**

The submitted plans indicate that the minimum number of car spaces has been provided. Non compliances include inadequate length of space A3, excessive gradient for the ramp linking the two basements and the car spaces for the manageable apartments not complying with disabled access requirements.

The failure to provide at least 5 resident car spaces which comply with disabled access standards is a significant concern as compliance with disabled access standards will require a redesign of the basement.

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, no owners consent, 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. The proposal is not considered satisfactory.

### **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 and the proposal is unsatisfactory in this regard.

### **Section 94 Plan**

If approval of the application were recommended conditions 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 SEPP 65, KPSO, and DCP 55. As a result of these non-compliances the proposal results in an unacceptable impact upon the adjoining properties and environment.

### **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 constraints of the site in terms of slope, orientation and proximity to a heritage item require a different design response to that presented in the development application. 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 – DA43 prepared by Aleksandar Design Group Pty Ltd and dated February 2011 and Landscape plans DA-LS01 to DALSO7 prepared by Melissa Wilson landscape architect, for the following reasons:

1. The proposal does not comply with the requirements of Clause 49 'Who can make a development application?' of the *Environmental Planning and Assessment Regulation 2000*.

#### Particulars

- i. Vehicular access to the proposed development is through Nos. 2-6 Buckingham Road. Council's records indicate that the owner of Nos. 2-6 Buckingham Road is Urban Peninsula Pty Ltd. Consent from Urban Peninsula Pty Ltd to lodge the development application has not been provided.
2. 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 that has vehicle access through the basement of a building that has not been built. There is no certainty as to whether the building approved for the adjoining site will be built and whether the owner of the adjoining site will permit vehicle access through the site.

3. 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 up the adjoining heritage item
  - ii. The development does not achieve a high level of residential amenity particularly with respect of solar access and the excessive depth of the single aspect apartments
  - iii. The amenity of the development is poor with respect to the excessive depth of the single aspect apartments
  - iv. The setbacks provided are insufficient to address privacy impacts
4. The development is contrary to the heads of consideration prescribed under clause 25I(1) of the Ku-ring-gai Planning Scheme Ordinance.

**Particulars**

- i. The development will result in excessive overshadowing of No. 8A Buckingham Road
  - ii. The development will result in a loss of privacy for the approved development at Nos. 2-6 Buckingham Road
5. 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 to support the variation to the development standard has not been submitted.

**Particulars**

- i. The manageable apartments 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.
6. 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 reasons:

- i. The lack of articulation of the front façade and the non compliant street setback demonstrate that the proposal does not have adequate regard for its context.
  - ii. The placement of the main entrance to the side of the Building A and below street level demonstrates that the proposal does not have a high quality built form which defines the public domain and contributes to the character and integrity of the streetscape.

- iii. The location of the pedestrian entry to Building A is inconsistent with the principles of Crime Prevention Through Environmental Design.
  - iv. An insufficient number of apartments receive at least 3 hours solar access on the winter solstice, the depth of single aspect apartments is excessive, the number of south facing single aspect apartments is excessive, a high proportion of apartments have undersized balconies, and a high proportion of apartments have kitchens that are greater than 8m from a window. The proposal does not achieve a sufficient standard of internal amenity.
  - v. 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.
  - vi. Suitable documentation regarding the ability for common open space areas to receive adequate solar access has not been provided. It is unclear as to whether well designed common open space has been provided in the development.
7. The proposal is inconsistent with Part 2 'Elements of good design' of DCP 55.

#### **Particulars**

- i. The proposal does not have a building entry that provides a clear identity for the development.
  - ii. The proposed building entry located on the western elevation of Building A does not relate to the street.
8. 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.
9. The proposal is inconsistent with Part 4.3 'Setbacks' of DCP 55.

#### **Particulars**

- i. The proposal does not comply with design control C-1(a) as the basement is not setback 6m from the eastern boundary.
- ii. The proposal does not comply with design control C-1(c) as more than 40% of the front setback zone is occupied by the building footprint.
- iii. The proposal does not comply with design control C-7 as the front courtyards have a street setback of less than 8m.



- iv. The proposal does not comply with design control C-9 as the design of the top floor of Building B results in overshadowing of No. 8A Buckingham Road.
- 10. The proposal is inconsistent with Part 4.4 'Built form and Articulation' of DCP 55.

**Particulars**

- i. The proposal does not comply with design controls C-1 and C-2 as the wall planes of the northern elevation of Building A exceed 81m<sup>2</sup> and have a depth of less than 600mm.
- 11. The proposal is inconsistent with Part 4.5.1 'Solar access' of DCP 55.

**Particulars**

- i. The proposal does not comply with design control C-1 as less than 70% of apartments in the development receive 3 hours solar access.
- ii. The proposal does not comply with design control C-2 as less than 50% of the common open space receives 3 hours solar access.
- iii. The proposal does not comply with design control C-4 as four apartments (15, 22, 29, 36) are single aspect with a southern orientation.
- iv. The proposal does not comply with design control C-6 as the development reduces solar access to habitable rooms of No. 8A Buckingham Road to less than 3 hours.
- 12. The proposal is inconsistent with Part 4.5.2 'Visual Privacy' of DCP 55.

**Particulars**

- i. The proposal does not comply with design control C-2 as the separation between the eastern living room window of apartment 13 and the balcony of apartment A304 in the approved building at Nos. 2-6 Buckingham Road is less than 18m.
- 13. The proposal is inconsistent with Part 4.5.4 'Internal Amenity' of DCP 55.

**Particulars**

- i. The proposal does not comply with design control C-5 as the corridor at the rear of level 1 of Building A has a width of 1.2m and a minimum width of 1.5m is required.
- ii. Insufficient information has been submitted with the application to determine compliance with the minimum storage space requirements outlined in design control C-6.

14. The proposal is inconsistent with Part 4.5.5 'Outdoor living' of DCP 55.

**Particulars**

- i. The balconies for twenty-three (23) apartments in the development do not comply with the minimum requirements outlined in design control C-2.
- ii. The balconies for six (6) apartments in the development do not comply with the minimum 2.4m dimension requirement outlined in design control C-4.
- iii. The common roof terrace does not contain soft landscaping that would satisfy the requirements of design control C-8.

15. The proposal is inconsistent with Part 4.6 'Safety and security' of DCP 55.

**Particulars**

- i. The proposal does not comply with design control C-4 as the pedestrian entrance for Building A is not clearly visible from the street.

16. The proposal is inconsistent with Part 4.7 'Social dimensions' of DCP 55.

**Particulars**

- i. The proposal does not comply with design control C-1 as including the traffic aisle of the basement as part of the disabled access path between Building A and Building B is unsafe.
- ii. No disabled parking spaces have been provided for the adaptable dwellings in accordance with design control C-2.
- iii. In contravention of design control C-3, less than 70% of the dwellings in the development are 'visitable' by persons with a disability.

17. The proposal is inconsistent with the requirements of Australian Standard 2890.1 (2004) "Off-Street car parking", Part 5 'Parking and vehicular access' of DCP 55, and DCP 40 (Policy for Construction and Demolition Waste Management).

**Particulars**

- i. Car spaces that comply with the requirements of AS2890.1:2009 have not been provided for the five manageable apartments.
- ii. The length of car space A3 is 5.4m, a minimum length of 6.3m is required.
- iii. The location of the traffic lights recommended by the traffic report has not been indicated on the plans.
- iv. A construction traffic management plan has not been submitted.

18. Errors on the architectural plans

**Particulars**

- i. The apartment numbers shown on the sections do not match the location of the section indicated on the floor plans.
- ii. The location of the courtyard fencing for apartments 14, 15, and 16 on section a part 2 (drawing No. DA21) does not match the landscape plans.

19. The proposal is inconsistent with the requirements of Council's Water Management Development Control Plan DCP 47 (Adopted 4 May, 2005).

**Particulars**

- i. On drawing No. C02.01 prepared by ABC Consultants the rising main is not connected to the Humeceptor, this contradicts the arrangement shown on drawing No. C03.01 prepared by ABC Consultants.
- ii. No documentary evidence has been submitted from Killara Golf Club indicating that the Club is willing to grant a drainage easement.

20. 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.

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**Attachments:**

- 1. Location Sketch
- 2. Zoning Extract
- 3. Basement Plans

4. Site Plans
  5. Floor Plans
  6. Elevations
  7. Sections
  8. Landscape Plans
  9. Council's Heritage Officer's Comments
  10. Council's Landscape and Tree Assessment Officer's Comments
  11. Council's Team Leader Engineering Assessment Comments
  12. SEPP 1 Objection
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