

**JOINT REGIONAL PLANNING PANEL  
(Sydney West Region)**

<b>JRPP No</b>	2011SYW127
<b>DA Number</b>	0605/11
<b>Local Government Area</b>	Ku-ring-gai Council
<b>Proposed Development</b>	Demolition of existing structures & construction of a 5 to 6 storey residential flat building containing 123 units, basement carparking, land consolidation and a boundary adjustment
<b>Street Address</b>	1444B, 1446, 1446A, 1448, 1450, 1452, and 1454 Pacific Highway, Turramurra
<b>Applicant</b>	Mackenzie Architects
<b>Owner</b>	Mr JS Wolfe, Mrs JR Wolfe, Mrs ML Theobald, Mr W Webb, Mrs PM Webb, Mrs KA Smith, Mr JL Alonso, Mrs KAB Alonso
<b>Number of Submissions</b>	Thirty Six (36) (Including a petition signed by 29 Residents) during the first notification period.  Ten (10) submissions received during the second notification period.
<b>Recommendation</b>	Refusal
<b>Report by</b>	Grant Walsh, Executive Assessment Officer

## EXECUTIVE SUMMARY

<b>Primary Property</b>	1454 Pacific Highway TURRAMURRA NSW 2074
<b>Lot &amp; DP</b>	Lot 22 DP 552024
<b>Additional Properties</b>	1444b Pacific Highway TURRAMURRA NSW 2074 1446 Pacific Highway TURRAMURRA NSW 2074 1446a Pacific Highway TURRAMURRA NSW 2074 1448 Pacific Highway TURRAMURRA NSW 2074 1450 Pacific Highway TURRAMURRA NSW 2074 1452 Pacific Highway TURRAMURRA NSW 2074

<b>Lot(s) &amp; DP (s)</b>	No related land
<b>Proposal</b>	Demolition of existing structures & construction of a 5 to 6 storey residential flat building containing 123 units, basement carparking, land consolidation, and boundary adjustment

<b>Development application no.</b>	DA0605/11
<b>Ward</b>	COMENARRA
<b>Applicant</b>	Mackenzie Architects
<b>Owner</b>	Mr JS Wolfe, Mrs JR Wolfe, Mrs ML Theobald, Mr W Webb, Mrs PM Webb, Mrs KA Smith, Mr JL Alonso, Mrs KAB Alonso
<b>Date lodged</b>	14/11/2011

<b>Issues</b>	Building height, number of storeys, top floor percentage, unacceptable massing, bulk and scale, unsatisfactory impacts on Blue Gum High Forest, unsatisfactory resolution of access into and throughout the site, unsatisfactory impacts on trees, insufficient front setback, unsatisfactory impacts on adjoining property at 1456 and 1456A Pacific Highway, Owner's consent.
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<b>Submissions</b>	Yes
<b>Land &amp; Environment Court</b>	N/A
<b>Recommendation</b>	Refusal
<b>Assessment Officer</b>	Grant Walsh

### LEGISLATIVE REQUIREMENTS:

<b>Zoning</b>	Residential 2(d3)
<b>Permissible under</b>	KPSO
<b>Relevant legislation</b>	SEPP 1, SEPP 55, SEPP 65, SEPP Infrastructure, SEPP BASIX SREP (Sydney Harbour Catchment) 2005, KPSO Draft LEP (Local Centres) 2012

Draft LEP 218  
 DCP 31 - Access  
 DCP 40 – Waste Management  
 DCP 43 – Car Parking  
 DCP 47 – Water Management  
 DCP 55 – Multi Unit Housing  
 DCP 56 - Notification

**Integrated development** YES

## **PURPOSE FOR REPORT**

To determine Development Application No. 0605/11, for the demolition of existing structures & construction of a 5 to 6 storey residential flat building containing 123 units, with basement carparking for 164 vehicles, land consolidation and a boundary adjustment.

The application is required to be reported to the Joint Regional Planning Panel as the stated cost of works (CIV) of \$22.5 million exceeds \$20 million.

## **HISTORY**

### **Site history:**

The site has historically been used for residential purposes.

### **Development application history:**

28 April 2011	Pre-DA conducted pursuant to Town Centres LEP 2010 and DCP.
20 July 2011	Follow up Pre-DA meeting held which was abandoned due to insufficient information.
28 July 2011	Town Centres LEP 2010 declared void and zoning reverted back to 2D3 under LEP 194.
26 September 2011	Pre-DA held based on revised plans made pursuant to LEP 194, concerns raised included length of the building, ecology, landscaping and walkway/access issues.
14 November 2011	Development Application lodged.
25 November 2011	Application notified for 30 days.
14 March 2012	Issues letter sent to applicant.
8 May 2012	Meeting held with applicant to discuss issues where Council officers advised the applicant that significant amendments had to be made to the proposal to address the issues raised.

15 May 2012	Correspondence sent to the applicant that reiterated significant concerns with the proposal, particularly in relation to vehicle and pedestrian access, urban design, impacts on Blue Gum High Forest and achieving appropriate landscape outcomes.
15 June 2012	Correspondence sent to the applicant indicating that amended documentation should be provided by no later than 13 July 2012.
24 July 2012	A further letter was sent to the applicant requesting amended documentation be submitted no later than 31 July 2012.
25 July 2012	The applicant requested an extension of time until 28 August 2012 which was granted.
12 September 2012	Additional information/amended plans were received.
21 September 2012	The amended plans were notified for a period of 30 days.
14 November 2012	The applicant was requested to provide owner's consent from property owner of 1446 Pacific Highway Turramurra.

## THE SITE AND SURROUNDING AREA

### The site

Visual character study category:	1920/1945-68
Easements/rights of way:	<p>Yes</p> <p>Easement to drain water 1m wide (DP 260234)</p> <p>Right of carriageway and easement for Services 3.66m wide (DP 259533)</p> <p>Right of carriageway and easement for services 3.66m wide and variable (DP 259533)</p> <p>Easement to drain water 1m wide (DP 259533)</p> <p>Easement for sewage purposes over existing line of pipes (DP 2595330)</p> <p>Right of carriageway 4.57m wide (DP) 552024</p> <p>Right of carriageway variable width ( DP 552024)</p> <p>Drainage Easement 1.22m wide (F363298)</p> <p>Easement to drain water 1m wide (R828562 and S684428)</p> <p>Right of way 4.57m wide (F363298)</p> <p>Easement to drain water 1.5m wide (AC367353 and</p>

AC367352)

Heritage Item:	No
Heritage conservation area:	No
In the vicinity of a heritage item:	Yes (Cherrywood" at 1359 Pacific Highway, "Milneroyd" at 1379 Pacific Highway (opposite), 1428 Pacific House (Brogan house), 1458 Pacific Highway)
Bush fire prone land:	No
Endangered species:	Yes (Blue Gum High Forest Critically Endangered Ecological Community)
Urban bushland:	No
Contaminated land:	No

The development proposal encompasses seven (7) allotments which are located on the southern side of Pacific Highway approximately 350 metres north-west of Turramurra local centre and railway station. The site details are as follows:

- 1444B Pacific Highway, Lot 5 in DP 259533. The site is an irregular shaped battle axe allotment currently developed with a one and two storey brick dwelling with an attached verandah, associated garage, carport and swimming pool. The site is also known as 2 Kirawa Close as the access handle is known as Kirawa Close.
- 1446 Pacific Highway, Lot 1 in DP 259533. The site is a regular shaped allotment that fronts Pacific Highway and is currently developed with a two storey brick dwelling with a swimming pool located at its rear. The house has an internal garage accessed from Pacific Highway.
- 1446A Pacific Highway, Lot 3 in DP 259533. The site is an irregular shaped battle axe allotment and is currently developed with a two storey brick dwelling with an attached carport associated swimming pool and covered entertaining area. The site is also known as 3 Kirawa Close.
- 1448 Pacific Highway, Lot B in DP 347520. The site is a battle axe shaped allotment and is currently developed with a single storey brick and fibro dwelling with an attached balcony at its rear. A brick carport is located within the access handle with a stepped path providing pedestrian access to the dwelling.
- 1450 Pacific Highway, Lot A in DP 347520. The site fronts Pacific Highway and is currently developed with a one and two storey brick dwelling with an attached deck located at the rear of the dwelling. Vehicular access is obtained from Pacific Highway and a swimming pool is located within the front setback of the property.
- 1452 Pacific Highway, Lot 21 in DP 552024. The site fronts Pacific Highway and is currently developed with a one and two storey brick dwelling with an attached carport which received vehicular access via a right of carriageway over the battle axe of 1454 Pacific Highway. The dwelling includes attached decking to its rear and a swimming pool located on a raised terrace area additionally to the rear of the dwelling.

- 1454 Pacific Highway, Lot 22 in DP 552024. The site is a battleaxe allotment and is currently developed by a one and two storey brick dwelling with a detached carport located at the front of the dwelling and a swimming pool and associated deck located to the rear of the dwelling.

The combined site has a total area 9745.6m<sup>2</sup> and an area of 9211.4m<sup>2</sup> exclusive of the access handles, the land dedication to the RMS of 133.8m<sup>2</sup> (for the deceleration lane) and the land dedication to the adjoining property at 1446 Pacific Highway of 260.0m<sup>2</sup> to ensure its site area is 1200m<sup>2</sup>. The site will have a frontage to the Pacific Highway of 52.21m. The site slopes significantly down from Pacific Highway (AHD 185) to the rear boundary (AHD 151) resulting in a fall of approximately 34m over the site length.

The site is heavily vegetated and supports existing mature remnant endemic trees representative of Blue Gum High Forest community in the form of a bushland corridor that descends with the site from the top of the ridge to the south west for a distance of approximately 32 metres. A Category 3 watercourse, is located at the south-western edge of the site.

### **Surrounding development**

Development that exists on surrounding properties consists of one and two storey single dwellings to the south of the site on large allotments of land set within established landscaping. At the property to the south east of the site at 1 Lamond Drive (also known as 1440-1444 Pacific Highway) construction works are underway for the purposes of a residential flat building. Development to the north west of the site consists of a single storey brick and sandstone dwelling at 1456 Pacific Highway, a 1 and 2 storey brick dwelling at 1456A Pacific Highway, a residential flat building at 2 Finlay Road and the heritage item known as "Brogan house" being a single storey brick and sandstone dwelling at 1458 Pacific Highway. The Warrawee public school is located off Finlay road to the west of the subject site. Development on the opposite side of Pacific Highway consists of residential flat buildings and one and two storey single dwellings set within established landscaping.

## **THE PROPOSAL**

The proposal, as amended, is for demolition of the existing six (6) dwellings, garages and associated structures and construction of a 5-6 storey residential flat building containing 123 dwellings and is detailed as follows:

- 49 x 1 bedroom dwellings
- 65 x 2 bedroom dwellings
- 7 x 3 bedroom dwellings
- 2 x 4 bedroom dwellings

There are eight (8) levels of basement carparking containing 164 parking spaces (132 resident's spaces, and 32 visitor spaces).

The development is configured into two separate buildings accessed via a shared basement. The western most building contains four blocks (based upon lift/access cores) being A, B, C, and D. The building fronts Pacific Highway and runs parallel to the north-western boundary of the site. The eastern most building contains two blocks being E and F. The building is located approximately 55m from Pacific

Highway, with half of the building positioned behind the property of 1446 Pacific Highway. Vehicular and pedestrian access is proposed to be obtained from Pacific Highway.

The application additionally proposes a boundary adjustment with 1446 Pacific Highway to increase the site area of that site from 930.8m<sup>2</sup> to 1200m<sup>2</sup>. It is noted that the development application form and site description within the Statement of Environmental effects did not identify the property at 1446 Pacific Road as being part of the subject development application and owners consent has not been received from the respective property owner.

An inclinator is proposed to provide access to the building and runs from Pacific Highway between the two buildings.

A deceleration lane and land dedication of 133.8m<sup>2</sup> has been proposed within the site frontage as required by the Roads and Maritime Service (RMS) of NSW.

## COMMUNITY CONSULTATION

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

1. *Tony Taur, 2 Finlay Road, Turramurra*
2. *D & S Brown 18/2 Finlay Road, Turramurra*
3. *Wei Yeong Ho, 24/2-4 Finaly Road, Turramurra*
4. *Marc Walker, no address provided*
5. *Charles Hyde, Duff Street, Turramura*
6. *Fiona Cloke, 9 Finlay Road, Warrawee*
7. *Adam and Claudine Tucker, 20 Cornwall Avenue, Turramurra*
8. *Elizabeth and Drew Benesh, 3 Oswald Close Warrawee*
9. *Lisa Dodman, 38/2 Finlay Road, Turramurra*
10. *John and Sue Daily, 23 Monteith Street, Turramurra*
11. *Helen and Fred Pentecost, 46 Roland Avenue, Wahroonga*
12. *Suzanne Chalker, 28/2 Finlay Road, Turramurra*
13. *Ann James, 19/2 Finlay Road, Turramurra*
14. *Ian and Robyn Hicks 3/2 Finlay Road, Turramurra*
15. *George Brown, 8 Finlay Road, Turramurra*
16. *Tony and Lela Sanders, 4 Lammond Drive, Turramurra*
17. *Koorosh Moghaddamizamani, 23/2 Finlay Road, Turramurra*
18. *Pieter Boele, 14 Denman Street, Turramurra*
19. *Anne Carroll, 36 Karranga Avenue, Killara*
20. *Lyness Beavis, 8 Holmes Street, Turramurra*
21. *Kenichi and Kerry Suzuki, 10 Denman Street, Turramurra*
22. *Betty and Jim Sweeting, Denman Stree,t Turramurra*
23. *Leighanne Sietsma, no address provided*
24. *Ken and Estue Nakaseko, 15/2 Finlay Road, Turramurra*
26. *M Riley, 20 Denman Street, Turramurra*
27. *Dr Graham and Sally Carman, 8 Denman Street, Turramurra,*
28. *Boo, Jessie, May and Wei Liak, 6 Denman Street, Turramurra*
29. *Friends of Ku-Ring- Gai Environment residents group*
30. *Stan Wesley, no address provided*
31. *Janet Harwood, no address provided*

- 32. *Raymond Mitchison, 11 Mildred Street Warrawee*
- 33. *Diana Avent, no address provided*
- 34. *Petition signed by 28 Residents*
- 35. *Geoffrey and Judith Cleland, 18 Mildred Street, Warrawee*
- 36. *Miguel Zaragoza, 22 Mildred Street, Warrawee*

Council's notification documentation did not include the property at 1446 Pacific Highway as the development application form did not identify it when submitted.

The submissions raised the following issues:

***traffic impacts on surrounding road network due to an inability to turn south onto the Pacific Highway***

Council's Development Engineer considered that traffic impacts on the surrounding road network are acceptable. Refer to comments made by Council's Development Engineer.

***safety implications for school and pedestrians as a result of increased traffic on roads that do not have pathways or kerb and guttering***

Council's Development Engineer has indicated that the traffic increase on surrounding the surrounding road network is considered to be acceptable and thus safety implications are considered to be acceptable. Refer to comments made by Council's Development Engineer.

***loss of significant flora and fauna***

The proposal is considered to be unsatisfactory in this regard in its current form. Refer to comments made by Councils Landscape and Ecological Assessment officers.

***the development is too large and has unacceptable bulk and scale***

Building A-D is considered to result in unsatisfactory impacts given its massing, length and height. Refer to comments made by Council's Urban Design Consultant and under number of storeys/height of this report.

***the development is out of character with area***

The proposal is currently considered to be unsatisfactory due to impacts on surrounding properties and Pacific Highway associated with the height, massing and length of Building A-D.

***stormwater impacts as a result of a large development***

The stormwater design of the proposal is considered to be satisfactory by Council's Development Engineer. Refer to comments made by Council's Development Engineer.

***noise impacts from the finished development***

Noise associated with the use of residential dwellings is what can ordinarily be expected within the residential zone. It is noted that the zoning of the subject site



permits residential flat buildings. Noise associated with any mechanical plant would be required to meet state and local acoustic requirements by condition of consent.

***construction work impacts relating to noise, dust, parking, and traffic***

Any development consent granted would be conditional on a Construction Traffic Management Plan and Construction Management Plan which is required to be assessed and approved by Council. Being short term (in the context of the life of the development) construction work impacts are not considered to warrant refusal of a proposal. That being said, access issues remain unresolved with the proposal which impacts upon the parking of construction vehicles. Refer to Council's Development Engineers comments.

***the site is too steep for a residential flat building which results in a large amount of excavation and impact on the topography***

The site does have a significant slope and if developed in accordance with its zoning controls and will inevitably result in excavation and some impact on the topography.

***the cumulative impact of development on the area***

The proposal is permissible within the subject 2D3 zoning. The Turramurra area is in a state of changing character, however, this is a result of previous rezoning within the LGA which would have anticipated the change in character and densities. This is therefore not a matter for any specific development application.

***the site is not suited to residential flat buildings***

A residential flat building is a permissible land use within the zone. That being said, the site is also heavily constrained through slope, access, flora and fauna and watercourse issues. It is considered that any proposal for a residential flat building on the site would have to give due regard to the significant constraints associated with this particular site.

***the proposal would set a precedence given its large size***

Each development application is considered on its own merits in terms of the applicable legislation and controls of the day. The subject proposal is currently considered to be unsatisfactory given its height and length among other issues.

***impacts on the existing creek***

The application constitutes integrated development and was referred to the NSW Office of Water on two occasions. A comment is yet to be received.

***loss of privacy***

The proposal complies with building separation requirements to the adjoining 2D3 zoning and the 2C zoning to the rear. It is noted there is a minimum of 21 metres of separation between Buildings E-F and the adjoining development at 1 Lamond Drive (currently under construction), the proposal has a minimum boundary setback of 21.4 metres to the rear for Buildings A-D and a minimum setback to the rear boundary of 46 metres for Buildings E-F. It is noted that the site is significantly higher than the properties at the rear being located on Denman Road, however, these separation

distances significantly exceed those required by the DCP and Residential Flat Design Code.

***loss of outlook***

Concern was raised by adjoining property owners relating to a loss of outlook through the site as a result of the proposed development, and in particular, a loss of leafy outlook due to vegetation removal. It is noted that the extent of tree removal and vegetation impacts are not currently supported. It is also acknowledged that the length, massing, and height of Building A-D is considered to result in adverse impacts.

***loss of solar access***

A review of the submitted shadow diagrams has revealed that the proposal is compliant with the provision of the DCP and does not result in any unreasonable overshadowing impacts on adjoining properties.

***the proposal is not environmentally friendly given the high density and increased pressures placed on services***

Residential flat buildings are permissible in the 2(D)3 zone. The proposal has been provided with a BASIX certificate issued by the NSW Department of Planning which is the current state requirement which must be met.

***Amended plans dated 20/8/2012***

The amended plans were also notified. In response, submissions from the following were received:

1. *Ian Hicks, no address provided*
2. *Anne Carroll, 36 Karranga Avenue, Killara*
3. *Lisa Dodman 38/2 Finlay Road, Turramurra*
4. *A.C and L.M Sanders, 4 Lamond Drive, Turramurra*
5. *Raymond Mitchison, 11 Mildred Street, Warrawee*
6. *Andrew Bolton, 34/2 Finlay Road, Turramurra*
7. *Robert Firth, no address provided*
8. *Koorosh Moghaddamizamani, 23/2 Finlay Road Turramurra*
9. *Lyness Beavis, 8 Holmes Street, Turramurra*
10. *M Riley, 20 Denman Street, Turramurra*
11. *Dr Graham and Sally Carman, 8 Denman Street Turramurra*

The submissions raised the following additional issues:

***impacts on the Blue Gum High Forest***

The proposal is considered to have an unacceptable impact on the Blue Gum High Forest. Refer to Council's Ecological Assessment Officer's comments.

***impacts on the water table due to deep excavations***

Refer to comments made by Council's Development Engineer and Ecological Assessment Officer's.

***impacts of construction traffic***

It is noted that this issue remains outstanding based on the access arrangements to the site which are unresolved. Refer to comments made by Council's Development Engineer.

***The housing mix is inadequate***

The proposal does include 1, 2, 3, and 4 bedroom units with, the majority being 1 and 2 bedroom units. However, neither the Residential Flat Design Code nor Council's controls specify the minimum percentage of unit mix that must be obtained.

***shortfall of parking in the surrounding road network***

The proposed development complies with the off-street carparking requirements of the KPSO and DCP 55 which includes provision for visitor parking. Refer to comments made by Council's Development Engineer.

***impacts of pollution during the construction phase***

Should consent be granted, it would be subject to a Construction Management Plan and a Construction Traffic Management Plan which would be reviewed by Council prior to works commencing on site.

***no infrastructure upgrades are taking place with RFB developments which impacts upon services***

This is a matter which was considered as part of the rezoning of the site in preparation of LEP 194. Council's Section 94 plan contemplates future infrastructure and services proportionate to the demand of the development.

***insufficient landscaping provided to screen the development***

The front setback does not allow for sufficient planting to occur to satisfactorily screen the development and be consistent with that of other residential flat buildings in the locality.

***erosion and potential flooding due to the sloping nature of the site and the extent of building***

Erosion and water impacts during construction would be subject to standard construction site requirements, post construction, Council's Development Engineer has indicated that the proposed water management is satisfactory.

***loss of habitat as a result of the loss of vegetation***

Council's Ecological Assessment Officer has determined that insufficient documentation has been submitted to adequately demonstrate the impacts upon the Blue Gum High Forest.

## INTERNAL REFERRALS

### Urban design

Council's Urban Design Consultant has reviewed the application against the provisions of SEPP 65. Attachment 3 of this report contains the complete Urban Design comments. The conclusions made by the Urban Design Consultant are set out as follows:

#### **Conclusion**

*The proposed development is for two residential flat buildings containing 123 apartments to be located at 1444-1454B The Pacific Highway Turramurra.*

*The current proposal still indicates that the permissible floor space cannot be achieved given the constraints of the site. Even with minor relaxations/adjustments of the LEP and DCP controls for the site to address the topographical conditions, the ability of the site to accommodate buildings with large footprints and car parking is limited.*

*The site has a complex topography and natural features. Some of the issues raised in initial assessments have been addressed. However, other issues have not been addressed. These are:*

#### **Major issues**

- ***The length and stepping of Buildings A-D***

*This relates to the amount of development on the site. A reduction in density would allow more issues to be solved. Building A-D is massive in appearance and the building needs to be broken into two or three buildings dependent on the final scheme. Although the KMC DCP suggests 60% of the roof area in the set backs for the upper level the set backs on this site need to be related to the overall height; the plan, the topography and the orientation. It is essential that the form of the buildings is simple and that the building/s are not ziggurat in shape.*

- ***The ability of the inclinator to provide adequate levels of service***

*Evidence is required of the frequency of service relative to the number of apartments; waiting times; weather protection and noise implications on adjacent units.*

- ***The relationship of both buildings to the car parking ramps; the pathway and the inclinator including the retaining walls***

*Evidence is required in terms of cross sections through the adjacent units that the apartments have good amenity.*

- ***The relationship of both buildings to the ground plane***

*Evidence is required in terms of cross sections through these ground floor units that the apartments have good amenity.*

- **Location of the adaptable units where the access is easiest**

### **Minor issues**

- *More careful proportioning relating to material use and the organisation of openings to the overall massing including the removal of the unnecessary framing elements in both Buildings A-D and E and better use of balconies and balustrades to create a coherent aesthetic. The glazing needs to extend from floor to ceiling in the rooms facing the courtyards / open spaces.*
- *Provision of appropriate storage and attention to other minor details raised in this report*

### **Landscaping**

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

#### **Deep soil**

*The Deep soil area calculation is nominated as 53.3% of the site area by the applicant. The following areas must be deducted from this calculation:*

*Headwall outlets and associated scour protection structure as per stormwater details, refer Sheet 24, Martens, 28/08/12 (dimensions are to be provided at DA stage to enable assessment of tree impacts and compliance with the deep soil standard).  
Entry signage.*

*The additional area to be excluded would not result in a non-compliance with the deep soil standard.*

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

*An Arboricultural Assessment, prepared by Advanced Treescape Consulting and dated 5/09/12, has been submitted with the application. Tree numbers refer to this report.*

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

#### **Significant trees to be retained**

*Tree 1/ Eucalyptus saligna (Sydney Blue Gum) TPZ 7.2m. The tree is located at the south-west of the site. Dimensions of the proposed headwall have not been provided, however the proposed excavation for the stormwater line and headwall will result in a minor encroachment within the TPZ. The proposed impacts are considered acceptable. Protection fencing is to be provided by condition in the vicinity of the rain garden and stormwater outlet construction.*

*Tree 2/ Eucalyptus saligna (Sydney Blue Gum) TPZ 7.2m. The tree is located south of the proposed building. The tree is considered suitable for*

retention. The tree is adjacent to two *Brachychiton* (Tree 4 and 5) and a *Pittosporum* (Tree 15) that are within TPZ of Tree 2 are shown to be retained, however the design of the timber deck east of the inclinator landing will have to be modified to avoid impacts on Trees 2, 4 and 5. The proposed inclinator is within the structural root zone (3.3m). The proposed inclinator landing is within the tree protection zone. The impacts of these works have not been included in the arborist report. The basement footprint shown on the Tree Assessment Plan (AR-202A, Arterra) and the encroachment calculation (3%) is incorrect.

Tree 3/ *Eucalyptus saligna* (Sydney Blue Gum) TPZ 11.4m. The tree is located to the south of the proposed Block E. The proposed excavation for the basement is outside the tree protection zone. An elevated walkway and gravel path at grade is to be constructed within the tree protection zone. The proposed impacts are considered acceptable.

Tree 6/ *Eucalyptus saligna* (Sydney Blue Gum) TPZ 6.5m. The tree is located at the south-west corner of the proposed Block D. The proposed building setback approximately 6 metres from the tree is to be suspended over the tree protection zone. The proposed excavation for piers for the building and boardwalk, and for stormwater trenching will result in a minor encroachment within the tree protection zone. The proposed impacts are considered acceptable.

Tree 171/ *Eucalyptus saligna* (Sydney Blue Gum) TPZ 6.5m. The tree is located to the north-west of the proposed Block B. The proposed excavation for the basement and courtyard will encroach upon 7% of the tree protection zone.

The existing 10m diameter crown is to be reduced to 3.5m on the building side to allow for scaffolding clearance. A detailed description including photographs of the proposed branches to be pruned is to be provided to enable assessment of the extent of the proposed pruning works. Written permission from adjoining owner is to be provided for proposed pruning as per 6.0.6, Arborist Assessment, Advanced Treescape Consulting, 5/09/12.

Tree 197/ *Eucalyptus paniculata* (Grey Ironbark) TPZ 7.4m. The tree is located to the south-west of the proposed Block D. The proposed building setback approximately 5 metres from the tree is to be partially suspended over the tree protection zone. The proposed excavation for courtyard and the piers for the building will result in a 5% encroachment within the tree protection zone. Canopy pruning is considered minor. The proposed impacts are considered acceptable.

Tree 193/ *Eucalyptus saligna* (Sydney Blue Gum) TPZ 5.0m. The tree is located on the boundary at the south west corner of the site. Dimensions of the proposed headwall have not been provided however the proposed excavation for the stormwater line and headwall will result in a minor encroachment within the TPZ. The proposed impacts are considered acceptable. Protection fencing is to be provided by condition in the vicinity of the rain garden and stormwater outlet construction. The proposed impacts are considered acceptable.

Tree 202/ *Eucalyptus paniculata* (Grey Ironbark) TPZ 6.0m. The tree is located at the south-east corner of the proposed Building D. The tree is

*considered suitable for retention. The proposed building setback approximately 2 metres from the tree is to be suspended over the tree protection zone. The requirement for scaffolding makes the preservation of this tree unlikely. The proposed building setbacks would result in excessive pruning on one side of the tree that would destroy the natural habit of the tree (AS 4373-2007 Pruning of amenity trees). The proposed excavation for building in addition to the support piers for the building will result in a minor encroachment within the tree protection zone, however filling for formwork to achieve FFL158.41 would have a further adverse impact on the long term viability of this tree. It is considered that the proposed works would have an adverse impact on this tree.*

*Tree 265/ Eucalyptus saligna (Sydney Blue Gum) TPZ 5.4m. The tree is located south of the proposed building. The tree is considered suitable for retention. The proposed building setback approximately 3 metres from the tree is to be partially suspended over the tree protection zone. The proposed building setbacks would result in excessive pruning on one side of the tree that would destroy the natural habit of the tree (AS 4373-2007 Pruning of amenity trees). The Tree Assessment Plan (AR-202A, Arterra) does not include the correct extent of the landing at Level 161.41 and the fire stairs from Level 158.41 in accordance with the architectural plans. This would result in an incorrect encroachment calculation (13%). It is considered that the proposed works would have an adverse impact on this tree.*

*Tree 300A/ Eucalyptus saligna (Sydney Blue Gum) TPZ 7.0m. The tree is located on the front boundary. The proposed substation is 4m from the tree and excavation for entry ramp are within the tree protection zone (9% encroachment). The masonry piers for the front fence are located within the structural root zone, and have not been included in the calculation. The substation is considered a structure and should be relocated outside the tree protection zone of this significant tree and the fence should be simplified.*

*Tree 319/ Eucalyptus saligna (Sydney Blue Gum) TPZ 6.2m. The tree is located south-east of the proposed building fronting Pacific Highway. The proposed excavation for the basement is 5m from the tree (7% encroachment). The proposed impacts are considered acceptable.*

*Tree 326/ Eucalyptus paniculata (Grey Ironbark) TPZ 4.8m. The tree is located at the north-eastern corner of the site. The tree is considered suitable for retention. The proposed excavation for the basement is 3m from the tree (8% encroachment). The proposed impacts are considered acceptable.*

*Tree 327/ Eucalyptus saligna (Sydney Blue Gum) TPZ 10.8m. The tree is located south-east of the proposed building fronting Pacific Highway. A proposed boardwalk deck is located within the tree protection zones. Removal of all landscape structures and construction of deck are to be by hand within the tree protection zone.*

*Tree 328/ Angophora floribunda (Rough Barked Apple) TPZ 2.4m. The tree is located south-east of the proposed building fronting Pacific Highway. Removal of all landscape structures and construction of deck are to be by hand within the tree protection zone.*

*Tree 346/ Eucalyptus saligna (Sydney Blue Gum) TPZ 4.8m. The tree is located in the north-east corner of the site, within the adjoining property. The existing retaining wall is to be retained to protect it from the proposed demolition and landscape works within its tree protection zone.*

*Tree 365/ Eucalyptus saligna (Sydney Blue Gum) TPZ 4.8m. The tree is located in the south-eastern corner of the site. The existing retaining wall is to be retained to protect it from the proposed demolition and landscape works within its tree protection zone.*

*Tree 386/ Eucalyptus saligna (Sydney Blue Gum) TPZ 6.1m. The tree is located at the south-east corner of the proposed Block E. The proposed excavation for the basement is 8.4m from the tree outside the tree protection zone. The proposed stormwater line will encroach within the tree protection zone. The new path down the eastern boundary is also within the tree protection zone however it is located within the existing driveway and is to be constructed at grade under arborist supervision.*

*Tree 391/ Eucalyptus saligna (Sydney Blue Gum) TPZ 11.5m. This tree is located north of the proposed Block E. The proposed excavation for the basement is 8m from the tree. The proposed building setback however is approximately 3.5 metres from the tree as Block E is to be partially suspended over the tree protection zone.*

*The existing dwelling and driveway is an encroachment of the 24.6% within the tree protection zone. The proposed basement and suspended Block E will encroach as further 9.5%. Due to the proximity of the proposed building to the structural root zone, verification of the number of piers required should be provided by a structural engineer.*

#### *Root zone impacts*

*The intrusion of a building into the root zone on a pier and beam system is an established methodology for allowing retention of adjacent trees but it is accepted that it is a means of allowing the tree to adapt over time to the changed conditions in the root zone without the abrupt impact of root severance. In this case, steepness of the site, the likely extent of excavation required for piers, the maturity of the tree and the proximity to the structural root zone would combine to present an adverse impact on the tree. Construction would involve significant disruption by soil compaction and contamination (the clay soils of the site being particularly prone to compaction), by excavation of the pier holes, the repeated passage of machinery and personnel, construction of formwork and construction of the slab.*

#### *Canopy impacts*

*The building is only 3.5m from the trunk and therefore approximately 30% of the canopy would overhang the building. A detailed description including photographs of the proposed branches to be pruned is to be provided to enable assessment of the extent of the proposed pruning works.*

#### **Significant trees to be removed**

*Tree 220/ Eucalyptus saligna (Sydney Blue Gum) TPZ 10.0m. The tree is located north-west of the proposed building. The tree is considered*



*unsuitable for retention due to evidence of epicormic shooting and large diameter deadwood. The tree is within the footprint of the proposed building. Removal is supported.*

*Tree 253/ Eucalyptus saligna (Sydney Blue Gum) TPZ 4.3m. This young tree is located on the front boundary. The tree is considered suitable for retention. The proposed road realignment will require the removal of this tree.*

*Tree 288/ Eucalyptus saligna (Sydney Blue Gum) TPZ 10.2m. The tree is located south of the proposed building. The tree is considered suitable for retention. The tree is within the footprint of the proposed building. There is a wound at the base of the tree, however no structural testing has been undertaken.*

*Tree 293/ Eucalyptus saligna (Sydney Blue Gum) TPZ 6.0m. The tree is located south of the proposed building. The tree is considered suitable for retention. The tree is within the footprint of the proposed building. There is a wound at the base of the tree, however no structural testing has been undertaken.*

*Tree 314/ Eucalyptus saligna (Sydney Blue Gum) TPZ 2.4m. The tree is located east of the proposed building. This juvenile tree is considered unsuitable for retention due to the tree's poor structural condition. The tree is 2m from the proposed building. Removal is supported.*

*Tree 320/ Eucalyptus saligna (Sydney Blue Gum) TPZ 6.3m. The tree is located east of the proposed building. The tree is considered suitable for retention in the arborist report. Removal is recommended due to the tree's poor vigour. The tree is 3m from the proposed building. Removal is supported.*

*Tree 324/ Eucalyptus saligna (Sydney Blue Gum) TPZ 5.7m. The tree is centrally located within the site. There is a fungal fruiting body at the base of the tree, however no structural testing has been undertaken. The tree is within the footprint of the proposed basement. Removal is supported.*

*Tree 329/ Eucalyptus paniculata (Grey Ironbark) TPZ 5.4m. The tree is located at the north-eastern corner of the site. The proposed driveway is 1.0m from the tree. Removal is supported.*

*Tree 384/ Acacia maidenii (Maiden's Wattle) TPZ 5.1m. The tree is located to the south-east of Block F. The tree is considered for removal due to a wound in the crown. No details have been provided. Removal is not supported.*

*Tree 385/ Eucalyptus saligna (Sydney Blue Gum) TPZ 6.6m. The tree is located to the south of Block F and there is evidence of a hollow. The tree is leaning to the south-west with a branch lodged in the crown of Tree 385A, an adjacent tree that is proposed to be retained. The tree is considered for removal, however it is located downslope of the development within an area of regeneration. Removal is not supported.*

*Tree 389/ Eucalyptus scoparia (Willow Gum) TPZ 5.4m. The tree is located at the eastern boundary adjacent to the existing access handle.*

*The tree has a significant lean to the south and is considered unsuitable for retention. Removal is supported.*

*Tree 390/ Eucalyptus saligna (Sydney Blue Gum) TPZ 9.9m. The mature co-dominant tree is located at the eastern boundary adjacent to the existing access handle. The tree is considered unsuitable for retention due to a trunk wound and a bracket fungus. No structural testing in the location of the bracket fungus or the trunk wound to demonstrate structural instability has been undertaken. The proposed wall of the elevated building is 2.0m from the tree.*

### **Trees to be removed**

*The development proposes the removal of the following trees:*

*12 canopy trees representative of Blue Gum High Forest: Eucalyptus saligna (Sydney Blue Gum) and Eucalyptus paniculata (Grey Ironbark). 6 of these trees are considered suitable for retention.*

*A total of 7 understorey trees representative of Blue Gum High Forest: Pittosporum undulatum (Sweet Pittosporum) and Brachychiton acerifolius (Flame Tree) 58 exotic and native trees that are not locally occurring, 10 of which are palms 21 trees exempt from Council's Tree Preservation Order*

### **Street Trees to be removed**

*The two existing street trees, Tree 436/ Melaleuca sp and Tree 438 /Jacaranda mimosifolia (Jacaranda), are in poor condition and is supported. Replacement planting could be conditioned.*

### **Landscape plan/tree replenishment front setback**

*To meet RMS requirements, the proposal includes a deceleration lane within a large proportion of the site frontage. No levels have been provided in relation to the deceleration lane and reconfigured road reserve, however, likely impacts due to the road reserve level changes to Trees 351, 345 and 346 should be assessed by the arborist.*

*The basement setback is 6.2m from the front boundary. This is not supported as it fails to provide 'sufficient viable deep soil landscaping and tall trees in rear and front gardens where new development is carried out' (Clause 25D(2)(b) and Clause 25I (1)(e), C-3 Section 4.3 DCP55). Proposed planting of small (Tristania laurina/8m in height) and medium trees (Glochidion ferdinandii/12m in height) proposed in the front setback to the building, will not be in scale with the proposed building. The proposed planting of Glochidion less than 1 metre from the basement and 3 metres from the building, is not considered viable (Clause 25D(2)(e)).*

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

*The development provides a single rooftop podium communal open space on Block E. This area is accessible and includes planting beds and areas for seating. Casual surveillance of the rooftop podium from units is limited to two units, which are to have full height privacy screens. The development also provides three areas of communal open space at grade, to the north-east (200m<sup>2</sup>), the south-east (676m<sup>2</sup>) and south-west (805m<sup>2</sup>) of the site. The area of lawn to the south-west is accessed via a set of steps from the southern end of both buildings. The area to the*

south-east is accessible via a ramp from the south-east corner of the Building. To provide amenity and maintenance, a low level access path is provided through the Blue Gum High Forest between the south-east and the south-west communal open spaces.

A large proportion on of the site (41%, Section 4.1, Flora and Fauna Report, Keystone Ecological, 27/10/11) is proposed to be planted as Blue Gum High Forest revegetated and regenerated areas in accordance with the vegetation management plan.

### **Private courtyards**

#### **Block A-D**

Except for a section of approximately 10m, the private courtyards are setback 3m from the north-west boundary, however, in most cases, excavation for the terraces is 5m from the boundary with the remaining courtyard area retained at existing levels. Units A01 and A02 are less than 25m<sup>2</sup>.

#### **Block E**

The private courtyard of Unit E07 is entirely within the undercroft of Building E. No levels have been provided.

#### **Roof terraces**

A number of the proposed penthouse units have large roof top terraces.

### **On-slab planting**

The proposed planters are shown at approximately 800mm depth and are considered sufficient for the proposed small tree planting.

### **Riparian planting**

The recommended 10m core riparian zone (CRZ) is to be rehabilitated and maintained as part of the proposed development in accordance with the vegetation management plan and the Office of Water conditions. The management unit (MU12) referred to in the VMP prepared by Keystone Ecological is predominantly weed management, planting only 'because of failure of natural regeneration'. With the amount of weed removal, revegetation should be provided to ensure stabilisation of riparian zone. All stormwater outlets, including scour protection, are recommended to be located outside of the core riparian zone.

### **Screen planting**

North-western boundary – Blue Gum High Forest revegetation including *Backhousia myrtifolia* and *Allocasuarina torulosa*.

### **Tree replenishment**

Minimum 35 trees are required for the site. The proposed development will retain 30 canopy trees and proposes in excess of 5 new canopy tree plantings.

### **Basix**

Two Basix certificates have been submitted with the application and refer to Blocks A-C and Blocks D- E.

The Basix certificate has nominated 2580m<sup>2</sup> common area landscape that is to be indigenous/low water use species for Blocks A-C and

1430m<sup>2</sup> for Blocks D-E. The nominated areas are to be shown on the landscape plan.

#### **Stormwater plan**

The proposed stormwater will be collected within two bio-swales that connect to the watercourse via headwall outlets. The proposed turfed finish to the bio-swale detail is inconsistent with the landscape plan that indicates 'revegetation mix raingarden species'.

#### **Groundwater assessment**

To assess impact on trees downslope of the development, caused by the proposed basement structures on the groundwater flows, testing was undertaken. It is recommended that the reports be referred for further assessment by a hydro-geological expert.

#### **Soil moisture**

To preserve the soil moisture post development, the existing soil moisture at 300mm depth and at 700mm depth was measured. It is recommended that the reports be referred for further assessment by a hydro-geological expert.

#### **Environmental site management plan**

An environmental site management plan is required to be submitted with the application.

#### **Conclusion**

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

*Insufficient viable deep soil planting area to front setback of building (Clause 25D (2)(b) and Clause 25I (1)(e))*

*Adverse tree impacts (Clause 25D(2)(b))*

The proposed removal of the following significant remnant canopy trees that are representative of Blue Gum High Forest, a critically endangered ecological community, without substantiated evidence, is not supported. Trees 253, 288, 293, 384, 385 and 390.

No levels have been provided in relation to the deceleration lane and reconfigured road reserve, however, likely impacts due to the road reserve level changes to Trees 351, 345 and 346 should be assessed by the arborist.

The proposed construction impact on significant trees to be retained is not supported. Impacts on the following trees –

*Tree 2/Eucalyptus saligna (Sydney Blue Gum) - The proposed inclinor is within the structural root zone (3.3m). The proposed inclinor landing is within the tree protection zone. The impacts of these works have not been included in the arborist report. The basement footprint shown on the Tree Assessment Plan (AR-202A, Arterra) and the encroachment calculation (3%) is incorrect.*

*Tree 202/Eucalyptus paniculata (Grey Ironbark) - The proposed building setback approximately 2 metres from the tree is to be suspended over the tree protection zone. The requirement for scaffolding makes the preservation of this tree unlikely. The proposed building setbacks would result in excessive pruning on one side of the tree that would destroy the natural habit of the tree (AS 4373-2007 Pruning of amenity trees). The proposed filling for formwork to achieve elevated slab at FFL 158.41 would have a further adverse impact on the long term viability of this tree. It is considered that the proposed works would have an adverse impact on this tree.*

*Tree 265/Eucalyptus saligna (Sydney Blue Gum) - The proposed building setback approximately 3 metres from the tree is to be partially suspended over the tree protection zone. The proposed building setbacks would result in excessive pruning on one side of the tree that would destroy the natural habit of the tree (AS 4373-2007 Pruning of amenity trees). The Tree Assessment Plan (AR-202A, Arterra) does not include the correct extent of the landing at Level 161.41 and the fire stairs from Level 158.41 in accordance with the architectural plans. This would result in an incorrect encroachment calculation (13%).*

*Tree 300A /Eucalyptus saligna (Sydney Blue Gum) - The substation is considered a structure and should be relocated outside the tree protection zone of this significant tree and the fence should be simplified.*

*Tree 391/Eucalyptus saligna (Sydney Blue Gum) - The proposed encroachment within the tree protection zone greater than 10% and the proposed canopy impacts of the proposed 3.5m setback of the elevated building is not supported.*

**Insufficient information**

*Deep Soil Calculation*

*Areas to be excluded,*

*headwall outlets and associated scour protection structure as per stormwater details, refer Sheet 24, Martens, 28/08/12 (dimensions are to be provided at DA stage to enable assessment of tree impacts and compliance with the deep soil standard).*

*Entry signage*

*Arborist report*

*Arborist report is to be amended to include the following:*

*A detailed description including photographs of the proposed branches to be pruned is to be provided to enable assessment of the extent of the proposed pruning works.*

*Written permission from adjoining owner is to be provided for the following tree for proposed removal or pruning as per 6.0.6, Arborist Assessment, Advanced Treescape Consulting, 28/10/11.*

*Tree 171.*

*Further investigation and information is required as follows, to determine health and structural stability of the following significant trees prior to removal or construction incursions on tree protection zone.*

**Tree/Location**

Tree 288/ *Eucalyptus saligna* (Sydney Blue Gum)

Tree 293/ *Eucalyptus saligna* (Sydney Blue Gum)

Tree 390/ *Eucalyptus saligna* (Sydney Blue Gum)

**Inspection**

A Picus Tomograph analysis is to be undertaken to assess the structural integrity of the lower trunk through the trunk wound.

A Picus Tomograph analysis is to be undertaken to assess the structural integrity of the lower trunk through the trunk wound.

A Picus Tomograph analysis is undertaken to assess the structural integrity of the lower trunk.

**Architectural plans**

Details of the proposed levels of private courtyard to Unit E01. To preserve existing trees, the existing retaining walls should be retained where possible.

The proposed suspended section of Block E has four piers supporting the building. To determine the impact of the proposed excavation within the tree protection zone of Tree 391, the number of supporting piers required to be located above the existing retaining walls, is to be verified by a structural engineer.

Landscape Plans to be amended as follows,  
To enable assessment of cut and fill, the plans are to be prepared at 1:100 scale.

Planting plan should show existing trees. Tree numbers are to be shown on all Landscape Plans

The proposed turfed finish to the bio-swale detail is inconsistent with the landscape plan that indicates 'revegetation mix rain garden species'.

Proposed planting in the front setback to the building of small trees (*Tristania laurina*/8m in height) and medium trees (*Glochidion ferdinandii*) 12m in height), will not be in scale with the proposed building. The proposed planting of *Glochidion* less than 1 metre from the basement and 3 metres from the building, is not considered viable deep soil planting (Clause 25D(2)(e)).

The proposed planting of *Eucalyptus saligna* (Sydney Blue Gum) within 6m setback is not supported.

**Basix Landscape Compliance Diagram**

The Basix Certificate does not reflect the proposed development for the following reasons,

*The site is certified as two buildings, Blocks A, B and C and D, and Block E. To accurately reflect the Basix Certificate, the areas of nominated indigenous low water use planting should be indicated on the landscape plan. To enable assessment, a separate Basix landscape compliance diagram, should be submitted. The site area for either both certificates, or the combined total of the two, should be clearly indicated on the plan.*

#### **Environmental Site Management Plan**

*To preserve the health and condition of existing trees, proposed temporary access, stockpiles and areas for plant and material storage areas shall be clearly shown on an environmental site management plan, in accordance with Council's DA Guide. Protection of conservation area and tree protection fencing should be prepared in consultation with the arborist and ecologist recommendations.*

### **Ecology**

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

*During the site inspection Blue Gum High Forest (BGHF) which is listed as a critically endangered ecological community (CEEC) under the Threatened Species Conservation Act 1995 was identified within the site. The BGHF community was comprised of a canopy dominated by Eucalyptus saligna (Sydney Blue Gum) and Eucalyptus paniculata (Grey Ironbark). The understorey within the native canopy contains a mixture of exotic herbaceous species and native Blue Gum High Forest ferns, grasses and herbs.*

*As well as the endangered ecological community, habitats for mobile threatened fauna species listed under the aforementioned act were also identified. The site contains suitable foraging resources (Eucalypts) for the Grey-headed Flying Fox a threatened species listed under both the Threatened Species Conservation Act 1995 & under the Environmental Protection & Biodiversity Conservation Act 1999.*

#### **Impacts from the proposal**

*The proposed residential flat building and associated landscaping proposes the removal of 9-Eucalyptus saligna (Sydney Blue Gum), 1-Eucalyptus paniculata (Grey Ironbark), 1-Acacia maidenii (Maidens Acacia), 1- Brachychiton acerifolius (Illawarra Flame Tree), 6-Pittosporum undulatum (Sweet Pittosporum). The abovementioned trees form part of the onsite Blue Gum High Forest community.*

#### **Flora and fauna assessment**

*A review and assessment has been made of the flora and fauna assessment prepared by Keystone Ecological.*

*The impact assessments prepared for threatened fauna species e.g. microbats, Superb Fruit-dove & the Grey-headed Flying-fox species by Keystone Ecological are considered to be satisfactory & in accordance with section 5A of the Environmental Planning and Assessment Act 1979. No significant impacts are likely to occur upon threatened species as a result of the proposal.*

*The impact assessment prepared for the Blue Gum High Forest community is not considered to be satisfactory for the following reasons:*

*The impact assessment fails to demonstrate the “extent” of the physical area (ha) of Blue Gum High Forest and the compositional components of the habitat and the degree to which is affected. This in particular reference to the local occurrence of Blue Gum High Forest community within the site. The local occurrence of community is not defined as canopy trees only. Blue Gum High Forest is a community comprised of vascular plant species; but also includes micro-organisms, fungi, cryptogamic plants and a diverse fauna, both vertebrate and invertebrate. An amended impact assessment is to be submitted in accordance with Section 5A of the Environmental Planning & Assessment Act 1979 which assesses all impacts of the current proposal upon the local occurrence of Blue Gum high Forest within the subject site. The impact assessment is to demonstrate the area (ha) lost of BGHF as a result of the proposal.*

*Insufficient assessment of hydrological impacts upon the Blue Gum High Forest upon the site.*

*Insufficient assessment has been made in regard to changes to the existing hydrological regime as a result of the proposal and associated impacts upon the Blue Gum High Forest community. At present water that falls upon existing soft landscape areas flows in a down slope westerly direction into the lower end of the site which contains Blue Gum High Forest.*

*A detailed groundwater assessment has been undertaken by Martens Consulting. The report concludes that the development ‘will cause an obstruction to groundwater flow’. The report proposes the following impact mitigation measure “the installation of gravel drains around all structures which obstruct groundwater flows” (Section 3.5, Groundwater Assessment, Martens, October 2011).*

*Further assessment is required regarding hydrological impacts.*

*The proposed rainwater gardens are positioned within the north-western corner of the site. Water movement across the site is proposed to captured and delivered through a swale drain into the lower end of the site. The position of the rain gardens and swale drain are down slope of area of Blue Gum High Forest which at present receive a high overland flow from the upslope existing residential area. Concern is raised in regards to a reduction in water within these upslope areas containing Blue Gum High Forest.*

*Further information and assessment is to be provided in regards to ecological implications from a reduction in water to parts of the Blue Gum High Forest community to be retained within the lower end of the property & to demonstrate that the Blue Gum High Forest is not likely to be detrimentally affected by obstruction of groundwater flows.*

#### ***Vegetation management plan (VMP)***

*A vegetation management plan has been prepared over 0.392ha of the site which contains Blue Gum High Forest.*



*The following amendments & further information are required to the vegetation management plan (VMP):*

- The area of land to be managed under the VMP is to be amended to include the following Blue Gum High Forest trees 385, 384, 265, 202, 203 & 02.*
- The VMP is to include the approximate number of shrubs and groundcovers to be planted within the Blue Gum High Forest community within each management unit. The VMP is also to contain the landscape plans which it makes reference to.*
- The VMP is to specify the number and species to be planted within each management unit.*
- The VMP figure is to show the 10m core riparian zone.*

### ***Landscape plan***

*The Landscape Plan is to be amended as follows:*

- All species to be planted within areas containing blue gum high forest are to be native endemics to the Blue Gum High Forest community as per the scientific determination.*
- The landscape plan is to detail the number of individuals of each species to be planted within management area as per the amended VMP.*
- A typical matrix planting scheme is to be provided.*
- No monocultures are to be proposed to be planted within areas containing Blue Gum High Forest.*
- Only native Blue Gum High Forest species in accordance with the scientific determination are proposed to be planted within landscape areas of the site containing Blue Gum High Forest. Consultation between landscape architect and ecologist may be required.*
- The proposed removal of trees 385 & 390 is not justified. Testing is required to demonstrate that trees 385 & 390 are structurally sound.*

### ***Further information/amendments***

*The landscape plan is to be amended in accordance with the aforementioned comments.*

*An amended impact assessment is to be provided that considers the extent of the local occurrence of the onsite Blue Gum High Forest and all impacts of the proposal upon the Blue Gum High Forest community particularly hydrological impacts.*

*Amendments to the vegetation management plan are required in accordance with the aforementioned comments.*

**Conclusion:**

*The proposal is not satisfactory from an ecological perspective. An amended landscape plan, threatened species assessment for Blue Gum High Forest, and vegetation management plan are required in accordance with the aforementioned comments.*

**Engineering**

Council's Development Engineer commented on the proposal as follows:

*Strata subdivision is indicated on the application form, however the applicant has advised by email that strata subdivision is not proposed as part of this development.*

**Boundary adjustment**

*The proposal includes a boundary adjustment involving the transfer of some 260 square metres of the site to the adjoining 1446 Pacific Highway (Lot 1 DP259533). If approval were to be granted to the application, then conditions would be recommended appropriate to the subdivision and the registration of a Subdivision Certificate.*

*A Section 73 Certificate would have to be obtained from Sydney Water. **The boundary adjustment must be included in the description** of the development if consent is granted, because this is the only way that Sydney Water will be aware that two Section 73 Certificates will be required, one for the building and one for the subdivision.*

*The Section 73 Certificate process would regularise the existing situation, where 1446 Pacific Highway has an easement for sewer over Lot 3 DP259533, which would be excavated and built over.*

*However, the building plan approval process required by Sydney Water prior to commencement of works may not be sufficient to ensure that sewer services to 1446 Pacific Highway remain available during construction, as only Sydney Water assets are checked. The Section 88B Instrument for DP259533 contains a restriction as to user benefitting Sydney Water. A special condition could be included to alert Sydney Water to this situation. Ultimately, it is a matter for the property owners and Sydney Water to resolve.*

*The boundary adjustment does not need to be registered for the construction of the development to proceed and may be registered prior to the issue of the Occupation Certificate. This could be conditioned. It is assumed that owner's consent for the extinguishment of the rights of carriageway benefitting Lot 1 would be forthcoming, as they would be required to endorse the subdivision documentation.*

*It may be more expedient for the applicant to register the boundary adjustment with the consolidation of the development site, which would*

*be required prior to issue of the Construction Certificate. The land dedication for the deceleration lane could be shown on the same plan.*

### **Water management**

*It is proposed to convey runoff from the development to the headwaters of a small watercourse which starts at the lower boundary of the site. A referral to NSW Office of Water has been made, however no response has been received to date, so there is no concurrence.*

*The BASIX water commitments include two 10 000 litres rainwater tanks, with re-use for irrigation only. This is a very limited level of re-use.*

*However, the Concept Stormwater Management Report states that 123 000 litres of rainwater storage, with re-use for toilet flushing, is required to achieve the water quality targets of DCP 47. Because of this, if approval were to be recommended, the plans and report should be stamped and the size of the rainwater tanks and re-use for toilet flushing would be referenced in conditions of approval. Water quality is important in this sensitive environmental area.*

*The rainwater retention and on site detention tanks are shown below the lowest basement carpark level. This is satisfactory, as the access covers would be within a common area. The detention tank overflows into the bioremediation swales which are part of the water quality treatment train for the development.*

*Modelling of a range of storms was carried out to assess the impacts of the development on the receiving waterway, and for most the post-development discharge was less than pre-development, due to the on site detention system provided. The rainwater tank was not included in the model, so the post-development discharge would actually be less for all storms, due to the storage provided.*

*The upstream properties, including the development site at 1a Lamond Drive and 1446 Pacific Highway, have the legal right to use the drainage easement over Lot 5 DP259533. However, the easement is within the side setback, so it does not need to be relocated or amended in conjunction with the subject development.*

### **Traffic and parking**

*A 3.6 metres wide strip of land at the front of the property has been shown on the architectural plans as being dedicated to Roads and Maritime Services (RMS), but no concept design has been formally approved by RMS, who have advised that the area of land dedication will need to be determined on the basis of being able to accommodate the geometric layout of the proposed deceleration lane.*

*The applicant should have prepared a concept plan (not a sketch) of the deceleration lane and obtained RMS formal written approval so that Council could be sure that the area to be dedicated would be sufficient. This information is required for DA assessment as the correct site area must be known in order to accurately calculate such indices as deep soil planting, FSR, site coverage and also so that setbacks can be known, to*

*be adequate for landscape purposes and to confirm the entry driveway gradient.*

*Council has no way of knowing whether the dimensions shown on the plans are adequate. The traffic report refers to "...discussions held with officers of the Roads and Maritime Services on 24 May 2012." but no specific details are provided.*

*The applicant should provide confirmation in the form of written advice from RMS that the dimensions shown on the architectural plans are adequate. Otherwise, such matters as the final site area, trees affected and effects on setbacks and driveway gradient remain unknown and this is not satisfactory for determination of the application.*

*With regard to traffic impacts of the development on the wider road network, Council's Strategic Traffic Engineer has advised as follows:*

*"The expected traffic generation from the proposed development is approximately 31 vehicles per hour (both entering and exiting) during the morning peak hour. The majority of these 31 vehicles would be leaving the site during the morning peak and are likely to travel on Finlay Rd for their journey to destinations to the south. This is expected to add approximately 26 vehicles per hour south-westerly in Finlay Rd during the morning peak, or approximately 1 additional vehicle every 2 minutes which is not considered to be significant. Also, these movements are likely to occur before the peak of the Warrawee Public School morning drop off time, and would not be expected to impact significantly on student drop offs (or pick ups).*

*Council regularly monitors traffic volumes and speeds on local roads and over the last 5-10 years, roads such as Finlay Rd, the southern section of Duff St and the eastern end of Monteith St have recorded minimal traffic growth (and in some cases, a slight decline). Traffic volumes on these roads are consistent with local roads.*

*As far as set down/pick up facilities at Warrawee Public School are concerned, Council's staff have conducted school-related traffic facilities audits and have been in close consultation with the school and its P&C. Improvements have been made at the school within the constraints of the area, which include the narrow road pavement widths, topography and mature trees. This has been a collaborative process where available on street opportunities have been optimised.*

*In the longer term, Council has traffic and transport improvements planned for the Turramurra local centre, which include upgrades to the intersection of Pacific Highway and Kissing Point Rd/Ray St, as well as other transport infrastructure improvements such as upgrades to Stonex St, upgraded bus interchange and footpaths, and improved cycle access. These measures would assist traffic flows while encouraging the use of alternative modes of transport. However, Council recently resolved that there will be no major revision of current traffic management in the Rohini St/Gilroy Rd/Turramurra Ave precinct and traffic lights will remain at the intersection of Rohini St and Pacific Hwy."*

*The site is further than 400 metres from Turramurra Station, so 132 resident and 31 visitor parking spaces are required. The drawings show*

*132 resident spaces, including 13 suitable for disabled persons, and 32 visitor spaces, including 2 suitable for disabled persons. Of the resident parking spaces, 8 are in a tandem arrangement, which will be suitable for the three or four bedroom units.*

*The dimensions of the basement carparking levels comply with As2890.1:2004 Off street car parking. The single lane ramps between floors will require the placement of convex mirrors at certain locations. This could be conditioned.*

### **Construction traffic management**

*The RMS has not required a limit on peak hour truck movements as a condition of development consent, however it is expected that this would be imposed when a CTMP is being considered prior to commencement of works. The RMS has not required the deceleration lane to be provided prior to commencement of works, so it is expected that traffic control and peak hour restrictions are intended to allow safe entry and egress from the construction site.*

*Contractor and employee parking will be a challenge as there is no parking along the site frontage at any time and the school nearby has its own parking restrictions limiting the amount of on-street parking available. The site is not likely to provide suitable platforms for much off-street parking. The traffic engineer's report has a section titled "Construction Traffic Management Plan", however it is generic.*

*No environmental site management plan has been submitted, which is identified by Landscape Services as a reason for refusal (insufficient information). Site access and parking should be included on such a plan.*

### **Waste management**

*A large waste storage area is provided at Level 179.41 (approximately one and a half levels below the Pacific Highway), with space for 126x240 litres containers which is satisfactory. A development of this size will have a caretaker who can move the containers around for collection.*

*Access and turning are confirmed in the traffic report, which also states that the required 2.6 metres headroom will be provided. Section L2 on Drawing 402A shows this headroom, although no slab depths are specified.*

### **Geotechnical investigation**

*The site is underlain by a deeply weathered shale profile. It is possible that sandstone may be encountered during the deeper basement excavation. The geotechnical report contains recommendations for excavation support and vibration monitoring which will apply regardless of the subsurface conditions.*

*The report also contains recommendations for slope stability modelling of the Pacific Highway, since the excavation was assessed to be within the zone of influence of the Highway. This was not raised by RMS in their correspondence, however a new technical direction has since been*

*adopted by RMS, who has advised that the requirements of this document could be incorporated into the recommended conditions of any consent. The recommended slope stability modelling would also be conditioned.*

### **Groundwater and hydrogeology**

*The groundwater assessment was carried out and monitoring has been undertaken. The groundwater assessment report contains recommendations for gravel drains around structures which are likely to obstruct groundwater flows. The recommended gravel is blue metal – the project ecologist should comment on the suitability of this material.*

### **Conclusion**

*The proposal is considered unacceptable for the following reasons:*

*Insufficient information has been provided regarding the dimensions of the strip of land shown as being dedicated as public road. This has implications for site area, setbacks, driveway gradient and calculation of indices for the development.*

#### **Particulars**

- Roads and Maritime Services has advised that a deceleration lane will be required for vehicles entering the site from the Pacific Highway.*
- The applicant has shown a 3.6 metres indent into the site's front boundary on the development application drawings.*
- No length is given for the indent, although the architectural plans show "Area = 133.8m<sup>2</sup>".*
- No concept design has been provided for the deceleration lane which includes any dimensions except for the 3.6 metres indent.*
- No evidence has been provided that Roads and Maritime Services have agreed to the final dimensions of the deceleration lane or of the dedication.*
- Roads and Maritime Services have not stated a timeframe for the construction of the deceleration lane, so it is not known whether demolition, excavation and construction can proceed or whether the roadworks must be carried out prior to commencement of works within the site.*

### **Heritage**

Council's Heritage Advisor commented upon the proposal as follows:

#### **Heritage status**

*The site does not contain a heritage item but is within the vicinity of a several heritage items. The heritage items are located nearby, but do not adjoin the site. The heritage items are:*

*“Cherrywood” at 1359 Pacific Highway  
“Milneroyd” at 1379 Pacific Highway (opposite)  
1428 Pacific House (Brogan house)  
1458 Pacific Highway*

*The site is not within a National Trust UCA or a draft HCA.*

### **Demolition**

*The site contains 6 single houses. The buildings date from the 1920s but most are from later periods. The site only contains two street frontage houses, the majority are located at the rear of the site and accessed via long driveways and have no contribution to the streetscape due to the fall and the density of vegetation on the site. Only No 1452 Pacific Highway could be considered to have any historic or aesthetic values but is it partially obscured behind a brick wall. None of the houses have been identified as having any heritage values.*

*Demolition of this group of buildings is considered acceptable, provided photographic recording of the buildings is undertaken before any works commence on the site. It is considered unlikely that any potential for archaeological deposits on the site.*

### **Design Objectives in DCP 55 for development within the vicinity of a heritage item.**

1. *New medium density development that respects the heritage significance of the adjoining or nearby heritage items*

*Comment: The character of the proposed development is different to the near by items which are Federation Period and Inter War houses.*

*“Milneroyd” is a former estate house of two storeys and built in the Federation style. The proposed development is opposite but separated by the Pacific Highway. The heritage item is located on a corner site and has a relatively high visual profile to the Pacific Highway and Lowther Park Avenue. “Milneroyd” has been altered and developed under SEPP 5 policies (2001) and now contains several dwellings and villas.*

*“Cherrywood” at 1359 Pacific Highway is a Federation period estate house on the opposite side of the highway and slightly to the south. It has a relatively high visual profile to the Pacific Highway and Cherry Street and was converted to several dwellings (c1990s) and has some two storey additions.*

*1458 Pacific Highway is a single storey Federation house located on the corner of Finlay Road. It is highly intact but currently screened by an overgrown garden.*

*1428 Pacific House is a prominent Inter War house (possibly designed by Brogan) and located further to the south.*

*The item potentially most affected by the proposed development is 1458 Pacific Highway. It is separated from the development site by 1456 and a battle axe lot at 1456A Pacific Highway.*

- 2 *New medium density development that does not visually dominate a heritage item.*

*Comment: The proposed development is located with reasonable separation from the heritage items at 1359 and 1379 Pacific Highway and it should not visually dominate or compete with them. There are other recently constructed medium density developments in the vicinity that have a similar level of impact.*

*However, the proposed development would have visual impacts on the item at 1458 Pacific Highway, particularly as the northern elevation of the proposed development is about 95m in length. Despite the proposed building setting down in its site from the Pacific Highway in blocks (Block A, B, C & D), It is continuous and its length will have relatively high visual impact appearing as one building with no change in elevation treatment or articulation between Block A, B, C or D.*

- 3 *New medium density development that does not reduce the views from or to an item from the public realm.*

*Comment: The primary view of the items is from the Pacific Highway. These views will be largely unaffected.*

*The views from the items will be affected, particularly the views from 1458 Pacific Highway to the south-west. It is acknowledged that the development site is separated from the heritage item at No 1458 by another site rezoned for medium density development and the views to the south – west are filtered by existing vegetation.*

- 4 *New medium density that does not impact on the garden setting of an item, particularly in terms of overshadowing the garden or causing physical impacts on important trees.*

*Comment: The development would not impact on the garden setting of the nearby heritage items due to the physical separation and location. The proposed development would affect some Sydney Blue Gum trees on the site and adjoining sites which are considered endangered. That issue is dealt with by Council's Landscape and Ecological Assessment officers.*

***Design Controls in DCP 55 for development within the vicinity of a heritage item.***

*C – 1. Medium density development adjacent to a heritage items shall:*  
*i. setback the first and second storeys at least 10m from the adjacent heritage buildings;*  
*ii. setback the third and fourth storeys at least 15m for the adjacent heritage building; and*  
*iii. be setback from the front boundary as that it is not closer than the adjoining heritage building.*



*Comment: The development does not directly adjoin a heritage building and the above conditions do not apply.*

*C – 2. Screen planting on all boundaries with an item too achieve a height of at least 4m*

*Comment: The development does not directly adjoin a heritage building and the above conditions do not apply. However, Councils Landscape officers have provided comments on the proposed landscaping.*

*C – 3 New development shall respect the aesthetic character of the item and not dominate it.*

*Comment: The proposed new development is a contemporary building and has a different aesthetic character than the nearby heritage items which are Federation and Inter War period buildings. In this way it can be considered to respect the nearby items.*

*Although the proposed development is separated from No 1458 Pacific Highway by a house at No 1456 and a battle axe lot at 1456A Pacific Highway the length, scale and bulk of the proposed development will have some visually domination on the scale of the single storey Federation heritage item.*

*C – 4 Colours and building materials are to be complementary to the heritage building.*

*Comment: The predominant material in the area and for the heritage items is red/brown face brick, with some rendered and painted wall surfaces and some limited areas of stone and timber. The external materials and colours of the proposed building uses similar materials and colours found in the area and are considered acceptable.*

*C – 5 The solid component of front fences and side fences is to be no higher than the fence of the adjoining items and any additional height must be visually transparent.*

*Comment: This control does not apply as the site does not directly adjoin a heritage item. The existing houses on the site along the Pacific Highway have relatively high masonry fences. The proposed fences are considered satisfactory in this context.*

*C – 6 An applicant's statement of environmental effects shall discuss the effect that the proposed development will have on a heritage item.*

*Comment: The applicant has provided a HIS prepared by an experienced consultant. It concludes that:*

*"There is inherent impact when a building of greater massing and scale is erected in proximity to one and two storey heritage items. The proposed works will not block any significant view corridors towards the heritage items, but will be read as part of their general setting. The way in which the development has been sited on the block, its response to topography, the retention of existing trees and new landscaping, and the fact the elevations are well articulated and detailed with appropriate colours and materials will*

*aid in the insertion of the new blocks into the general setting of the heritage items. The heritage items will continue to be able to be appreciated as Federation and Interwar period buildings.”*

### **Comments**

*Due to the fall on the site, and the relatively narrow presentation of the building on the street, the large size, scale and bulk of the development would largely be screened from the Pacific Highway and most nearby items. The large trees in the area will assist in providing screening to the proposed development and to some extent mitigate its scale and bulk. It is considered that there would be some visual impact and dominance on the scale of the single storey item at 1458 Pacific Highway. The item at 1458 Pacific Highway is currently unoccupied and is becoming derelict. The impacts from the proposed development may not assist in promoting future conservation of the item. However, the subject site is separated from the item at 1458 Pacific Highway by another site rezoned for medium density and no development on that site is currently proposed.*

### **Conclusions and recommendations**

*Demolition of the existing buildings on the site is acceptable, provided photographic recording is undertaken to archival standards.*

*The revised colour scheme and materials selection is considered acceptable.*

*The application generally complies with the heritage controls in DCP 55 primarily because the site does not directly adjoin a heritage item. Views to the nearby heritage items will be largely unaffected. Views from most of the nearby heritage items will have minor impact due to their physical separation and mitigation to some extent by tree retention.*

*There would be some impact on views from No 1458 Pacific Highway to the south - west and some visual domination of this item. This impact is primarily due to the scale and length of the building despite it stepping down in its site and being physically separated from it. However, it is considered that the heritage impacts on No 1458 Pacific Highway are not in themselves sufficient reasons to refuse the application.*

### **Building**

Council's Building Officer commented on the proposal as follows:

*Amended plan complies with clause F2.1.*

*It is noted that the path of travel from the point of discharge of a fire isolated exit is likely to pass within 6m of openings (windows & doors) on the external wall of the same building. It is preferred if the DA plans to show what method of protection will be provided to comply with the requirement, in order to prevent free standing fire walls being built along the passageway instead of installing fire shutters or wall wetting drenches at the openings.*

*The following conditions apply:*

- *Compliance with the Building Code of Australia*
- *Copy of the final fire safety certificate to be submitted with the final occupation certificate*

## STATUTORY PROVISIONS

### New South Wales Office of Water

The subject development application is classified as “integrated development” under the provisions of Clause 91 of the Environmental Planning and Assessment Act due to the site being located within 40m of a water course. Clause 91a of the act provides for the following:

#### **91A Development that is integrated development**

- (1) This section applies to the determination of a development application for development that is integrated development.*
- (2) Before granting development consent to an application for consent to carry out the development, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. Nothing in this section requires the consent authority to obtain the general terms of any such approval if the consent authority determines to refuse to grant development consent.*
- (3) A consent granted by the consent authority must be consistent with the general terms of any approval proposed to be granted by the approval body in relation to the development and of which the consent authority is informed. For the purposes of this Part, the consent authority is taken to have power under this Act to impose any condition that the approval body could impose as a condition of its approval.*
- (4) If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application.*
- (5) If the approval body fails to inform the consent authority, in accordance with the regulations, whether or not it will grant the approval, or of the general terms of its approval:*
  - (a) the consent authority may determine the development application, and*
  - (b) if the consent authority determines the development application by granting consent:*
    - (i) the approval body cannot refuse to grant approval to an application for approval in respect of the development, and*
    - (ii) an approval granted by the approval body must not be inconsistent with the development consent, and*
    - (iii) section 93 applies to an approval so granted as if it were an approval the general terms of which had been provided to the consent authority, despite any other Act or law.*
- (6) If a development application is determined, whether or not by the granting of development consent, the consent authority must notify all relevant approval bodies of the determination.*

**Note.** *If a dispute arises under this section between a consent authority and an approval body, the dispute may be dealt with under section 121.*

The application was referred to the NSW Officer of Water on 16 December 2011 and 20 September 2012. To date, no comments have been received. The timeframes referred to in the regulations are contained within clause 70 as follows:

**70 Notification of general terms of approval**

*(1) An approval body that has received a development application from a consent authority must give written notice to the consent authority of its decision concerning the general terms of approval in relation to the development application (including whether or not it will grant an approval):*

- (a) within 40 days after receipt of the copy of the application, or*
- (b) in the case of development that is required to be advertised or notified under section 79 or 79A of the Act, within 21 days after it receives:*
  - (i) the last of the submissions made during the relevant submission period, or*
  - (ii) advice from the consent authority that no submissions were made.*

**Note.** *This period may be extended by operation of Division 11.*

*(2) If the consent authority determines a development application by refusing to grant consent before the expiration of the relevant period under subclause (1):*

- (a) the consent authority must notify the approval body as soon as possible after the determination, and*
- (b) this clause ceases to apply to the development application.*

*(3) Nothing in this clause prevents a consent authority from having regard to an approval body's general terms of approval that have been notified to the consent authority after the expiration of the relevant period under subclause (1).*

Given the recommendation is for refusal, a determination can be made pursuant to clause 70 (2) of the regulations as noted above.

**Roads and Maritime Services of New South Wales**

Clause 104 of State Environmental Planning Policy Infrastructure 2008 identifies the proposal as "traffic generating development" for which concurrence must be sought from the Roads and Maritime Service of NSW.

The NSW Roads and Maritime Service (RMS) responded to Council's letter as follows:

*I refer to Council's letter dated 20 September 2012 forwarding amended plans for the abovementioned development application. The amended plans were referred to Roads and Maritime Services (RMS) for comments in accordance with Clause 101 of State Environmental Planning Policy (Infrastructure) 2007.*

*RMS has reviewed the amended plans and provides the following comments:*

*The proposed deceleration lane on the Pacific Highway shall be designed to meet RMS requirements and endorsed by a suitably qualified practitioner. The design requirements shall be in accordance with the RMS Road Design Guide and other Australian Codes of Practice. The certified copies of the civil design plans shall be submitted to RMS for consideration and approval prior to the release of a Construction Certificate by Council and commencement of road works. RMS fees for*

*administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works.*

*2. The realigned boundary to facilitate a footway resulting from the proposed deceleration lane must be dedicated as road at no cost to RMS.*

*3. The developer may be required to enter into a Works Authorisation Deed (WAD) for the abovementioned works. Please note that the WAD will need to be executed prior to RMS assessment of the detailed civil design plans.*

*4. The design and construction of the gutter crossing on the Pacific Highway shall be in accordance with RMS requirements. Details of these requirements should be obtained from the RMS Project Services Manager, Traffic Projects Section, Parramatta (telephone 8849 2496). Detailed design plans of the proposed gutter crossing are to be submitted to RMS for approval prior to the commencement of any road works. A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by RMS.*

*5. All issues raised in RMS letter of 22 December 2011 remain applicable.*

The letter of 22 December 2011 is reproduced as follows:

*I refer to your letter of 22 November 2011 (DA0605/1 1) with regard to the abovementioned development application, which was referred to Roads and Maritime Services in accordance with Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 and concurrence under Section 138 of the Roads Act 1993.*

*The Roads and Maritime Services has reviewed the development application and grants concurrence to the proposed development under Section 138 of the Roads Act, 1993 subject to Council's approval and the following being included in Council's conditions of consent:*

*To maintain driveway operational efficiency and safety due to the presence of sight distance limitations, physical segregation of the ingress and egress arrangement at the driveway should be achieved via the provision of a low profile concrete median island. This may require the driveway entry splay to be widened accordingly. In addition a left turn deceleration lane should be provided to allow safe departure of motor vehicles from the thru carriageway.*

*2. The design and construction of the proposed deceleration lane and gutter crossing on the Pacific Highway shall be in accordance with RMS requirements. The design requirements shall be in accordance with RMS Road Design Guide and other Australian Codes of Practices. Land dedication will be required to accommodate the proposed treatment.*

*Details of these requirements should be obtained from the RMS Project Services Manager, Traffic Projects Section, Parramatta (telephone 02 8849 2496). The certified copies of the civil design plans shall be submitted to RMS for consideration and approval prior to the release of construction certificate by Council and commencement of road works.*

*A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approved road design plans by RMS.*

*All redundant driveways on the Pacific Highway shall be removed and replaced with kerb and gutter to match existing.*

*The developer will be required to enter into a Works Authorisation Deed (WAD) for the abovementioned works. Please note that the Works Authorisation Deed (WAD) will need to be executed prior to RMS assessment of the detailed civil design plans.*

*3. The developer is to submit detailed design drawings and geotechnical reports relating to the excavation of the site and support structures to RMS for assessment. The developer is to meet the full cost of the assessment by the RMS.*

*This report would need to address the following key issues:*

- a. The impact of excavation/rock anchors on the stability of the Pacific Highway and detailing how the carriageway would be monitored for settlement.*
- b. The impact of the excavation on the structural stability of the Pacific Highway.*

*The report and any enquiries should be forwarded to:*

*Project Engineer, External Works  
Sydney Asset Management  
Roads and Maritime Services  
P0 Box 973 Parramatta CBD 2124.  
Telephone 8848 2114  
Fax 8849 2766*

*If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owners of the roadway is given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.*

*4. The developer shall be responsible for all public utility adjustment works, necessitated by the above work and as required by the various public utility authorities and/or their agents.*

*5. A Road Occupancy Licence shall be obtained from RMS for any works that may impact on traffic flows on the Pacific Highway during construction activities.*

*6. The proposed development should be designed such that road traffic noise from the Pacific Highway is mitigated by durable materials in order to satisfy the requirements for habitable rooms under Clause 102 subdivision 3 of State Environmental Planning Policy (Infrastructure) 2007.*

*7. All demolition and construction vehicles should be contained wholly within the site as a work zone permit will not be approved on the Pacific Highway.*

*8. All works / regulatory signage associated with the proposed development are to be at no cost to RMS.*

*In addition, RMS provides the following advisory comments to Council for its consideration in the determination of the development application:*

*9. The swept path of the longest vehicle entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan showing the swept path of service vehicles entering and exiting the site shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.*

*10. Car parking provision to Council's satisfaction.*

*11. The layout of vehicle parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements and parking bay dimensions) should be in accordance with AS 2890.1- 2004.*

*12. Resident parking should be clearly signposted at entry to car parking areas.*

*13. Council should ensure that post-development storm water discharge from the subject site into the RMS drainage system does not exceed the pre-development discharge. Should there be changes to RMS drainage system then detailed design plans and hydraulic calculations of the stormwater drainage system are to be submitted to RMS for approval, prior to the commencement of any works.*

*Details should be forwarded to:  
The Sydney Asset Management  
Roads and Maritime Services  
P0 Box 973 Parramatta CBD 2124.*

*A plan checking fee will be payable and a performance bond may be required before RMS approval is issued. With regard to the Civil Works requirement please contact the RMS Project Engineer, External Works on (02) 8849 2114 or fax (02) 8849 2766.*

RMS has therefore provided concurrence to the proposal. However, there is no certainty in what design changes would have to be made to the proposal in order to meet the RMS requirements as discussed within comments made by Council's Development Engineer. The issue of appropriate access into the site it yet to be resolved and requires further consultation between the applicant and the RMS.

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

The property has a frontage to a classified road, being Pacific Highway, and consideration is required pursuant to Division 17 Clause 101 and 102 of the SEPP. Clause 101 of the SEPP states:

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

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

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

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

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

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

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

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

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

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

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

As discussed previously, vehicular access into the development is yet to be resolved and the consent authority cannot be satisfied that the above requirements have been achieved.

Vehicular access to the development is from Pacific Highway.

Clause 102 of the SEPP states:

### **102 Impact of road noise or vibration on non-road development**

*(1) This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RTA) and that the consent authority considers is likely to be adversely affected by road noise or vibration:*

*(a) a building for residential use,*

*(b) a place of public worship,*

*(c) a hospital,*

*(d) an educational establishment or child care centre.*

*(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that*



are issued by the Director-General for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

(a) in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,

(b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

(4) In this clause, **freeway**, **tollway** and **transitway** have the same meanings as they have in the Roads Act 1993.

To address the above requirements, the applicant has submitted an acoustic assessment prepared by Acoustic logic. The report includes recommended construction techniques and states that the proposal will achieve the above mentioned noise guideline requirements, subject to those construction techniques. The proposal is therefore considered to be satisfactory in this respect, subject to condition requiring post construction monitoring and certification.

#### **State Environmental Planning Policy No.65 - Design Quality of Residential Flat Development RFDC)**

SEPP 65 aims to improve the design quality of residential flat buildings across NSW and provides an assessment framework, the Residential Flat Design Code (RFDC), for assessing 'good design'.

Clause 50(1A) of the EPA Regulation 2000 requires the submission of a design verification statement from the building designer at lodgement of the development application. This documentation has been submitted and is satisfactory.

The SEPP requires the assessment of any development application for residential flat development against 10 principles contained in Clauses 9-18 of the SEPP which has been undertaken by Council's Urban Design Consultant. The SEPP also requires consideration of the matters contained in the publication "Residential Flat Design Code".

As such, the following consideration has been given to the requirements of the SEPP and Design Code.

#### **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.

#### **COMPLIANCE TABLE**

	<b><i>Guideline</i></b>	<b><i>Compliance</i></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 (2302.85m <sup>2</sup> ); more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, stormwater treatment measures must be integrated with the design of the residential flat building.	YES - 52%
<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. (2763.42m <sup>2</sup> )	YES - 5373.0m <sup>2</sup> or 58.3%
<i>Planting on Structures</i>	<p>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:</p> <p>Medium trees (8 metres canopy diameter at maturity)</p> <ul style="list-style-type: none"> <li>- minimum soil volume 35 cubic metres</li> <li>- minimum soil depth 1 metre</li> <li>- approximate soil area 6 metres x 6 metres or equivalent</li> </ul>	YES
<i>Safety</i>	<p>Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.</p> <p>Reinforce the development boundary to strengthen the distinction between public and private space</p> <p>Optimise the visibility, functionality and safety of building entrances</p> <p>Improve the opportunities for casual surveillance.</p> <p>Minimise opportunities for concealment</p> <p>Control access to the development.</p>	YES
<i>Visual Privacy</i>	Refer to Building Separation minimum standards	NO
<i>Pedestrian Access</i>	Identify the access requirements from the street or car parking area to the apartment entrance.	YES

	Follow the accessibility standard set out in Australian Standard AS 1428 (parts 1 and 2), as a minimum.  Provide barrier free access to at least 20 percent of dwellings in the development.	YES
<i>Vehicle Access</i>	Generally limit the width of driveways to a maximum of six (6) metres.	NO 8.0 metres at proposed front boundary
	Locate vehicle entries away from main pedestrian entries and on secondary frontages.	Located on Pacific Highway which is only option
<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.	NO
	The back of a kitchen should be no more than 8 metres from a window.	YES
	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.	YES
<i>Apartment Mix</i>	Provide a diversity of apartment types, which cater for different household requirements now and in the future	YES
<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
<i>Ceiling Heights</i>	The following recommended dimensions are measured from finished floor level (FFL) to finished ceiling level (FCL). These are minimums only and do not preclude higher ceilings, if desired. 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 2.25 metres is permitted. for two storey units, 2.4 metres minimum for second storey if 50 percent or more of the apartment has 2.7 metres minimum ceiling heights	YES

<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.	NO
	Provide ground floor apartments with access to private open space, preferably as a terrace or garden.	YES
<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. Exceptions may be allowed:  for adaptive reuse buildings where developments can demonstrate the achievement of the desired streetscape character and entry response where developments can demonstrate a high level of amenity for common lobbies, corridors and units, (cross over, dual aspect apartments).	YES
<i>Storage</i>	In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:  - studio apartments 6m <sup>3</sup> - one-bedroom apartments 6m <sup>3</sup> - two-bedroom apartments 8m <sup>3</sup> - three plus bedroom apartments 10m <sup>3</sup>	YES
<b>Building Amenity</b>		
<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. In dense urban areas a minimum of two hours may be acceptable.	YES
	Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units proposed. Developments which seek to vary from the minimum standards must demonstrate how site constraints and orientation prohibit the achievement of these standards and how energy efficiency is addressed (see Orientation and Energy Efficiency).	YES

<i>Natural Ventilation</i>	Building depths, which support natural ventilation typically range from 10 to 18 metres.	NO 23.0 metres (Max)
	Sixty percent (60%) of residential units should be naturally cross ventilated.	YES 61%
	Twenty five percent (25%) of Kitchens within a development should have access to natural ventilation	YES 29.3%
<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

#### *Visual privacy*

The proposal does not meet the building separation requirements of the RFDC. Refer to discussion under visual privacy of DCP 55 within this report.

#### *Vehicle access*

The proposed driveway is wider than 6.0 metres (8.0 metres at the proposed property boundary) however this arrangement was made to address issues raised by the RMS to achieve satisfactory access into and out of the site. The proposal is considered acceptable in this respect.

#### *Apartment layout*

Single aspect apartments within the development have a depth of greater than 8.0 metres. It is noted that all kitchens within the development are located within 8.0 metres of a window and cross ventilation and daylight access has been achieved for the development on a whole. A review of the plans has indicated that areas which exceed the 8.0 metres depth of the single aspect units are not living rooms and are generally areas such as laundry's and bathrooms. The proposal is considered acceptable in this respect.

#### *Ground floor apartments*

The proposal does not provide ground floor apartments with a separate entry. As this requirement relates to the desired streetscape and topography the proposal is considered acceptable as there is one ground floor unit fronting Pacific Highway (that will be visible) and the slope of the site and orientation of the building prevents this rule of thumb from being met.

### *Natural ventilation*

Building E-F has a maximum depth of 23.0 metres. The Residential Flat Design Code indicates that building with a depth of 10-18 metres typically supports natural ventilation. Through the submission of cross ventilation diagrams and a solar access report, the applicant has demonstrated that natural ventilation and daylight access is able to be achieved for the development.

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

A valid BASIX certificate has been submitted. The Basix Certificate is however, not consistent with the landscape plans as discussed by Council's Landscape Officer. The application is deficient in this respect.

### **State Environmental Planning Policy No. 55 – Remediation of Land**

The provisions of SEPP 55 require Council to consider the potential for a site to be contaminated. A stage 1 Land Contamination Assessment has been submitted with the development application and has concluded that the site(s) have been used for residential purposes and "*subject to the appropriate waste management during and following demolition, the site is considered suitable for continued residential purposes*". Further investigation is not warranted in this case.

### **State Regional Environmental Planning 2005 – (Sydney Harbour Catchment)**

Matters for consideration under SREP 2005 include biodiversity, ecology and environmental protection, public access to and scenic qualities of foreshores and waterways, maintenance of views, control of boat facilities and maintenance of a working harbour. The proposal is not within close proximity to any waterways and the scope of works is such that the proposal is considered to meet the requirements of the SREP.

### **KU-RING-GAI PLANNING SCHEME ORDINANCE (KPSO)**

#### **Zoning, permissibility and aims and objectives for residential zones**

Under Clause 25B (definitions) of KPSO – LEP 194, a residential flat building is defined as '*a building containing three or more dwellings*'. The residential flat buildings proposed on the site satisfy this definition and are permissible with consent. The development is not considered to satisfy all of the zone aims and objectives under clause 25C (b) and (c) and 25D (b) of the KPSO as the development does not currently encourage the protection of the natural environment incorporating a high level of urban and architectural design or provide sufficient landscaping within the front setback.

### **COMPLIANCE TABLE**

<b>Development standard</b>	<b>Proposed</b>	<b>Complies</b>
<b>Site area (min):</b> 1200m <sup>2</sup>	9211.4m <sup>2</sup>	YES
<b>Deep landscaping (min):</b> 50% (2526.55m <sup>2</sup> )	52%	YES

<b>Street frontage (min):</b> 30 metres (SA>1800m <sup>2</sup> )	52.21 metres	YES
<b>Number of storeys (max):</b> 5	11	NO
<b>Site coverage (max):</b> 35% (3223.99m <sup>2</sup> )	34.2%	YES
<b>Top floor area (max):</b> 60% of level below	100%	NO
<b>Storeys and ceiling height (max):</b> 4 storey and 13.4 metres	10 storey and 20.5 metres (max)	NO
<b>Car parking spaces (min):</b> 1 per 4 dwg = 31 (visitors) 1 per dwg + 2.0 per 3 & 4 bed (residents) = 132	31 visitor spaces 132 resident spaces	YES
<b>Zone interface setback (min):</b> 3 <sup>rd</sup> and 4 <sup>th</sup> storey setback of 9 metres	21.8 metres	YES
<b>Manageable housing (min):</b> 10% = 12.3 (13) Dwellings	13	YES
<b>Lift access:</b> required if greater than three storeys	Lifts have been provided	YES

### **Number of Storeys (max):**

The proposal results in a breach of Clause 25I (5) of the KPSO in that it exceeds 5 storeys (11 proposed). As the KPSO does not define a “storey” reliance is made upon SEPP 6 “Number of stories in a building” which specifies the following:

#### **6 Determination of number of storeys which a building contains**

*(1) Where the application of a provision of an environmental planning instrument requires a determination of the number of storeys, floors or levels which a building contains, that number shall, for the purposes of applying the provision, be deemed to be the maximum number of storeys, floors or levels, as the case may be, of the building which may be intersected by the same vertical line, not being a line which passes through any wall of the building.*

*(2) Except as provided by subclause (3), when applying subclause (1) in relation to a provision referred to in that subclause, a reference in subclause (1) to storeys, floors or levels shall be treated as a reference to storeys, floors or levels, within the meaning of the provision.*

*(3) The second reference in subclause (1) to storeys, floors or levels does not include a reference to the whole or any part of a roof used as an uncovered garden, terrace or deck.*

The following inclusion within clause 25I (9) of the KPSO is of note:

*(9) Any storey which is used exclusively for car parking, storage or plant, or a combination of them, in accordance with the requirements of this Ordinance and no part of which (including any wall or ceiling which encloses or defines the storey) is more than 1.2 meters above ground level, is not to be counted as a storey for the purposes of the Table to subclause (8).*

The floor plans and sections supporting the proposal of the submitted proposal indicate that levels are not used exclusively for plant or carparking within Building A-

D that are lower than 1.2m above the natural ground level and therefore do not qualify for the exemption under the “storey” definition. The proposal is therefore technically assessed as being 11 storey’s (maximum) as nominated within the compliance table above. Consequently, the proposal breaches three components of clause 25I being 25I (5), (7) and (8), as noted within the compliance table above.

The applicant is aware of this breach and has submitted an objection to the development standard pursuant of State Environmental Planning Policy 1 - Development Standards. An assessment of the SEPP 1 objection has been undertaken within the framework of the established case law (being *Wehbe v Pittwater Council* [2007] NSW LEC 827 and *Winten Property v North Sydney* [2001] 130 LGERA 79) and is as follows:

***whether the planning control in question is a development standard***

Clause 25I (5) of the KPSO reads as follows:

***(5) Maximum number of storeys***

*Buildings on land to which this Part applies are not to have more storeys than allowed by the Table to this subclause.*

***Table***

***Maximum number of storeys***

<b><i>Site area</i></b>	<b><i>Maximum number of storeys</i></b>
<i>Less than 1,800m<sup>2</sup></i>	<i>3</i>
<i>1,800m<sup>2</sup> or more but less than 2,400m<sup>2</sup></i>	<i>4</i>
<i>2,400m<sup>2</sup> or more</i>	<i>5</i>

Clause 25I (7) of the KPSO is as follows:

***Limit on floor area of top storey***

*In Zone No.2 (d3), where the maximum number of storeys permitted is attained, then the floor area of **the top storey of a residential flat building** of 3 storeys or more is not to exceed 60% of the total floor area of the storey immediately below it.*

Clause 25I (8) of the KPSO is as follows:

***(8) Maximum number of storeys and ceiling height***

*Subject to subclause (5) and clause 25K, buildings on land to which this Part applies are not to have:*

- (a) more storeys than the maximum number of storeys specified in Column 2 of the Table to this subclause, or*
- (b) given the number of storeys in the building, a perimeter ceiling height greater than that specified in Column 3 of that Table.*

The table specifies a maximum ceiling height of 13.4m and a maximum amount of storey’s as 4 (not including top storey with floor area reduced because of subclause (7)).

That being said, Clause 25K provides for the following:



## **25K Steep slope sites**

Consent may be granted to a building on a site with a site slope greater than 15% that would:

- (a) exceed the number of storeys controls in clause 25I (8) by only one storey for up to 25% of the building footprint, or
- (b) exceed the height controls in clause 25I (8), but only by up to 3 metres for up to 25% of the building footprint, or
- (c) take advantage of the concessions conferred by both paragraphs (a) and (b), but only for up to the same 25% of the building footprint.

Pursuant of the definition of “site slope” within the KPSO the subject site slope is calculated as 28.16%. The site therefore qualifies for consideration under the provisions of clause 25K. Based on a building footprint of 3150.7m<sup>2</sup>, 25% of the building footprint equates to 787.675m<sup>2</sup> and 3.0 metres of additional height would equate to a maximum height of 16.4 metres. The proposal also exceeds the allowance provided by clause 25K with a height of 20.5 metres and 10 storeys (not including the reduced top floor) and therefore breaches a development standard.

The controls are considered to be a development standard.

### ***the underlying objective or purpose behind the standard***

There are no specifically stated purposes of objectives expressed in Clause 25I or 25K of the KPSO. Clause 25 C provides the aims and objectives for LEP 194 as follows:

### ***Aims and objectives***

#### ***25C Aims and objectives of Part 3A***

(1) *The aims of this Part are as follows:*

- (a) *to encourage the protection and enhancement of the environmental and heritage qualities of Ku-ring-gai,*
- (b) *to encourage orderly development of land and resources in Ku-ring-gai,*
- (c) *to encourage environmental, economic, social and physical well-being so that Ku-ring-gai continues to be an enjoyable place to live in harmony with the environment.*

(2) *The objectives of this Part are as follows:*

- (a) *to provide increased housing choice,*
- (b) *to encourage the protection of the natural environment of Ku-ring-gai, including biodiversity, the general tree canopy, natural watercourses, natural soil profiles, groundwater and topography and to reduce and mitigate adverse impacts of development on natural areas,*
- (c) *to achieve high quality urban design and architectural design,*
- (d) *to achieve development of Ku-ring-gai with regard to the principles of ecologically sustainable development,*
- (e) *to ensure that development for the purpose of residential flat buildings on land within Zone No 2 (d3) has regard to its impact on any heritage items in the vicinity of that development,*
- (f) *to encourage use of public transport, walking and cycling,*
- (g) *to achieve a high level of residential amenity in building design for the occupants of buildings through sun access, acoustic control, privacy protection, natural ventilation, passive security design, outdoor living,*

*landscape design, indoor amenity and storage provision.*

## **25D Consideration of residential zone objectives and impact on heritage**

### **(1) Heads of consideration for consent authority**

*Consent must not be granted to any development of land to which this Part applies unless the consent authority has had regard to:*

- (a) the objectives for residential zones set out in this clause, and*
- (b) if the application is for consent for a residential flat building in Zone No 2 (d3), a statement describing the extent, if any, to which carrying out the proposed development would affect the heritage significance of any heritage item in the vicinity of the subject land.*

### **(2) Objectives for residential zones**

*The objectives for residential zones are as follows:*

- (a) to provide rear setbacks that ensure rear gardens are adjacent to rear gardens of other properties and that sufficient ground area is available for tall tree planting, consistent with the objectives of this Part,*
- (b) to encourage the protection of existing trees within setback areas and to encourage the provision of sufficient viable deep soil landscaping and tall trees in rear and front gardens where new development is carried out,*
- (c) to provide side setbacks that enable effective landscaping, tree planting between buildings, separation of buildings for privacy and views from the street to rear landscaping,*
- (d) to minimise adverse impacts of car parking on landscape character,*
- (e) to provide built upon area controls to protect the tree canopy of Ku-ring-gai, and to ensure particularly the provision of viable deep soil landscaping in order to maintain and improve the tree canopy in a sustainable way, so that tree canopy will be in scale with the built form,*
- (f) to encourage the planting of tree species that are endemic to Ku-ring-gai,*
- (g) to require on-site detention for stormwater for all new development and refurbishment of existing housing so as to avoid excessive run-off and adverse impacts on natural watercourses, and to preserve the long-term health of tall trees and promote natural absorption,*
- (h) to encourage water sensitive urban design,*
- (i) to encourage the protection and enhancement of open watercourses,*
- (j) to have regard for bushfire hazard,*
- (k) to ensure sunlight access to neighbours and to provide sunlight access to occupants of the new buildings,*
- (l) to encourage safety and security of the public domain by facing windows and building entries to the street, where appropriate, and windows to open spaces in order to maximise casual surveillance opportunities,*
- (m) to encourage safety and security of private development by requiring a high standard of building design and landscape design,*
- (n) to encourage the provision of housing for seniors and people with disabilities by prescribing appropriate standards for new development,*
- (o) to encourage the protection of the environmental qualities of the area by limiting the range of permissible residential uses and to allow a limited range of compatible non-residential uses in certain zones,*
- (p) to allow attached dual occupancies only on compliance with defined criteria and only where they are consistent with or enhance the character of the*

- streetscape and its setting,*
- (q) to provide for waste management (including provision for garbage storage and collection) consistent with the objectives of this Part,*
- (r) to ensure that adequate provision of storage is made for residential development,*
- (s) to encourage the retention and expansion of bicycle infrastructure.*

***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), (ii), and (iv) of the Environmental Planning and Assessment Act 1979***

The aim of SEPP 1 is to:

*Provide 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 tend to hinder the attainment of the objects specified in section 5(a) (i), (ii), of the Act.*

The objectives of section 5(a) (i), (ii), of the Act. Are as follows:

*To encourage 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; the promotion and co-ordination of the orderly and economic use and development of land.*

It is considered that the non-compliance with the development standard is not consistent with the aims of SEPP 1 as it is considered that compliance is not unreasonable and unnecessary in this instance (as assessed below) to comply with the requirement. In this particular circumstance, compliance with the development standard would not hinder the attainment of the objectives specified in Section 5a (i), and (ii) of the Act.

***whether compliance with the development standards is unreasonable or unnecessary in the circumstance of the case***

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

*“ The variations to the building height development standards are acceptable in the circumstances of this case and compliance with the development standards are considered unreasonable and unnecessary based on the following:*

- The portion of the site that accommodates the built form adopts a slope of approximately 28% which substantially exceeds the 15% threshold contained in Clause 25K;*
- The development proposal complies with the remaining density controls, notably controls pertaining to site coverage and floor space ratio. The proposed FSR is 1.11:1 which is well below the permitted 1.3:1;*
- The design of the development proposal, which seeks to minimise the building footprint by marginally increasing height, enables retention of*

*substantial stands of Blue Gum High Forest which is identified as a critically endangered ecological community;*

- The design of the development proposal serves to retain substantial vegetation areas and provides for 53.3% of the site as deep soil zones which is well above the control specified within the residential flat design code;*
- The development proposal presents a five (5) storey built form to the Pacific highway – given the change in levels – which is comparable to other developments to the north-west and south-east, as shown on elevation no. 301 prepared by Mackenzie Architects;*
- The majority of the building facades will be screened by the substantial number of trees in the middle third of the site to ensure that the built form in subservient to the landscape setting;*
- The portion of the building in contention does not generate unreasonable amenity impacts to the adjoining properties with regard to overshadowing, loss of views/outlook or privacy impacts;*
- When viewed in elevation it can be seen that the upper most levels present a reduced visual scale through the stepping of the built form and the use of more lightweight materials at the uppermost levels: and*
- The current proposal is a superior urban design outcome in the present circumstance when considering the substantial site constraints and the considerable environmental benefit in minimising the building footprint on the site to retain as much of the Blue Gum High Forest ecological community as possible.”*

The applicant's SEPP 1 objection is included as **Attachment 8** of this report.

Clause 25K of the KPSO acknowledges that steep sites are included in the Ku-ring-gai LGA and provides flexibility to the suite of development standards contained within Clause 25I for building to overcome design constraints. It is not considered that compliance with the development standard is unreasonable. The current proposal exceeds the allowance provided by Clause 25K and contributes to an unacceptable mass of building. It is also noted that the SEPP 1 objection has partly been made on the basis of satisfactory impacts on the Blue Gum High Forest, and a minimising of building footprint, however, Council's Ecological Assessment Officer has indicated that impacts on the Blue Gum High Forest are unsatisfactory and the building footprint of 34.25% of a maximum 35% is not considered to be minimising the building footprint. The development proposal presents as 6 storeys to Pacific Highway (not 5) and Council's Urban Design Consultant has indicated that the steeping of the proposal results in a greater impacts of scale rather than a reduction. The proposal would result in a 100% top floor percentage and a total of 11 storeys under the technical assessment of the development standard which has not been acknowledged within the SEPP 1 objection.

***whether the objection is well founded***

For the reasons discussed above, the SEPP 1 objection is not considered to be well founded.

***whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning***

It is not considered that the non compliance with the development standard contains any matter of significance for state and regional planning.

***whether there is public benefit in maintaining the planning controls adopted by***

### ***the environmental planning instrument***

Maintenance of the planning controls for the site is considered to be in the public benefit until such time that the draft Local Centres LEP and draft Principal LEP are gazetted.

### **Part B: Residential zone objectives:**

The development does not satisfy the objectives for residential zones as prescribed in clause 25D as discussed above.

### **Clause 33 – Aesthetic appearance**

The subject site fronts Pacific Highway which is a main road. The clause requires consideration of the aesthetic appearance of the proposed building when viewed from the Pacific Highway. The building will present as 6 storeys to Pacific Highway and will be of massing and bulk out of character and incongruous to future desired character to residential flat building development in Ku-ring-gai.

### **Clause 61E – Development in the vicinity of heritage items**

As noted previously, the proposal is within proximity of heritage items located at Cherrywood” at 1359 Pacific Highway, “Milneroyd” at 1379 Pacific Highway (opposite), 1428 Pacific House (Brogan house), and 1458 Pacific Highway. The application has been considered by Council’s Heritage Advisor who has raised no concerns regarding the proposed development and impact upon these heritage items. The proposal is therefore considered satisfactory in this respect.

### **DRAFT KU-RING-GAI LOCAL ENVIRONMENTAL PLAN (LOCAL CENTRES)**

In accordance with Section 79C (1) (ii) of the Environmental Planning and Assessment Act 1979, the consent authority is to take into consideration any relevant matter under the above mentioned draft LEP as it was publically exhibited between 21 May 2012 and 18 June 2012. The plan has since been considered by the elected Council on 31 July 2012 and sent to the Department for gazettal on 18 August 2012.

Under the provisions of the Draft EPI, the subject site is zoned R4 “High density residential”. Residential flat buildings are permitted with consent. Draft development standards within the instrument include a maximum FSR of 1.3:1 and maximum height of 17.5m. It is noted for the purposes of the Draft LEP that the definition of height is as follows:

*Means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devises, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

Under the provisions of the draft LEP the proposal would be permissible with consent and be compliant with the prescribed FSR, however, the proposed height of 23m would breach the height development standard by 7m which is considered to be a significant departure. The proposal would not satisfy the objectives of the Local Centres LEP should it be adopted in its current form.

### **DRAFT LEP 218 BIODIVERSITY, HERITAGE AND RIPARIAN LAND**

In accordance with Section 79C (1) (ii) of the Environmental Planning and Assessment Act 1979, the consent authority is to take into consideration any relevant matter under the above mentioned draft LEP as it was publically exhibited between January 30 and February 27, 2012. The plan has since been adopted by the elected Council on 13 November 2012 and sent to the Minister of Planning for gazettal. The subject site is identified within the Draft Natural Resource –Biodiversity Map as being subject to the Biodiversity provision of the planning proposal. The Biodiversity provisions within draft document are as follows:

***“Biodiversity Protection***

*(1) The objective of this clause is to protect, maintain and improve the diversity and condition of native vegetation and habitat, including:*

- (a) protecting biological diversity of native flora and fauna, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the recovery of threatened species, communities, populations and their habitats, and*
- (d) protecting, restoring and enhancing biodiversity corridors.*

*(2) This clause applies to development on land that is identified as “Areas of Biodiversity Significance” on the Natural Resources - Biodiversity Map.*

*(3) Before granting development consent for development on land to which this clause applies, the consent authority must consider:*

- (a) the impact of the proposed development on the following:*
  - (i) any native vegetation community,*
  - (ii) the habitat of any threatened species, population or ecological community,*
  - (iii) any regionally significant species of plant, animal or habitat,*
  - (iv) any biodiversity corridor,*
  - (v) any wetland,*
  - (vi) the biodiversity values within any reserve,*
  - (vii) the stability of the land, and*
- (b) any proposed measure to be undertaken to ameliorate any potential adverse environmental impact, and*
- (c) any opportunity to restore or enhance remnant vegetation, habitat and biodiversity corridors.*

*(4) Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the development:*

- (a) is consistent with the objectives of this clause, and*
- (b) is designed, and will be sited and managed, to avoid any potential adverse environmental impact or, if a potential adverse environmental impact cannot be avoided:*
  - (i) the development minimises disturbance and adverse impacts on remnant vegetation communities, habitat and threatened species and populations, and*

(ii) measures have been considered to maintain native vegetation and habitat in parcels of a size, condition and configuration that will facilitate biodiversity protection and native flora and fauna movement through biodiversity corridors, and  
 (iii) the development avoids clearing steep slopes and facilitates the stability of the land, and  
 (iv) measures have been considered to achieve no net loss of significant vegetation or habitat.

(5) In this clause:

**biodiversity corridor** means an area to facilitate the connection and maintenance of native flora and fauna habitats. Within the urban landscape, biodiversity corridors may be broken by roads and other urban elements and may include remnant trees and associated native and exotic vegetation.”

As noted in the comments made by Council’s Ecological Assessment Officer above, the proposal will result in an unsatisfactory outcome for the Sydney Bluegum High Forest Critically Endangered Ecological Community. The proposal therefore is not considered to meet the abovementioned requirements.

## POLICY PROVISIONS

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

COMPLIANCE TABLE		
Development control	Proposed	Complies
<b>Part 4.1 Landscape design:</b>		
<b>Consolidated Deep soil landscaping (min) 50% or 4605.7m<sup>2</sup></b>	52%	YES
150m <sup>2</sup> per 1000m <sup>2</sup> of site area = 1350m <sup>2</sup>	>2000m <sup>2</sup>	YES
<b>No. of tall trees required (min): 31</b>	>31 trees to be provided/retained	YES
<b>Private outdoor space differentiation</b> Up to 1.2m solid wall with at least 30% transparent component		
<b>Part 4.2 Density:</b>		
<b>Building footprint (max):</b> 35% of total site area	34.2%	YES
<b>Floor space ratio (max): 1.3:1</b> (11947.82m <sup>2</sup> )	1.11:1	YES
<b>Part 4.3 Setbacks:</b>		
<b>Street boundary setback (min): 10-12 metres Pacific Highway</b>	6.4 metres	NO

<b>Side and rear boundary setback (min):6.0 metres</b> <b>Maximum 40% of building within setback zone</b>	6.0 metres Northwest 7.6 metres Southeast 21.8 metres Rear	YES
<b>Setback of ground floor courtyards to street boundary (min) 11.0 metres</b>	11.0 metres	YES
<b>% of total area of front setback occupied by private courtyards (max):</b> 15%	0.0%	YES
<b>Part 4.4 Built form and articulation:</b>		
<b>Façade articulation:</b> Wall plane depth >600mm Wall plane area <81m <sup>2</sup>	>600mm >150m <sup>2</sup>	YES NO
<b>Built form:</b> Building width < 36 metres Balcony projection < 1.2 metres	14.6 metres <1.2 metres	YES YES
<b>Part 4.5 Residential amenity</b>		
<b>Solar access:</b> >70% of units receive 3+ hours direct sunlight in winter solstice >50% of the principle common open space of the development receives 3+ hours direct sunlight in the winter solstice <15% of the total units are single aspect with a western orientation <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 12 metres b/w habitable rooms 9 metres b/w habitable and non habitable 6m b/w two non habitable 5 <sup>th</sup> storey 18 metres b/w habitable 13 metres b/w habitable and non habitable 9 metres b/w two non habitable	82% 3 hours <15% 13 metres (min) 13 metres (min)	YES YES YES YES NO



<b>Internal amenity:</b> Habitable rooms have a minimum floor to ceiling height of 2.7 metres Non-habitable rooms have a minimum floor to ceiling height of 2.4m 1-2 bedroom units have a minimum plan dimension of 3m in all bedroom 3+ bedroom units have a minimum plan dimension of 3m in at least two bedrooms Single corridors: - serve a maximum of 8 units 1.8m wide at lift lobbies	2.7 metres	YES
	2.4 metres (min)	YES
	3.4m x 3.0m	YES
	3.2m x 3.4m	YES
	Max 6 units	YES
<b>Outdoor living:</b> Ground floor apartments have a terrace or private courtyard greater than 25m <sup>2</sup> in area	25m <sup>2</sup>	YES
Balcony sizes: - 10m <sup>2</sup> – 1 bedroom unit - 12m <sup>2</sup> – 2 bedroom unit NB. At least one space >10m <sup>2</sup> primary outdoor space has a minimum dimension of 2.4m  Common Open space (30%) Of the site area 2763.42m <sup>2</sup>  Private open space adjoining common open space not to be enclosed with high solid fences	10-15m <sup>2</sup>	YES
	2.4 metres	YES
	58.3%	YES
	YES	YES
<b>Part 4.7 Social dimensions:</b>		
<b>Visitable units (min):</b> 70%	92%	YES
<b>Housing mix:</b> Mix of sizes and types	49 x 1 bedroom dwellings 65 x 2 bedroom dwellings 7 x 3 bedroom dwellings 2 x 4 bedroom dwellings	YES
<b>Part 5 Parking and vehicular access:</b>		
<b>Car parking (min):</b> 132 resident spaces 31 visitor spaces 163 Total spaces	132 Resident space 32 Visitor spaces 164 Total Spaces	YES

#### Part 4.3 Setbacks

##### *Street boundary setback*

It is proposed to undertake a land dedication in order to provide a deceleration lane to gain vehicular access to the development. This therefore reduces the location of the front boundary to which the building has not been set back 10-12 metres as required by DCP 55. That being said, the proposal in terms of built form would be setback the equivalent distance of that of other residential flat buildings in the area. The proposal will not however, be able to provide sufficient landscaping within its setback due to the reduced depth as noted within Council's Tree and Landscape Assessment Officer's comments.

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

##### *Façade articulation*

The proposal would result in facades that have an area well in excess of 81m<sup>2</sup> at approximately 150m<sup>2</sup>. Council's urban design consultant has indicated that the proposal results in unacceptable massing and therefore the proposal is considered unsatisfactory in this respect. Refer to **Attachment 3**.

*Control C-5 of DCP is as follows:*

*Limit building length along side boundaries to promote view corridors between buildings and provide a leafy outlook from all dwellings.*

Building A-D has a length adjoining the north-western boundary of 97 metres and results in unacceptable massing, bulk and scale. Council's urban design consultant has indicated that the building should be separated to create two or possible three separate buildings to address the issue.

##### **Visual privacy**

The proposal does not meet the building separation requirements of DCP 55 with regard to the internal separation between Building AD and Building EF being less than the required 13 metres when higher than 5 storeys. The applicant is aware of the proposal not meeting this requirement and has indicated that the use of louvre windows and offset windows results in a satisfactory outcome none the less. It is agreed that visual privacy between buildings A-D and E-F is satisfactorily mitigated through the subject design.

The applicant was requested to address the impacts of the proposal on a possible residential flat building on the property (s) to the north-west being 1456 and 1456a Pacific Highway which could be consolidated). Concerns were raised that the subject proposal would, through its setback of 6m to the north-western boundary and a height of greater than 5 storeys, create difficulties in achieving building separation requirements for a residential flat building on that site noting the 27 metres width. Concern was also raised that the frontage of the consolidated site would require a SEPP 1 objection given the consolidated lot area requiring a frontage of greater than 30m. In response to this issue, the applicant has indicated that consolidation could further occur with the heritage item at 1458 Pacific Highway or the existing residential flat building at 2-4 Finlay Road. The applicant was requested to provide potential building footprints on the adjoining site to demonstrate building separation implications but declined to do so.

It is noted that Council's urban design consultant has indicated that privacy issues exist through use of the inclinator. It is agreed that further sections are provided to detail privacy impacts of the inclinator. Whilst it is noted that the majority of units do

have mitigation devices, courtyards associated with Building E-F are likely to be overlooked by the inclinometer and further sectional details would be required to demonstrate that there would be adequate privacy.

#### **Development Control Plan No. 31 Access**

Matters for assessment under DCP 31 have been taken into account in the assessment of this application against DCP 55 and the proposal is satisfactory in this regard.

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

Matters for assessment under DCP 40 have been taken into account in the assessment of this application and the proposal is satisfactory in this regard.

#### **Development Control Plan No. 43 - Car Parking**

Matters for assessment under DCP 43 have been taken into account in the assessment of this application and the proposal is satisfactory in this regard.

#### **Development Control Plan No. 47 - Water Management**

Matters for consideration under DCP 47 have been taken into account in the assessment of this application and the proposal is satisfactory in this regard.

#### **Section 94 Plan**

The development proposal would be subject to a Section 94 Contribution were consent to be granted.

### **LIKELY IMPACTS**

The likely impacts of the development have been considered within this report and it is considered that the proposal is unacceptable and should not be approved in its current form.

### **SUITABILITY OF THE SITE**

The site is zoned 2(d3). The proposed development is generally considered suitable for the site.

### **ANY SUBMISSIONS**

The matters raised in the submissions have been addressed in this report.

### **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 impacts on the surrounding area are minimized. The proposal has been assessed against the relevant Environmental Planning Instruments and policy provisions and is deemed unsatisfactory in its current form.

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 would result in a breach of four development standards which contribute to an unacceptable massing of built form in conjunction with a 97m building length. The design does not have a sufficient setback area for landscaping between the building and the proposed land dedication, does not currently demonstrate that adequate access can be provided to the development without significant changes and results in unacceptable impacts on the Bluegum High Forest Critically Endangered Ecological Community.

## **RECOMMENDATION**

THAT the Sydney West Joint Regional Planning Panel, as the consent authority, refuse development consent to Development Application 0605/11 for demolition of existing structures & construction of a 5 to 6 storey residential flat building containing 123 units, basement carparking, land consolidation, and boundary adjustment at 1444B, 1446, 1446A, 1448, 1450 and 1452 Pacific Highway, Turramurra for the following reasons:

### **1. Unacceptable massing, length of building, height, bulk, and scale**

#### *Particulars*

- Building A-D would have a massive appearance due to its length of 97m, and number of “steps” at its upper levels, it is not appropriate in its current form and should be configured into two separate buildings.
- The framing elements of the design confuse the proportions of the building resulting in unsatisfactory visual impacts
- There is lack of clarity between the four components of Building A-D.
- The proposal breaches Clause 25I (5) Number of storeys development standard within the KPSO and the SEPP 1 objection is not considered to be well founded due to visual impacts of excessive height, massing and scale.
- The proposal breaches Clause 25I (7) limit on floor area of top storey development standard within the KPSO and the SEPP 1 objection is not considered to be well founded due to visual impacts of excessive height, massing and scale.
- The proposal breaches Clause 25I (8) Maximum number of storeys and ceiling height development standard within the KPSO and the SEPP 1 objection is not considered to be well founded due to visual impacts of excessive height, massing and scale.
- The proposal breaches Clause 25K Steep slope sites development standard within the KPSO and the SEPP 1 objection is not considered to be well founded due to visual impacts of excessive height, massing and scale.

### **2. Unacceptable visual impacts**

#### *Particulars*

- The development proposal is 6 storeys at the Pacific Highway frontage and is out of character with other residential flat buildings in the locality which are predominantly a maximum of 4 storeys with a reduced and set back 5<sup>th</sup> storey. This contravenes Clause 33 of the KPSO.
- The proposed vehicle entry point and associated undercroft area would result in unsatisfactory visual impacts when viewed from Pacific Highway contravening Clause 33 Of the KPSO.
- The proposal exceeds the maximum building height contained within the Draft Local Centres LEP 2012 by 7 metres which is not considered to meet the objectives of the LEP.
- The proposal does not comply with part 4.3 Setbacks, Street boundary Setbacks of DCP 55 in that it does not provide a 10-12m setback which inhibits the planting of significant vegetation within the front setback area.
- The proposal does not comply with part 4.4 Built form and articulation, façade articulation of DCP 55 which contributes to an unacceptable massing, bulk and scale.
- The proposal does not comply with the part 4.4 Built form and articulation, control C5 of DCP 55 as the 97 metres length of Building A-D does not promote view corridors between buildings nor provide a leafy outlook from all dwellings.

### **3. Unsatisfactory impacts upon future development on land at 1456 and 1456A Pacific Highway**

#### *Particulars*

- The applicant has not demonstrated that the proposed building with a height of over 5 storeys and a setback of 6.0m to the north-western boundary makes allowance for a viable development to occur within the adjoining property to the north-west being 1456 and 1456a Pacific Highway when considering building separation requirements and the 27 metres combined width of those lots.

### **4. Unsatisfactory resolution of vehicular access from Pacific Highway**

#### *Particulars*

- Insufficient information has been provided regarding the dimensions of the strip of land shown as being dedicated as public road. This has implications for site area, setbacks, driveway gradient and calculation of indices for the development.
- Roads and Maritime Services has advised that a deceleration lane will be required for vehicles entering the site from the Pacific Highway.
- The applicant has shown a 3.6 metres wide indentation into the site's front boundary on the development application drawings.

- No length is given for the indentation, although the architectural plans show “Area = 133.8m<sup>2</sup>”.
- No concept design has been provided for the deceleration lane which includes any dimensions except for the 3.6 metres wide indentation.
- No evidence has been provided that Roads and Maritime Services have agreed to the final dimensions of the deceleration lane or of the dedication.
- Roads and Maritime Services has not stated a timeframe for the construction of the deceleration lane, so it is not known whether demolition, excavation and construction can proceed or whether the roadworks must be carried out prior to commencement of works within the site.

**5. Insufficient viable deep soil planting area to front setback of building (Clause 25D (2)(b) and Clause 25I (1)(e)) of KPSO**

*Particulars*

- The proposed setback between the building and the deceleration lane is insufficient to provide viable deep soil planting consistent with that of other residential flat buildings in the locality.
- The proposed setback between the building and the deceleration lane is insufficient to provide viable deep soil planting with an ability to effectively screen the proposed development.

**6. Adverse amenity impacts as a result of access arrangement into the site**

*Particulars*

- The proposed inclinator would result in adverse privacy impacts on private courtyards of ground floor apartment within Building E-F and insufficient information has been provided to undertake an assessment if impacts on other units within the development.
- The proposed access arrangement includes common pathways immediately adjoining bedrooms which is an unacceptable outcome.

**7. Adverse tree impacts (Clause 25D(2)(b))**

*Particulars*

- The proposed removal of the following significant remnant canopy trees that are representative of Blue Gum High Forest, a critically endangered ecological community, without substantiated evidence, is not supported. Trees 253, 288, 293, 384, 385 and 390.

- No levels have been provided in relation to the deceleration lane and reconfigured road reserve, however, impacts are likely due to the road reserve level changes to Trees 351, 345 and 346. These impacts have not been assessed by an arborist.

#### **8. The likely construction impacts on significant trees to be retained.**

##### *Particulars*

- Tree 2/Eucalyptus saligna (Sydney Blue Gum) - The proposed inclinators are within the structural root zone (3.3m). The proposed inclinators are within the tree protection zone. The impacts of these works have not been included in the arborist report. The basement footprint shown on the Tree Assessment Plan (AR-202A, Arterra) and the encroachment calculation (3%) is incorrect.
- Tree 202/Eucalyptus paniculata (Grey Ironbark) - The proposed building setback (approximately 2 metres from the tree) is to be suspended over the tree protection zone. The requirement for scaffolding makes the preservation of this tree unlikely. The proposed building setbacks would result in excessive pruning on one side of the tree that would destroy the natural habit of the tree (AS 4373-2007 Pruning of amenity trees). The proposed filling for formwork to achieve elevated slab at FFL158.41 would have a further adverse impact on the long term viability of this tree. It is considered that the proposed works would have an adverse impact on this tree.
- Tree 265/Eucalyptus saligna (Sydney Blue Gum) - The proposed building setback approximately 3 metres from the tree is to be partially suspended over the tree protection zone. The proposed building setbacks would result in excessive pruning on one side of the tree that would destroy the natural habit of the tree (AS 4373-2007 Pruning of amenity trees). The Tree Assessment Plan (AR-202A, Arterra) does not include the correct extent of the landing at Level 161.41 and the fire stairs from Level 158.41 in accordance with the architectural plans. This would result in an incorrect encroachment calculation (13%).
- Tree 300A /Eucalyptus saligna (Sydney Blue Gum) - The substation should be relocated outside the tree protection zone of this significant tree and the fence should be simplified.
- Tree 391/Eucalyptus saligna (Sydney Blue Gum) - The proposed encroachment within the tree protection zone greater than 10% and the proposed canopy impacts of the proposed 3.5m setback of the elevated building is not supported.

#### **9. Insufficient information provided within the arborist report to determine tree impacts**

- A detailed description, including photographs of the proposed branches to be pruned, has not been provided to enable assessment of the extent of the proposed pruning works.
- Written permission from adjoining owner has not been provided for the following tree for proposed removal or pruning as per 6.0.6, Arborist Assessment, Advanced Treescape Consulting, 28/10/11.
- Tree 171
- Further investigation and information is required as follows, to determine the health and structural stability of the following significant trees prior to removal or construction incursions on tree protection zone.

**Tree/Location**

Tree 288/ Eucalyptus saligna (Sydney Blue Gum)

Tree 293/ Eucalyptus saligna (Sydney Blue Gum)

Tree 390/ Eucalyptus saligna (Sydney Blue Gum)

**Inspection**

A Picus Tomograph analysis is to be undertaken to assess the structural integrity of the lower trunk through the trunk wound.

A Picus Tomograph analysis is to be undertaken to assess the structural integrity of the lower trunk through the trunk wound.

A Picus Tomograph analysis is undertaken to assess the structural integrity of the lower trunk.

**10. Insufficient information provided within the architectural plans to determine tree impacts**

- Details of the proposed levels of private courtyard to Unit E01. To preserve existing trees, the existing retaining walls should be retained where possible.
- The proposed suspended section of Block E has four piers supporting the building. To determine the impact of the proposed excavation within the tree protection zone of Tree 391, the number of supporting piers required to be located above the existing retaining walls, is to be verified by a structural engineer.

**11. Insufficient information provided within the landscape plans to determine tree impacts**

- To enable assessment of cut and fill, the plans are to be prepared at 1:100 scale.
- Planting plan should show existing trees. Tree numbers to be shown on all Landscape Plans



- The proposed turfed finish to the bio-swale detail is inconsistent with the landscape plan that indicates 'revegetation mix raingarden species'.
- Proposed planting in the front setback to the building of small trees (*Tristania laurina*/8m in height) and medium trees (*Glochidion ferdinandii*) 12m in height), will not be in scale with the proposed building. The proposed planting of *Glochidion* less than 1 metre from the basement and 3 metres from the building, is not considered viable deep soil planting (Clause 25D(2)(e)).
- The proposed planting of *Eucalyptus saligna* (Sydney Blue Gum) within the 6m setback is not supported.

**12. Insufficient information provided within the Landscape Compliance Diagram to determine tree impacts**

- The site is certified as two buildings, Blocks A, B and C and D, and Block E and F. To accurately reflect the Basix Certificate, the areas of nominated indigenous low water use planting should be indicated on the landscape plan. To enable assessment, a separate Basix landscape compliance diagram, should be submitted. The site area for either both certificates, or the combined total of the two, should be clearly indicated on the plan.

**13. Insufficient information provided within the Environmental Site Management Plan to determine tree impacts**

To preserve the health and condition of existing trees, proposed temporary access, stockpiles and areas for plant and material storage areas shall be clearly shown on an environmental site management plan, in accordance with Council's DA Guide. Protection of conservation area and tree protection fencing should be prepared in consultation with the arborist and ecologist recommendations.

**14. The impact assessment prepared for the Blue Gum High Forest community is not considered to be satisfactory for the following reasons:**

*Particulars*

- Insufficient impact assessment prepared in accordance with Section 5A of the *Environmental Planning & Assessment Act 1979*. The impact assessment fails to demonstrate the "extent" of the local occurrence (ha) of Blue Gum High Forest which is affected as a result of the proposed development.
- Insufficient assessment has been made in regard to changes to the existing hydrological regime as a result of the proposal and associated impacts upon the Blue Gum High Forest community.

- The proposal does not meet the aims and objectives of the Biodiversity provision of DRAFT LEP 218 as the impact assessment has not demonstrated that an accepted outcome is met.

#### **15 Insufficient information regarding hydrological impacts upon the Blue Gum High Forest upon the site.**

##### *Particulars*

- The proposed basement will impede the hydrological movement of water movement towards the lower end of site which contains Blue Gum High Forest. No assessment/information has been provided to demonstrate potential impacts upon the Blue Gum High Forest community.

#### **16 Owner's consent**

##### *Particulars*

- Owners consent has not been provided to Council from the property owner of 1446 Pacific Highway on which it is proposed to undertake a boundary adjustment as part of this development application.

**Grant Walsh**  
**Executive Assessment Officer**

**Richard Kinninmont**  
**Team Leader Development Assessment**

**Corrie Swanepoel**  
**Manager Development Assessment**

**Michael Miocic**  
**Director Development and Regulation**

**Attachments:**

1. Location sketch
2. Ku-ring-gai Planning Scheme Zoning Extract
3. Urban Design Consultants Report
4. Architectural plans
5. Landscape plans
6. Stormwater management plans
7. Basix certificate
8. SEPP 1 Objection