

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

JRPP No	2012SYW093
DA Number	378/12
Local Government Area	Ku-ring-gai Council
Proposed Development	Demolition of existing structures and construction of two residential flat buildings containing 86 units, basement parking and landscaping
Street Address	5, 7, 9, 11 and 15 Lamond Drive, Turramurra
Applicant Owner	Mackenzie Architects 5 Lamond Drive – Mrs Evans 7 Lamond Drive – Mr and Mrs Salmond 9 Lamond Drive – Mr Francis and Ms Joyeux 11 Lamond Drive – Ms Cheng 15 Lamond Drive – Mr and Mrs Hyoung
Number of Submissions	Thirteen (13) submissions received during the first notification period. Fourteen (14) received during the second notification period.
Recommendation	Refusal
Report by	Stuart Ratcliff, Senior Assessment Officer

EXECUTIVE SUMMARY

Primary property	5 Lamond Drive, TURRAMURRA NSW 2074
Lot and DP	Lot 4 DP260234
Additional properties	7Lamond Drive, TURRAMURRA NSW 2074 9 Lamond Drive, TURRAMURRA NSW 2074 11 Lamond Drive, TURRAMURRA NSW 2074 15 Lamond Drive, TURRAMURRA NSW 2074
Proposal	Demolition of existing structures and construction of two residential flat buildings containing 86 units, basement parking and landscaping
Development application number	DA0378/12
Ward	COMENARRA
Applicant	Mackenzie Architects
Owner	5 Lamond Drive – Mrs Evans 7 Lamond Drive – Mr and Mrs Salmond 9 Lamond Drive – Mr Francis and Ms Joyeux 11 Lamond Drove – Ms Cheng 15 Lamond Drive – Mr and Mrs Hyoung
Date lodged	11 September 2012
Issues	Unsatisfactory impacts on Endangered Ecological Communities, residential amenity, building height, number of storeys, urban design, zone interface, manageable housing, deep soil landscaping, stormwater management, unsatisfactory impacts on easements, insufficient information
Submissions	Yes
Land and Environment Court	N/A
Recommendation	Refusal
Assessment officer	Stuart Ratcliff
LEGISLATIVE REQUIREMENTS:	
Zoning	Residential 2(d3)

Permissible under	KPSO
Relevant legislation	SEPP1, SEPP55, SEPP Infrastructure, SEPP BASIX, SREP (Sydney Harbour Catchment) 2005, KPSO DCP31 – Access DCP40 – Waste Management DCP43 – Car Parking DCP47 – Water Management DCP55 – Multi-unit Housing DCP56 – Notification
Integrated development	Yes (within 40 metres of a water course)

PURPOSE FOR REPORT

To determine Development Application No. 0378/12 for the demolition of existing structures and construction of two residential flat buildings containing 86 units, basement parking and landscaping.

The application is required to be determined by the Sydney West Joint Regional Planning Panel as the cost of works (CIV) of \$26.4 million exceeds \$20 million.

HISTORY

Site history

The site has historically been used for residential purposes.

Development application history

11 September 2012	Development Application lodged.
21 September 2012	The application was notified for 30 days.
28 November 2012	An issues letter sent to applicant relating to the following: <ul style="list-style-type: none">- site coverage- building setbacks- plan details- building height- solar access- apartment mix- accessibility- privacy and building separation- building design- tree and vegetation impacts- stormwater

- waste management
- construction traffic management

13 December 2012 A meeting was held with the applicant to address issues raised in Council's letter dated 28 November 2012.

8 February 2013 Ku-ring-gai Local Environmental Plan (Local Centres) 2012 – KLEP(Local Centres) 2012 came into force. The KLEP (Local Centres) 2012 resulted in the following changes applying to the subject site:

- The site was rezoned to 'R4 – High Density Residential'
- A maximum building height of 11.5 metres is permissible (as measured to the highest point of the building as opposed to the current measurement to the perimeter of the ceiling at the fourth storey)
- A maximum floor space ratio of 0.85:1 is permissible (reduced from the current 1.3:1 set out under DCP55)

However, the provisions of the LEP do not apply to the subject application by virtue of Clause 1.8A – Savings provisions relating to development applications.

28 February 2013 Correspondence was sent to the applicant requesting the response to the issues raised in previous letters. The applicant was requested to provide a response by 13 March 2013.

14 March 2013 Additional information and plans are received.

21 March 2013 The amended plans were notified for a period of 30 days

THE SITE AND SURROUNDING AREA

The site

Visual Character Study Category:	1920-45 / 1945-68
Easements / rights of way:	Yes, the subject lots contained within DP260234 are subject to the following restrictions on the use of land:
	<ul style="list-style-type: none"> - (K) Right of carriageway 3.66 metres wide and variable width - (L) Easement to drain water 1 metre wide

- (M) Easement to drain water 1 metre wide
- (N) Easement to drain water 1 metre wide
- (O) Easement to drain water 1.83 metres wide
- (P) Easement to drain water 1.83 metres wide
- (Q) Easement to drain water 1 metre wide
- (R) Easement to drain water 1 metre wide

Heritage item:	No
Heritage conservation area:	No
In the vicinity of a heritage item:	Yes, 1428 Pacific Highway (Brogan House) and 1359 Pacific Highway (Cherrywood), 1379 Pacific Highway (Milneroyd) and 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 five (5) allotments which are located on the south-western side of the Pacific Highway, approximately 350 metres north-west of the Turramurra local centre and railway station. The site details are as follows:

- 5 Lamond Drive, Lot 4 DP 260234: The site is an irregular shaped battle-axe allotment containing a split single and two storey dwelling within an elevated balcony.
- 7 Lamond Drive, Lot 6 DP 260234: The site is also an irregular shaped battle-axe allotment contains a two storey dwelling with a detached garage.
- 9 Lamond Drive, Lot 3 DP260234: The site is an irregular shaped allotment with a frontage to Lamond Drive containing a split single and two storey dwelling and swimming pool.
- 11 Lamond Drive, Lot 7 DP 260234: The site is an irregular shaped allotment with a frontage to Lamond Drive supporting a split single and two storey dwelling. Vehicular access is provided by a shared right of carriageway over 15 Lamond Drive due to the steep topography of the site.
- 15 Lamond Drive, Lot 8 DP260234: The site is an irregular shaped allotment with a frontage to Lamond Drive containing a split two and three storey dwelling with a raised terrace and swimming pool above a garage located at the rear of the dwelling. Vehicular access is provided by the right-of-carriageway over 15 Lamond Drive.

The consolidated area of the site is 5908.6m² with an approximate frontage of 60 metres to Lamond Drive. The site incorporates a substantial slope away from the Lamond Drive

frontage towards the rear of the site, with a level difference of approximately 30 metres. The site is heavily vegetated, with a variety of endemic and exotic species, including those of the Blue Gum High Forest community which is recognised as a critically Endangered Ecological Community. A category 3 riparian corridor is located towards the rear of the site.

Surrounding development

There are a variety of development types surrounding the site. To the north-west, at 1 Lamond Drive, a five storey residential flat development is currently under construction. Residential flat developments are also located to the north-east of the site. Low density residential developments (consisting of single and two storey detached dwellings) set within established landscaped settings occupy the sites to the east, south and south-east of the development site.

The subject site was recently rezoned 'R4 – High Density Residential' following the gazettal of Ku-ring-gai Local Environmental Plan (Local Centres) 2012. While the savings provision of this LEP (Clause 1.8A) prescribes that the subject application is to be assessed as though this LEP had not commenced, the zoning of the surrounding sites under this LEP should be noted. The properties that adjoin the site to the north-west, north-east, and south-west are also zoned 'R4 – High Density Residential'. The properties that adjoin the site to the south-west are either zoned 'E4 – Environmental Living' or 'R2 – Low Density Residential'.

THE PROPOSAL

As originally submitted, the application proposed the construction of two residential flat buildings containing a total of 86 dwellings. While visually presenting as one building, Block 1 that aligns with the north-western side boundary, contains two separate buildings being Building A and Building B.

Through the progression of the application, the total number of units has been reduced to 83. The proposal, as amended, is as follows:

- 37 x 1 bedroom dwellings
- 43 x 2 bedroom dwellings
- 3 x 3 bedroom dwellings

Building A consists of 14 dwellings with six levels of basement parking below. Building B consists of 33 dwellings with three levels of basement parking below. The parking area of Building B is connected to Building A and also has an underground connection to Block B (Building C).

Building C contains of 36 dwellings with two levels of basement parking and aligns with the south-eastern side boundary of the site. Vehicular access to this parking area is only available through the underground connection to Block A. A total of 112 parking spaces are provided within the basement parking levels of the development, containing 90 resident spaces and 22 visitor spaces.

Various landscaping works, including formal and informal gardens, pathways and tree plantings, are also proposed. Pedestrian access across the site will be assisted through the provision of mechanical inclinator.

CONSULTATION - COMMUNITY

In accordance with Council's Notification DCP, owners of adjoining properties were given notice of the application on 21 September 2013. In response, submissions from the following objecting to the development were received:

- | | |
|---|---|
| 1. Jim Sweeting | 22 Denman Street, Turrumurra |
| 2. Gary Candish (2 submissions) | 32 Denman Street, Turrumurra |
| 3. Brian Plain (2 submissions) | 34 Denman Street, Turrumurra |
| 4. Julie and Phillip Priest (2 submissions) | 3 Lamond Drive, Turrumurra |
| 5. A C and LM Sanders | 4 Lamond Drive, Turrumurra |
| 6. M S Riley | 20 Denman Street, Turrumurra |
| 7. Leighanne Sietsma | 11A Duff Street, Turrumurra |
| 8. R D and P C Young | 16 A Denman Street, Turrumurra |
| 9. Vaughan Milligan Development Consulting on behalf of Julie and Philip Priest | PO Box 49, Newport Beach for 3 Lamond Drive, Turrumurra |
| 10. T Watson | 8 Lamond Drive, Turrumurra |

The submissions raised the following issues:

Tree removal and impacts on neighbouring trees

Council's Landscape Development Officer and Ecological Assessment Officer agree that the proposed development will adversely impact on the existing vegetation on the site. This is discussed in further detail, below.

Solar access impacts

The proposed development has been designed to retain adequate solar access to neighbouring properties, as outlined in further detail below. However, concern is raised with regard to the solar amenity of the units contained within the proposed development.

Increased traffic and impacts on local traffic movements and outdated information used within the applicant's traffic study

Council's Development Engineer is satisfied that the proposed development will not unduly impact on local traffic movements. The NSW Roads and Maritime Services concur and consider the proposal acceptable with regard to impacts on traffic movements, subject to conditions should the application be approved.

Additionally, Council's Development Engineer is satisfied that the information within the study is based on current and accurate data.

Inconsistency with Ku-ring-gai Local Environmental Plan (Local Centres) 2012

The subject application was lodged prior to the gazettal of the *Ku-ring-gai Local Environmental Plan (Local Centres) 2012* (KLEP 2012). The proposed development is not subject to the provisions of the KLEP 2012 by virtue of the savings clause included within this instrument.

Bulk and scale impacts, particularly excessive height and number of storeys

The number of storeys is considered to result in undue impacts to the amenity of the units within the development.

Excessive top storey floor area

It is agreed that the buildings of the proposed development exceed the top floor area development standard of the KPSO (outlined in further detail below). This non-compliance has necessitated a consideration of the proposal against State Environmental Planning Policy No. 1 – Development Standards (SEPP1). Through a consideration of this objection, it is concluded that the proposed number of storeys is unreasonable due to impacts on residential amenity. Accordingly, a departure from this development standard is not supported.

Inappropriate transition in building form with adjacent, lower density development

It is agreed that the proposed development does not incorporate an acceptable transition to adjacent lower density development. This is reflected by the failure of the proposal to comply with the required zone interface development standard of the Ku-ring-gai Planning Scheme Ordinance (KPSO).

Privacy impacts

The proposed development will retain adequate visual privacy to neighbouring residencies

Loss of property value and saleability

The impact of a development on property values is not a matter for consideration listed under Section 79C of the *Environmental Planning and Assessment Act, 1979*.

Impacts on groundwater flow and adverse stormwater runoff

Council's Landscape Development Officer, Ecological Assessment Officer and Development Engineer have all raised concern with regard to the impacts of the development upon groundwater, this is discussed in further detail, below. Additional concern has been raised with regard to the adequacy of the proposed stormwater management provisions.

Impacts on endangered ecological communities and fauna

Council's Ecological Assessment Officer has advised that the applicant has not submitted sufficient information to allow for a comprehensive assessment of the full impacts of the proposal upon the Critically Endangered Ecological Community on the site.

Undue impacts on neighbouring amenity during the construction period and construction worker parking should be provided onsite

Should the application be approved, conditions may be imposed to ensure the associated construction impacts are managed appropriately.

Unit mix that does not reflect the demographics of the area (i.e. lack of three bedroom units capable of accommodating families)

The application has been amended to include 3 x 3 bedroom units. The mix of units within the proposed development is considered to adequately reflect Council's controls relating to unit mix.

Insufficient parking

Council's Development Engineer is satisfied that the proposed development provides sufficient parking in accordance with the applicable planning policies.

Impacts on pedestrian safety

Council's Development Engineer is satisfied that the proposed development will not unduly impact on pedestrian safety.

View loss

The objectors raise concern that the loss of trees from the site and the introduction of the proposed development will impact on outlook and access to available views.

In terms of visual amenity (outlook) of the site as viewed from neighbouring properties, it is noted that a number of trees are proposed to be removed and this will alter the appearance of the property. However, as outlined by Council's Ecological Assessment and Landscape Officers, insufficient information has been submitted by the applicant to confirm that the development will not adversely impact the identified Critically Endangered Ecological Community.

With regard to view loss, Controls C-7 and C-9 of Part 3.3 – Landscape and Visual Character of DCP55 state:

"C-7: Buildings are to be designed and located to respect existing significant views by not blocking or limiting opportunities for public views from roads, streets and parks."

"C-9: Design shall address issues of view-sharing of private views."

The DCP does not provide any numerical controls in order to assist in assessing these requirements. However, an analysis of view sharing has been provided by the NSW Land

and Environment Court in its determination of *Tenacity Consulting Pty Limited v Warringah Council [2004]*. Within this decision, Senior Commissioner Roseth developed assessment criteria as a guide to whether the loss of a view is reasonable. The steps are as follows:

1. Determine the views enjoyed by the neighbouring property(ies)

The views available to surrounding properties are regional views of western Sydney to the south and south-west of the site. These views extend to the Blue Mountains. However, these views are not unobstructed as the existing vegetation of the subject site impedes their access from a number of vantage points.

2. Consider from what part of the property are the views obtained

The views are obtained by the properties opposite the subject site, on the northern side of Lamond Drive and the west facing units of the residential flat building constructed at 1-3 Duff Street. These views are obtained from a number of internal living spaces across the various buildings as well as bedrooms and bathrooms.

3. Assess the extent of the impact from the whole of the property. The impact should be qualified on a scale of negligible to devastating

It is not considered that the existing views available to any neighbouring property will be significantly impacted. This conclusion notes that the proposed development will retain corridors between the proposed buildings and neighbouring development that will retain access to the views, albeit from a different angle.

The properties to the north of Lamond Drive are sited higher than the subject site and will only be impacted by the approximate 25 metres width of Building A. When considered in the context of the >50 metres width of the site, the obstruction caused by this building is not considered to be unreasonable or excessive.

The dwellings contained within the residential flat building to the east (1-3 Duff Street) will also retain some views to the south through the corridor between this building and proposed Building C.

4. Consider the reasonableness of the proposed view loss taking into account any non-compliance that is causing the view loss.

The extent of the proposed view loss is considered reasonable. While the proposed development is non-compliant with the applicable height controls, as is outlined in further detail below, these non-compliances are largely attributable to the challenging topography of the subject site. Given that the extent of view loss is not deemed to be significant, it is not considered reasonable to require compliance with these height controls on the basis of view retention alone. Moreover, the subject site is zoned in a manner that permits residential flat development and the loss of some views through the realisation of the site's development potential is inherent to this zoning.

Social alterations due to overpopulation

The objector has raised concern that the increased density of residential dwellings in the area may lead to social tensions within the local community.

It is noted that the subject site is zoned for medium density development and that the zoning of the site in this manner has been based on studies that included an assessment of social impacts.

Increased crime due to increased pedestrian numbers

It is not considered likely that the increased number of pedestrian visitors to the site will increase crime levels within the locality. The applicant has submitted an acceptable crime risk report that details the measures that would be implemented within the development to discourage illegal activity. However, it is beyond the ability of the consent authority to predict or control illegal activity undertaken by individuals.

The proposed development is inconsistent with the aims and objectives of the KPSO and DCP55

It is agreed that the proposed development is inconsistent with a number of the aims and objectives of the applicable planning policies, as discussed in detail, below.

The proposed development will isolate 3 Lamond Drive which is undersized in terms of its capability to accommodate multi-unit housing

The information submitted by the applicant demonstrating how 3 Lamond Drive can be developed for multi-unit housing is economically unviable and inconsistent with the key development criteria

The development site should be amalgamated to include 3 Lamond Drive

This issue has been discussed at length in the assessment of the application against DCP55, below. An assessment of the controls contained within the KPSO, the DCP and the principles developed within the NSW Land and Environment Court, has concluded that the proposed development will not unreasonably isolate this site.

Easements (legal rights) over the subject site that benefit neighbouring properties have not been given due consideration within the DA submission

The application proposes the placement of structures within the right-of-carriageway that benefits 3 Lamond Drive that which will obstruct the use of the vehicle easement and access to the adjacent drainage line

Council's Development Engineer agrees that the proposed development has not given due consideration to the benefits afforded to 3 Lamond Drive by the restrictions on the use of the subject site registered on the title. Council does not have the authority to release or modify these burdens without the consent of the dominant tenement (this is explained in further detail, below).

The right-of-carriageway over the subject site benefiting 3 Lamond Drive should not be used for access during the construction period

The use of the right-of-carriageway for construction purposes would be a civil matter between the respective property owners.

The following submission in support of the application was received:

- | | |
|---|--|
| 1. P Salmond on behalf of the
Lamond Drive Residents Action
Group | 5, 7, 9, 11 and 15 Lamond Drive,
Turrumurra |
|---|--|

The submission advanced the following points:

The proposed development is an appropriate and financially viable response to the zoning of the site and the context of its surrounds

For the reasons outlined within this report, the proposed development in its current form is not considered to be an appropriate response to constraints that affect the site. The financial viability of the proposal is not a matter for consideration in the assessment of the application.

Amended plans and information received 14 March 2013

In accordance with DCP56, the amended plans and information were also notified. In response, submissions from the following were received:

- | | |
|---|--|
| 1. Philip Priest | 3 Lamond Drive, Turrumurra |
| 2. Brian Plain (2 submissions) | 34 Denman Street, Turrumurra |
| 3. A C and LM Sanders | 4 Lamond Drive, Turrumurra |
| 4. Gary Candish (3 submissions) | 32 Denman Street, Turrumurra |
| 5. M S Riley | 20 Denman Street, Turrumurra |
| 6. Eluna YL on behalf of Yongyao
Wang and Yin Zhu | 28 Denman Street, Turrumurra |
| 7. Vaughan Milligan Development
Consulting on behalf of Julie and
Philip Priest | PO Box 49, Newport Beach for 3
Lamond Drive, Turrumurra |
| 8. Min | 1-3 Duff Street, Turrumurra |
| 9. Executive Committee, Owner's
Corporation | 1-3 Duff Street, Turrumurra |
| 10. Molly Meng | Address not provided |
| 11. Andrew Cong | Unit 12, 1-3 Duff Street, Turrumurra |

The submissions raised the following additional issues:

Insufficient information has been submitted to demonstrate that 3 Lamond Drive could be practically developed for the purpose of multi-unit housing (in isolation of

adjoining properties) and the representations made within the DA submission regarding this property are unfounded

The information submitted with the application to demonstrate that the proposed development will not render 3 Lamond Drive an isolated site is considered to be sufficient.

Noise impacts from the proposed inclinators

Were the application to be approved, conditions may be imposed to ensure the noise generated by the operation of the proposed inclinators is appropriately attenuated.

The site is too steep for practical development

While the site is steep, it is zoned for higher density development and it is not considered impractical to achieve a reasonable development of the property for the purpose of a residential flat building.

Insufficient building setbacks

While the proposed development incorporates a degree of non-compliance with the applicable building setback controls, it is not considered that the impacts of these non-compliances are unreasonable. Sufficient area within these setbacks will be provided to retain streetscape character and neighbouring amenity.

CONSULTATION – EXTERNAL TO COUNCIL

New South Wales Office of Water

The proposed development is “Integrated Development” under the provisions of Clause 91 of the Environmental Planning and Assessment Act, 1979 due to the subject site being located within 40 metres of a water course (that exists at the rear of the site). As such, the application was referred to the NSW Office of Water (as the applicable approval body) for consideration on 20 September 2012 and 22 March 2013, as per Clause 91A of the Act.

To date, no comments have been received. In this regard, it is noted that Clause 70 of the Environmental Planning and Assessment Regulation 2000 states that the approval body is to give written notice to the consent authority of its decision concerning the general terms of approval within the following timeframes:

- (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.*

The submissions received during the notification period have been sent to the NSW Office of Water, as required by Clause 69 of the Regulation. However, both of the above

timeframes have now passed and as such, a determination may be made pursuant to this Clause.

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 NSW Roads and Maritime Service of NSW (RMS), as access to the subject site is within 90 metres of the Pacific Highway – a classified road.

The application was referred to the RMS on 20 September 2012. The RMS has provided concurrence and advised that several conditions relating to vehicle and pedestrian safety and parking provisions should be imposed if the application were to be approved.

CONSULTATION - WITHIN COUNCIL

Urban Design

Council’s Urban Design Consultant reviewed the application against the provisions of SEPP65. **Attachment 7** of this report contains the complete comments of the Urban Design Consultant. A summary of the key issues raised by the Urban Design Consultant follows:

Principle 2 – Scale

The proposal seeks a variation to permitted height to allow an additional one-storey under the provisions of steeply sloping sites. However, the development in real terms has a component equating to 7/8 storeys due to the extent of excavation from NGL. This is not addressed in the SEPP 1 application and requires justification as it exceeds the additional height even allowing for steeply sloping sites. While the amenity of units on the top levels is the best enjoyed in the proposed development, it results in units below natural ground level that are not supported. The units specifically affected are A01, B01, B02, B05, C01, C02, C03, C04, C05 and C12.

While dramatic, the quality of the limited ground level communal space does not justify the extensive excavation (of up to approximately 5 metres below NGL) required to achieve it, nor the resultant tall retaining walls with fencing on top (often not shown on architectural drawings). Given that this area will achieve no solar access during the winter months as indicated by additional solar diagrams, the extent of site disturbance required to achieve this part of communal space is not justified.

Building B seeks both a variation to KPSO building height and exceeding the building depth by approximately 10 metres above the maximum recommendations of the Residential Flat Design Code (RFDC) and DCP 55. Dual orientation is achieved in 10 of the 33 units (30.3%) leaving the remaining 23 (69.7 %) as single orientation - 12 oriented to north-west and it is accepted that internal planning achieves an orientation closer to north in 8 of those. The

remaining 2 units are oriented to south-east. This is below the RFDC recommendations to achieve a minimum 60% of cross-ventilated units. A further 12% of units could be argued do not achieve sufficient cross ventilation due to proximity of walls opposite a window that present a barrier to breezes.

A total of 45.7% of units across the proposal achieve cross ventilation. This is well below the RFDC recommended minimum. It is considered this poor result can be attributed to excessive building depth that relies on single orientation unit types. Therefore, the scale is not supported on grounds of excessive height, excessive excavation (site disturbance) and predominance of single orientation unit types.

Principle 5 – Resources, energy and water efficiency

The extent of retaining walls, deep excavation, excessive building footprints combined with site specific topographic and landscape conditions present unacceptable environmental outcomes for the site in the current proposal.

Air-conditioning of units is proposed. There appears to be no provision indicated on drawings for location of A/C units such that they are considered design issue. This needs to be addressed to avoid the situation that often occurs where A/C is an afterthought resulting in units being highly visible on balconies.

Principle 7 – Amenity

Orientation of units: A total of 18 of 83 units (21.6%) of units are oriented to west (or just off west) far exceeding the RFDC that requires no single orientation units be oriented to west and should be oriented to north or east and exceeds DCP 55 that not more than 15% of units be oriented to west. The Amenity of these units is impacted and exacerbated by the type being predominately single-orientation. Additionally, 12 of the 83 units (14.4%) are orientated SE which exceeds the RFDC maximum 10% as permitted. While it is accepted that topography is an issue, the decision to rely upon single orientation unit types is not the result of topography, rather design decisions and building depth so are, therefore, unacceptable.

Units B03, B04, B09, B10, B11, B17, B18, B24, 25, B26, B27 and B31 (14.4%) receive no solar access during winter solstice. All these units are oriented to the south-east and are attributed to excessive building depth leading to single orientation and poor orientation. This exceeds the RFDC recommended maximum for units oriented around south-east to south-west. The requirement to demonstrate site constraints necessitate an excess of 10% of units with adverse orientation cannot be supported given the excessive breach of building depth proposed.

Regarding Building C the predominance of single orientation units oriented to west-west-nor-west is not supported.

The reliance on single orientation units as a unit type at 42 of the total 83 (50.6%) is not supported.

Principle 8 – Safety and security

A Traffic and Parking Assessment Report, provided by Varga Traffic Planning, provides one sentence stating the car park design is to AS2890.1. This is both inadequate and unsatisfactory documentation for a development of this size, proposing a basement configuration that requires residents to descend up to 7 storeys, linked by a tunnel element. Additional supporting information was requested, however, no information has been provided to date. From an urban design perspective, there are an excessive number of levels residents are expected to negotiate even for short trips to the shops that raises issues of safety, convenience and comfort in day-to-day use.

Heritage

Council's Heritage Advisor, commented on 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:

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

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

Demolition

The existing site contains 5 single existing houses. These buildings are of relatively recent construction, dating from the 1980s. None of the houses have been identified as having any heritage values.

Demolition of this group of buildings is considered acceptable on heritage grounds. However, to be consistent with all other approvals for medium density development and to provide records of residential development in Ku-ring-gai before medium density development occurs, it is recommended to undertake photographic archival recording of the buildings before any works commence on the site should this DA be approved. It is considered unlikely that there is any potential for archaeological deposits on the site and the site was vacant prior to the existing 1980s houses.

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 nearby items which are Federation Period and Inter War houses.

1428 Pacific House is a prominent Inter War house (possibly designed by the well known architect John Brogan). The rear of the site is located directly opposite the development site but separated by the roadway and thus there is some potential for heritage impacts on it.

“Milneroyd” is a former estate house of two storeys built in the Federation style. The proposed development is on the opposite side of the Pacific Highway and out of the visual catchment of the proposed development site.

“Cherrywood” at 1359 Pacific Highway is a Federation period estate house on the opposite side of the Pacific Highway and out of the immediate visual catchment of the development site.

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 and separated from the development site by several lots, a proposed medium density development and a medium density development currently under construction.

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

Comment: The proposed development is located on the low side of Lamond Drive. Given the elevation of the heritage item, there is little potential for the proposed development to visually dominate the item which has its main front presentation to the Pacific Highway. The main building is located close to the Pacific Highway and there is a pool and substantial vegetation in its rear garden area. There is a small lightweight building at the rear of the site (possibly a studio) located close to its boundary with Lamond Drive. It is elevated about 2 to 2.5m above the roadway behind a retaining wall.

The development site has reasonable separation from the other nearby heritage items and it should not visually dominate or compete with them in any way.

- 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 item at 1428 Pacific Highway is from the Pacific Highway. This view will be largely unaffected.

There would be views from the item to the west over the proposed development site. Given the fall of the ground line on the development site and existing vegetation it is considered there would be minimal loss of views to the west from

the main house. There would be minor loss of views from the studio at the rear of the heritage item, but those views are not considered to be significant.

- 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 item at 1428 Pacific Highway.*

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 requirements 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 requirement does not apply.*

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

Comment: *The proposed development is a contemporary building and has a different aesthetic character than to nearby heritage items which are Federation and Inter War period buildings. It should be noted that the development site adjoins a completed medium density development in Duff Street and also adjoins a medium density development currently under construction. This development is similar in aesthetic character to those developments.*

It is considered that the proposed development will not significantly dominate the scale of the nearby item at 1428 Pacific Highway.

- 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 a lighter face brick and grey painted and render finishes similar to the adjoining medium density developments and are considered acceptable in this context. It should also be noted that the site is largely out of the visual catchment of the heritage building at 1428 Pacific Highway.

- 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 item at 1428 Pacific Highway has a low masonry fence and no front fences are proposed on this site. There is no front fence proposed but an entrance structure is proposed on the Lamond Drive boundary.*

- 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:*

"The proposed works will have no impact on the immediate setting of No 1359 Pacific Highway, which is located on the opposite side of the Highway and sufficiently removed from the site. The proposed works will have a minimal and acceptable impact on the immediate setting of No 1428 Pacific Highway because the site is located to the rear of the site; separated by Lamond Drive; and located well below the level of the item. The proposal responds to the steep topography of the site, retains established trees and provides for new planting to the front, sides and rear. It is consistent with nearby residential flat buildings and the desired future character of the area.

The proposed works meet the aims and objectives with regard to built heritage of the KPSO, as amended by LEP 194, and the draft Local Centres LEP 2012".

Comments

Due to the fall on the site, and the relatively narrow presentation of the buildings to the street, the large size, scale and bulk of the development would largely be screened from any nearby heritage 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 minimal visual impact or dominance on the item at 1428 Pacific Highway.

Conclusion

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

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 minimal impact due to their physical separation and mitigation to some extent by tree retention and the fall of the development site.

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 within gardens and unmanaged area.

The BGHF community within the development contains a number of weed species within the understorey. The presence of weeds inhibits the germination of native groundcovers, shrubs and canopy trees. At the time of the site inspection, a large area within the lower end of the site was dominated by exotic Morning Glory, a sprawling species which is currently smothering the ground vegetation. This species is easily managed and it is expected should the Morning Glory, & other weed species be managed appropriately, BGHF species would occur within this area.

It is noted within the scientific determination that BGHF is highly fragmented with largest remnants being Sheldon Forest, Clive Evatt Reserve, Dalrymple Hay and Brown Forest Reserves. The BGHF within the site is continuous within the land to the south and west and forms one of the largest remnants of BGHF outside of conserved lands.

The BGHF onsite forms part of one of the largest remnant stands of this vegetation community outside conserved parklands, I consider this vegetation on this site has even greater ecological value than smaller areas of the community. Small remnants of BGHF are more susceptible to edge effects such as weed encroachment, genetic inbreeding and reduced habitat value.

As the BGHF on this site forms part and links to this vegetation community on adjoining properties, this means edge effects are reduced compared to small clumps of vegetation and isolated trees.

As noted in the scientific determination for BGHF, one of the key threatening processes for this community is clearing of vegetation.

This proposal will result in removal of a substantial proportion of BGHF community on the site, further fragmenting the community both within and the surrounding remnant BGHF.

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.

Tree impacts and arborist assessment

The proposed residential flat buildings and associated landscaping proposes the removal of 19 locally occurring trees comprising of 10 live and 5 dead-Eucalyptus saligna (Sydney Blue Gum), 1-Allocasuarina torulosa (Forest Oak), 1- Brachychiton acerifolius (Illawarra Flame Tree) & 2-Pittosporum undulatum (Sweet Pittosporum). These trees form part of the onsite Blue Gum High Forest community.

The arborist report identifies the retention of twenty eight (28) BGHF trees, of these seven (7) occur off site and two (2) (T44 & T61) are jointly owned as they straddle the eastern boundary (See Table 1).

The proposed stormwater pipes are located within the tree protection zone (TPZ) of the following trees: Trees 10 & 48 –Sydney Blue Gum, T10A Rough-barked Apple, T51-Brachychiton acerifolius and T52-Pittosporum undulatum. The arborist assessment has recommended that the stormwater pipe be installed by thrust boring. The plans do not reflect the arborist recommendations to thrust bore.

Further detail is required to demonstrate how the pipe would be installed within the TPZ of these trees using thrust boring without impacting upon trees. Further details are required showing the location of the pits for thrust boring to demonstrate that thrust boring can be achieved.

Tree 10- Sydney Blue Gum is located within close proximity to the proposed inclinor. The inclinor design is a concept only, however it appears from the plans that the inclinor differs from the concept in that it is larger and would impact on the tree. T10 is also affected by a proposed 1m wide grass swale as shown on the stormwater plans.

The arborist fails to make an assessment or provide any recommendations to ensure that T10 is not detrimentally affected by the installation of the stormwater pit, swale and the inclinor.

The following BGHF Trees 70, 71, 72 & 73 within the lower lying area of the site are likely to be affected by a decrease in groundwater movement as a result of the construction of basement car parks.

The hydrological assessment states the following “Absorption trenches, proposed for installation downslope of the proposed buildings and supplied with water from both a groundwater drainage system and the rainwater storage tank, will, together with surface irrigation from the rainwater storage tank, restore and potentially improve the soil moisture and sub-surface flow regime of the landscape zone below the proposed buildings”.

As mentioned above the hydrological regimes within site will be altered as a result of the basement car parks, to mitigate the loss of flows to the southern end of the property which contains Blue Gum High Forest vegetation/trees 70, 71, 72 & 73. The hydrological impact assessment has recommended the following: absorption trenches be installed downslope of the proposed buildings and supply water from both a groundwater drainage system and the rainwater storage tank, together with the surface irrigation from the rainwater storage tank, restore and potentially improve the soil moisture and sub-surface flow regime of the landscape zone below the proposed buildings.

The arborist assessment relies upon stormwater design to ensure that water is transferred to the lower lying areas of the site. However, the design is not considered to be sufficient to mitigate the loss of flows to these trees, as the location of these devices to the west (side) of these BGHF trees. Based upon the topography and RL levels would currently allow drainage across the slope and provide water to these trees.

Further arboricultural assessment is required with regards to the installation of stormwater services and inclinators upon Trees 10, T10A, 48 51 & 52 (Table 1) and the hydrological impacts of the proposal upon Trees 70, 71, 72 & 73 (Table 1) in accordance with the above comments.

Table 1: BGHF canopy trees proposed for retention/removal

Tree No	Species	Community	Onsite/Offsite	Arborist Recommendation	DBH	SULE
8	<i>Eucalyptus paniculata</i> (Grey Ironbark)	BGHF	Offsite	S		
10	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S (F)		
10A	<i>Angophora floribunda</i> (Rough-barked Apple)	BGHF	Onsite	S (F)		
15	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S		
22	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S		
25	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S		
28	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S		
34	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S		
35	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S		
40	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S		
41	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S		
44	<i>Eucalyptus paniculata</i> (Grey Ironbark)	BGHF	On the site boundary	S		
48	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S (F)		
49	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	R	310	3B
51	<i>Brachychiton acerifolius</i> (Illawarra Flame Tree)	BGHF	Onsite	S (F)		
52	<i>Pittosporum undulatum</i> (Australian Daphne)	BGHF	Onsite	S (F)		
60	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	R	1200	2B
61	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	On the site boundary	S		
62	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Offsite	S		

Tree No	Species	Community	Onsite/Offsite	Arborist Recommendation	DBH	SULE
64	<i>Eucalyptus paniculata</i> (Grey Ironbark)	BGHF	Offsite	S		
66	<i>E. pilularis</i> (Blackbutt)	BGHF	Offsite	S		
67	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Offsite	S		
68	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Offsite	S		
69	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Offsite	S		
70	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S (F)		
71	<i>Pittosporum undulatum</i> (Australian Daphne)	BGHF	Onsite	S (F)		
72	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S (F)		
73	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Offsite	S (F)		
74	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	R	560	2B
75	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	R	890	2B
77	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S		
78	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	S		
79	Dead Blue Gum	BGHF	Onsite	R	600	4A
80	Dead Blue Gum	BGHF	Onsite	R	510	4A
81	Dead Blue Gum	BGHF	Onsite	R	700	4A
82	Dead Blue Gum	BGHF	Onsite	R	600	4A
83	Dead Blue Gum	BGHF	Onsite	R	490	4A
84	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	R	600	3A
85	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	R	570	3A
86	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	R	800	4A
89	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	R	550	2B
90	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	R	1050	2B
91	<i>Allocasuarina torulosa</i> (Forest oak)	BGHF	Onsite	R	600	2B
92	<i>E. saligna</i> (Sydney Blue Gum)	BGHF	Onsite	R	850	2B
93	<i>Pittosporum undulatum</i> (Australian Daphne)	BGHF	Onsite	R	200	2B
94	<i>Pittosporum undulatum</i> (Australian Daphne)	BGHF	Onsite	R	140	2B
95	<i>Brachychiton acerifolius</i> (Illawarra Flame Tree)	BGHF	Onsite	R	240	2B
	Key					
	(R) BGHF TREES TO BE REMOVED					
	(S) BGHF TREES TO BE RETAINED					
	(F) FURTHER ARBORICULTURAL ASSESSMENT REQUIRED					

Flora and fauna impact 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:

- i. 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 it is affected, particularly with reference to the local occurrence of Blue Gum High Forest community within the site. The local occurrence of community in accordance with the Scientific determination is not defined as canopy trees only. The impact assessment only considers the removal of canopy trees not the extent of loss of the Blue Gum High Forest community.*
- ii. Section 1 of the scientific determination clearly states that BGHF 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 fails to demonstrate the area (ha) lost of BGHF as a result of the proposal.*
- iii. No field verified vegetation map has been provided to show the extent of the Blue Gum High Forest community within the site, therefore the impact assessment (7-part test) is insufficient with respect to demonstrating the impacts of the proposal upon occurrence of BGHF onsite pre and post development.*
- iv. The impact assessment prepared by Keystone Ecological does not correctly consider the factors of the assessment as set out under section 5a part 2 factors c (i) (ii), d (ii) (iii) & g of the Environmental Planning & Assessment Act 1979. The impact assessment fails to consider the scientific determination for Blue Gum High Forest in undertaking the assessment and does not make an accurate assessment in accordance with the Threatened Species Assessment Guidelines “The assessment of significance” prepared by the Department of Environment and Climate Change NSW (dated August 2007). The impact assessment prepared by Keystone relies upon compensatory planting measures to justify the removal of BGHF canopy trees a component of the onsite BGHF community.*
- v. The Threatened Species Assessment Guidelines state the following “Proposed measures that mitigate, improve or compensate for the action, development or activity should not be considered in determining the degree of the effect on threatened species,*

populations or ecological communities, unless the measure has been used successfully for that species in a similar situation". The applicant's ecologist has proposed offsets onsite in the form of the vegetation management plan which proposes to plant a number of native Blue Gum High Forest species around the building and within two small areas identified as Management Unit 1 & 2. However, without knowing the extent of loss of the BGHF community on site, it is not possible to determine if the area of BGHF proposed to be managed under the VMP is adequate to compensate the loss of critically endangered BGHF.

The impact assessment prepared by Keystone Ecological has concluded that the proposed development is not likely to have a significant impact upon Blue Gum High Forest.

This conclusion is not supported for the following reasons:

- i. The proposal will likely result in the loss of greater than 48% or 19 Blue Gum High Forest canopy trees within the site. This will have an adverse affect on the local occurrence of BGHF in the immediate future placing the community at further risk of extinction.*
- ii. The impact assessment fails to consider the impacts upon BGHF trees/vegetation which are likely to be affected as a result of the stormwater services installation and by the altered hydrological environment (see arboricultural comments above).*
- iii. The proposal will remove habitat which is important to the long-term survival of Blue Gum High Forest within the locality.*
- iv. The proposal will further fragment the onsite and local patch (local occurrence) of Blue Gum High Forest.*
- v. The proposal will further exacerbate "clearing of native vegetation" which is a key threatening process to the survival of Blue Gum High Forest.*

The proposal is likely to result in a significant impact upon the Blue Gum High Forest community and, as such, a Species Impact Statement should be prepared.

Amendments to Vegetation Management Plan (VMP)

A vegetation management plan has been prepared over 0.14ha of the site which contains Blue Gum High Forest.

The following amendments are required to the vegetation management plan (VMP).

- i. No trees have been proposed within Management Unit 1 (MU 1). Trees are to be proposed within this area as only two naturally occurring trees occur within MU 1.*
- ii. The proposed grouping of canopy trees as shown on the Landscape Plans within Management Units 3 & 4 is not supported. Trees are to be scattered such that spatial competition does not arise and ensure canopy trees can grow to full potential.*

Amendments to Landscape Plan

- i. The proposed grouping of monocultures of canopy trees as shown on the Landscape Plans within Management Units 3 & 4 is not supported, trees are to be scattered such that spatial competition does not arise and to ensure canopy trees can reach full growth potential.*
- ii. Trees are to be proposed to be planted within Management Unit 1.*
- iii. No monocultures of eucalypts, groundcovers, shrubs are to be planted within areas containing Blue Gum High Forest.*

Insufficient assessment further information/amendments

- i. An amended impact assessment (7-part test) in accordance with section 5a of the Environmental Planning & Assessment Act 1979 is to be provided that considers the extent of the local occurrence of the onsite Blue Gum High Forest and the associated impacts of the proposal upon the local occurrence of Blue Gum High Forest community.*
- ii. A species impact statement (SIS) is likely to be required in accordance with section 5a of the Environmental Planning & Assessment Act 1979 due to significant impacts upon the Critically Endangered Blue Gum High Forest community as a result of the proposed development.*

Landscaping

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

Site characteristics

The steeply sloping site is characterised by an established landscape setting with mature endemic, native and exotic trees, and shrub plantings within terraced gardens and naturalised areas. There is extensive weed invasion at the rear of the site where there is an ephemeral watercourse.

Tree impacts

Tree removal

No objection is raised to the removal of the following trees; Trees 6, 7, 11, 19, 21, 22, 23, 24, 26, 27, 29, 30, 31, 33, 36, 37, 39, 42, 43, 45, 46, 47, 49, 50, 54, 55, 56, 57, 58, 59, 65, 76, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 93, 94, and 95. The majority of these trees are either exempt species, environmental weed species or have low landscape significance. Their removal will allow for more appropriate endemic plant species consistent with the Blue Gum High Forest plant community to be planted.

Tree 60 Eucalyptus saligna (Sydney Blue Gum) located centrally on site. The tree is in excellent health and condition and the dominant tree in this portion of the site. The tree, given its dimensions and height, is a remnant specimen and considered part of the critically endangered Blue Gum High Forest (BGHF) plant community. The tree is located within the proposed building footprint and proposed for removal.

Tree 74 Eucalyptus saligna (Sydney Blue Gum) is located towards the rear of the site. The tree is co-dominant, outwardly in good health and condition, although suppressed by Tree 75, and is part of the critically endangered BGHF plant community. The tree is located within the proposed building footprint and proposed for removal.

Tree 75 Eucalyptus saligna (Sydney Blue Gum) is located centrally on site. The tree is in good health and condition and part of the critically endangered BGHF plant community. The tree is located within the proposed building footprint and proposed for removal.

Tree 89 Eucalyptus saligna (Sydney Blue Gum) is located centrally on site. The tree is in good health and condition and part of the critically endangered BGHF plant community. The tree is located within the proposed building footprint and proposed for removal.

Tree 90 Eucalyptus saligna (Sydney Blue Gum) is located centrally on site. The tree is in good health and condition but infested with ivy. The tree is part of the critically endangered BGHF plant community. Development encroachment within the TPZ will have an unacceptable impact and its removal is recommended by the arborist.

Tree 91 Allocasuarina torulosa (Forest Oak) is located centrally on site. The tree is in good health and condition and part of the critically endangered BGHF plant community. Development encroachment for inclinator, ramps and step layout for site accessibility conflict with the tree and removal is proposed.

Tree 92 Eucalyptus saligna (Sydney Blue Gum) is located centrally on site. The tree is in good health and condition and part of the critically endangered BGHF plant community. Development encroachment for inclinator, ramps and step layout for site accessibility conflict with the tree and removal is proposed.

Trees 79, 80, 81, 82, 83, 84, 85, 86 have all died and are located on the one site at 5 Lamond Drive. All the trees appear to have gone into quick decline. The arborist has not given any assessment of why or how the trees may have died, although there is some discussion regarding the presence of Phytophthora within the soil, although this is speculation as no soil testing has been undertaken (the extent and presence of

Phytophthora should be investigated as its presence would influence how excavated material is treated and disposed of within the Construction Traffic Management Plan). Given the size and structure of the dead trees, it is evident that they were all Eucalypts likely to be Eucalyptus saligna (Sydney Bluegum) and Eucalyptus pilularis (Blackbutt) and would have been part of the critically endangered Blue Gum High Forest plant community.

Development impacts on retained trees

Tree 10 Eucalyptus saligna (Sydney Blue Gum) is located centrally within the site frontage. The proposed inclinator passes directly adjacent to the western side of the tree. The concept details for the inclinator indicate the passenger car to be wider than the rails on which it travels which creates a spatial conflict with the tree. Therefore, either the tree would need to be removed or the inclinator repositioned (which would impact available deep soil landscape area). The arborist has stated that the proposed drainage line is to be thrust bored which is considered impractical. The proposed drainage pit with a depth of 7m deep will require substantial excavation, which is likely to further impact upon the tree. This has not been assessed by the applicant's arborist and increases the development incursion within the TPZ to a moderate level.

Trees 70 and 72 Eucalyptus saligna (Sydney Blue Gum) are located towards the southern site corner. These trees are located 3.5m from the proposed development and have an excavated basement located up slope. While the intrusion into the tree's identified TPZ is considered minor when assessed against AS4970-2009, the influence of the proposed basement (excavation) up slope of the trees is likely to be significant. The applicant's environmental consultant has provided recommendations to reduce this impact, however the proposed dispersal trench is located downslope and will not be of benefit to these trees.

Street Trees 1- 5 Fraxinus griffithii (Evergreen Ash) located within the Lamond Drive nature strip in front of the site have been shown for removal as per previous recommendations.

Deep soil

By the applicant's calculations the proposed development will result in a deep soil landscape area of 3 013.37sqm or 50.99% of the site area. LEP194 requires a minimum of 50% of site area to be deep soil landscape area as a development standard. Deep soil landscape area is defined as having a minimum dimension of 2.0m and is not occupied by any structure whatsoever, whether below or above the surface of the ground (except for paths up to 1.0m wide).

The assessing landscape officer does not agree with the areas included within the calculable deep soil landscape area. The areas in dispute include:

- the area of passage for the 'car' of the inclinator (>than that area accounted for/>1.0m width excluded)*
- the curved retaining wall to the south of Block B (considered a structure)*

- *the area of the existing right of carriageway benefitting 3 Lamond Dr (proposed landscape works prevents right of carriageway due to surface treatment and slope) as the area can be paved for vehicular access*
- *garden areas <2.0m wide (as per definition) eg between curved retaining wall and Block B*
- *paths >1.0m wide (as per definition)*

Together, these areas approximate to 148.8sqm, exceeding the available 59.07sqm of deep soil landscape area (based on the applicant's calculations). The development therefore does not comply with the deep soil landscape area development standard.

NOTE: The approximate calculation does not include the passage of the inclinor car as there is insufficient information to determine its proposed dimensions.

Landscape plan / tree replenishment

The landscape design proposes groupings of tree monocultures which limits biodiversity. It is required that canopy tree plantings reflect natural growing conditions and not be planted as groupings of the same species. This can be conditioned.

The landscape design proposes a retaining wall within the existing right of carriageway which may inhibit access. It is required that the retaining wall be located outside of the right of carriageway. It is noted the landscape plan is inconsistent with the architectural plans. Amendments to the landscape plan can be conditioned.

The landscape design proposes a fire egress path with steps within the right of carriageway, which may inhibit access. It is required that the steps be located outside the right of carriageway. It is also noted that the proposed surface is loose eg gravel or mulch (although not specifically detailed, the design graphic would indicate this). As this part of the site is steeply sloping a loose surface material is impractical. It is required that the access path be hard paved. This can be conditioned.

The landscape plan and VMP does not propose any canopy trees within the riparian zone (Management Unit 1). There does not appear to be any reasoning for this. Canopy trees naturally occur within riparian zones and stabilise embankments. It can be conditioned for additional trees to be located within the riparian zone (Management Unit 1).

Screen planting adjacent to the south-eastern site boundary is sparse and does not adequately satisfy the controls and objectives of LEP194 and DCP 55. For resident and neighbour amenity it is required that additional screening shrub species be accommodated within the side setback. This can be conditioned.

Stormwater plan

The development works include the relocation of the existing stormwater easement benefitting 3 Lamond Drive adjacent to the north-western and western site boundaries. The design has not taken into consideration existing trees located adjacent to the site boundary and the impacts of the installation of the pipe may have on the ongoing health, viability and stability of these trees. No arboricultural tree impact assessment has been undertaken. It is required that the project arborist provide detailed assessment of the potential impacts to the subject trees and provide recommendations as to how these impacts shall be minimised. It is recommended the easement be relocated.

The reconstruction of the existing drainage pit (Ex.1) to a depth of approximately 7.0m is likely to result in adverse tree impacts to Tree 10 and Tree10a. No arboricultural assessment of likely impact as a result of the excavation has been undertaken. It is recommended the drainage design be reconsidered to reduce tree impact.

The proposed dispersal trench conflicts with the courtyard of Unit C04. It can be conditioned for the dispersal trench to be redesigned to accommodate the private courtyard.

The remainder of the proposed drainage works are acceptable on landscape grounds.

Ground moisture

The impact assessment report by Keystone Ecological discusses how the impacts to soil moisture regimes can be reduced. Within Section 4.3 of the report it is stated that the impact of the interception of ground water and the depletion of recharge for down slope environments will be mitigated by collection and storage of rainfall runoff and its use for irrigation of deep soil areas during dry periods. It is stated that this has been addressed in an accompanying report by the hydraulic engineers. There is no accompanying hydraulic engineers report regarding the recharge of subsoil moisture regimes.

The report also states 'The deep excavation for the basement parking will cause an obstruction to groundwater flow. This flow obstruction causes groundwater head to increase up slope of the flow obstruction and decrease down slope of the flow obstruction. Sub-soil absorption trenches may be installed down slope of the buildings and supplied by water from subsoil drains upslope of the buildings; this will mitigate impacts on sub-surface flows to the drainage line at the bottom of the site.

A supplementary report by Steve McKay (Environmental Consultant) has provided recommendations to address hydrological impacts as a result of the development works. The recommendations made can be conditioned but it is noted that the dispersal trench as shown is not located up slope of some existing retained trees and therefore is not of any benefit to these trees (T70 & T72). As a result, the dispersal trench only benefits two retained trees (T77 Eucalyptus saligna (Sydney Blue Gum) & T78 Eucalyptus saligna (Sydney Blue Gum)) and proposed plantings. It is noted, however that new plantings will adapt to their growing environment and supplementary irrigation may not be warranted.

BASIX

The proposed development is consistent with common and private landscape areas stated within the submitted BASIX certificate 444122M dated 14/03/2013.

Inclinor

Details for the proposed inclinor are conceptual only. As the size of the inclinor cannot be determined the deep soil landscape area also cannot be determined. It is noted that a 1.0m wide area has been excluded for the inclinor, but this only accounts for the inclinors rails and space between and not the area occupied by the inclinors passage which inhibits deep soil landscape area, and therefore is required to be excluded from the calculable area. The conceptual detail indicates the car width to be greater than the rail width. For certainty and clarity it is required, as previously requested, that details be provided for the proposed inclinor.

Concept development plan for 3 Lamond Drive

From a landscape viewpoint, the concept development proposal for 3 Lamond Drive has not considered the natural constraints of the site which includes an existing critically endangered plant community (BGHF) and the steep slope. From a landscape viewpoint, further detail is required to enable assessment of the concept proposal.

Conclusion

The application is unacceptable on landscape grounds due to;

- non-compliance with deep soil landscape area development standard*
- tree impacts due to stormwater easement relocation adjacent to north-western boundary*
- insufficient information regarding impacts to existing trees*
- insufficient information regarding the proposed inclinors*

Engineering

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

Easements

Regarding the existing burdens on the site which are affected by the building footprint, Development Engineers maintain that the written consent of the beneficiaries to release or modify the burdens is required for the application to be supported.

The letter from Storey and Gough states that Council has the power to release vary or modify the easements created under DP260234. I cannot find a reference in the

Registrar General's Directions for the release or variation of an easement without the dominant tenement's approval unless it is being done by order of the Supreme Court. Council's consent is required for the release, variation or modification, but that does not mean that Council has the power to release the easements without the consent of the dominant tenement.

Water management

A copy of the Instrument Q868564 has been submitted which confirms that the easement through 34 Denman Street is in favour of Council and that therefore Council can permit the passage of runoff from the development through this system. The provision of on site detention and other water management measures means that the peak flow in the pipe should not increase significantly.

The Stormwater Management report by Northrop dated 31st August 2012 has not been amended. However, there are two aspects of the report which are now potentially superseded, one being the rainwater retention and re-use recommended by the hydrological consultant (separate to the BASIX requirements) and the other being the statement in the report "As the site is relatively steep, the means of infiltration, bio-swales or buffer strips could not be considered". Obviously this statement will have to be modified if the proposed absorption trenches are endorsed by the geotechnical engineer.

The hydrological impact assessment states "Transfer water captured from these drains, using a gravity feed system...", however the stormwater plans show a pumped feed. This is contrary to the recommendation of the hydrological consultant, and must be resolved.

Recommendation 3 of the hydrological impact assessment, being a series of absorption trenches along the upper edge of Management Unit 4 of the VMP, to be supplied with water from the rainwater tank, has not been shown on the stormwater plan.

The hydrological impact assessment includes toilet flushing as a means of mitigating the increase in stormwater flows from the development site and refers to a 70 cubic metres rainwater tank. The stormwater plans show re-use for toilet flushing and irrigation. However, the BASIX water commitments do not include toilet flushing or indeed any rainwater tank.

Furthermore, the detention and retention tanks are connected and the system is receiving runoff from landscaped and terrace areas, as well as roof water. This is stormwater and is not suitable for re-use inside the building without treatment. Separate rainwater and on site detention tanks are required for this to be acceptable, with the rainwater tank overflowing into the detention tank.

The arborist's report addresses pipe construction in the vicinity of trees (thrust boring is recommended) but does not specifically mention pit construction (see comments below regarding Pit Ex.1) or the swale which is required to collect overland flow.

If the trenches and swales are acceptable to the geotechnical engineer and the arborist, then the Model Urban Stormwater Improvement Conceptualisation (MUSIC) model needs to be run again and the number of Stormfilter cartridges required may be able to be reduced.

Additional detail has been provided showing the relaid Council stormwater pipe in relation to the basement ramps. The ramps are still proposed to be within Council's easement. It is proposed to provide a waterproof lining to the pipe and to backfill over the ramps with cement-stabilised material.

The 1.83 metres wide easement created under DP260234 benefits Lamond Drive. The terms of the easement give Council the right to lay, place and maintain any line of pipes laid within the easement. It is acknowledged that access for maintenance of the pipe is difficult at present. However, it would be made worse as a result of the development as proposed.

The proposed works in Council's drainage easement and on Council's asset is not supported for the following:

- Council is not willing to accept ownership and maintenance of the 7 metres deep Pit Ex. 1*
- Council is not willing to accept ownership and maintenance of the new pipe which would be between 7 metres and 3 metres deep*
- vehicular access to the new pit and pipe for maintenance or repairs would be impossible*
- the existing vehicular access to the pipe provided by the driveway to Lot 6 would no longer be available*
- Council does not support the location of private structures (in this case the basement carpark ramp) under or over Council stormwater assets*
- the paths, walls and steps proposed on the landscape plans would require increased effort to excavate in the event that the pipe had to be exposed*
- special techniques would be required to excavate the pipe over the basement ramp without affecting the structure, which would require Council to incur additional costs in maintaining its infrastructure*
- the proposed backfill over Council's pipe and placement of waterproof lining does not appear to be feasible in the absence of a trench*
- as the asset owner, Council will not give approval to a system which would be more difficult to maintain than the existing system*

- *the reconstruction of Pit Ex. 1 would affect Tree 10, which has not been addressed by the arborist*

The concept sediment and erosion control plan should be amended to reflect the vegetation management plan, including the location of one line of silt fence above the regeneration area, rather than below.

Traffic and parking

The traffic engineer's report has been amended to address the revised number of units. The development requires 86 resident and 21 visitor spaces. The architectural plans show 90 resident and 22 visitor spaces, with 9 resident and 3 visitor spaces suitable for persons with a disability. This is satisfactory. There still appears to be wasted space in the upper levels of the basement, but this may be an inevitable result of the site topography.

Waste management

Clouds on the sections indicate that floor levels have been amended. The sections on Drawing DA302A should be amended as well, to confirm that adequate headroom for the small waste collection vehicle will still be available.

Geotechnical report

An amended geotechnical report has been submitted which contains detailed discussion and recommendations for further work. The report also covers slope stability modelling, as requested, and confirms that this is only likely to be necessary if batters are adopted for the excavation. The excavation plan, Mackenzie Drawing DA425A, shows that battered excavation sides are not proposed.

The report states that groundwater is likely to be encountered during excavation. It is noted that the NSW Office of Water has not responded to Council's earlier integrated referral. If no response is received as a result of the current notification, and if the application were to be supported, then conditions relating to the assessment of dewatering volume and the possible acquisition of a licence would be recommended.

The geotechnical report is satisfactory for DA assessment.

However, the hydrological impact assessment makes recommendations for absorption trenches downslope of the building, and, given the sloping nature of this site, I would like to see the geotechnical engineer endorse this proposal, as it is contrary to the recommendations of the Australian Geomechanics Society for sloping sites.

The application is not supported at this stage.

Building

The development proposal includes numerous emergency fire egress paths within a 6.0m setback of the building. As the egress path is within a 6.0m setback fire protection measures are required to comply with the BCA. To enable further assessment, it is required that further detail and clarification from the applicant be submitted detailing how compliance with the BCA is proposed. The reason this is being requested as part of the development application (rather than prior to the CC) is that depending upon the design resolution, there may be an impact to development standards that need to be assessed as part of the development application process and/or amenity impacts to ground floor units.

STATUTORY PROVISIONS

State Environmental Planning Policy No. 55 – Remediation of land

The provisions of SEPP55 require consideration of the potential for a site to be contaminated. The subject site has a history of residential use and, as such, it is unlikely to contain any contamination and further investigation is not warranted.

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

A BASIX Certificate has been submitted with the application. However, Council's Development Engineer has noted that the commitments made within the Certificate are not adequately detailed on the submitted plans.

State Environmental Planning Policy (Infrastructure) 2007

As mentioned above, Clause 104 of the SEPP requires a concurrence referral to the RMS due to the vicinity of the site to the Pacific Highway. This has been undertaken with the RMS issuing concurrence, subject to the imposition of appropriate conditions, should the application be approved.

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

SEPP65 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 (refer to the comments of Council's Urban Design Consultant in this regard) and Council is required to consider 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.

	Guideline	Consistency with Guideline
PART 02 SITE DESIGN		
Site Configuration		
<i>Deep Soil Zones</i>	A minimum of 25 percent of the open space area of a site should be a deep soil zone; more is desirable. Exceptions may be made in urban areas where sites are built out and there is no capacity for water infiltration. In these instances, stormwater treatment measures must be integrated within the design of the residential flat building.	YES
<i>Open Space</i>	The area of communal open space required should generally be at least between 25 and 30 percent of the site area. Larger sites and brown field sites may have potential for more than 30 percent.	YES
	The minimum recommended area of private open space for each apartment at ground level or similar space on a structure, such as on a podium or car park, is 25m ² .	NO 24.67m ² to Unit C11
<i>Planting on Structures</i>	In terms of soil provision there is no minimum standard that can be applied to all situations as the requirements vary with the size of plants and trees at maturity. The following are recommended as minimum standards for a range of plant sizes: Medium trees (8 metres canopy diameter at maturity) - minimum soil volume 35 cubic metres - minimum soil depth 1 metre - approximate soil area 6 metres x 6 metres or equivalent	YES

<i>Safety</i>	Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	YES – crime report assessment undertaken
<i>Visual Privacy</i>	<p>Refer to Building Separation minimum standards</p> <ul style="list-style-type: none"> - up to four storeys/12 metres - 12 metres between habitable rooms/balconies - 9 metres between habitable/balconies and non-habitable rooms - 6 metres between non-habitable rooms - five to eight storeys/up to 25 metres - 18 metres between habitable rooms/balconies - 13 metres between habitable/balconies and non-habitable rooms - 9 metres between non-habitable rooms 	NO, 12 metres between 4 th storey of proposed Building C and adjacent habitable rooms of the residential flat building at 1-3 Duff Street
<i>Pedestrian Access</i>	Identify the access requirements from the street or car parking area to the apartment entrance.	<p>YES</p> <p>Defined pedestrian entries are proposed from street frontage and car parking areas</p>
	<p>Follow the accessibility standard set out in Australian Standard AS 1428 (parts 1 and 2), as a minimum.</p> <p>Provide barrier free access to at least 20 percent of dwellings in the development.</p>	<p>YES</p> <p>A lift has been provided from the basement to each level of the development.</p>
<i>Vehicle Access</i>	Generally limit the width of driveways to a maximum of six metres.	<p>NO</p> <p>The proposed driveway entrance from Lamond Drive is 6.3 metres wide</p>
	Locate vehicle entries away from main pedestrian entries and on secondary frontages.	<p>YES</p> <p>The entries to the proposed buildings have been acceptably separated from the vehicle entries.</p> <p>The site only has one</p>

		street frontage.
PART 03 BUILDING DESIGN		
Building Configuration		
<i>Apartment layout</i>	Single-aspect apartments should be limited in depth to 8 metres from a window.	NO – Units B26 and B27 have usable floor area (i.e. areas not used for laundries or storage) depths up to 9.4 metres
	The back of a kitchen should be no more than 8 metres from a window.	YES The back walls of all kitchens are within 8 metres from a window
	The width of cross-over or cross-through apartments over 15 metres deep should be 4 metres or greater to avoid deep narrow apartment layouts.	YES
	If Council chooses to standardise apartment sizes, a range of sizes that do not exclude affordable housing should be used. As a guide, the Affordable Housing Service suggest the following minimum apartment sizes, which can contribute to housing affordability: (apartment size is only one factor influencing affordability) - 1 bedroom apartment 50m ² - 2 bedroom apartment 70m ² - 3 bedroom apartment 95m ²	YES The proposed apartments satisfy the minimum dimensional requirements.
<i>Apartment Mix</i>	Include a mixture of unit types for increased housing choice.	YES The proposal includes: 37 x 1 bed, 43 x 2 bed and 3 x 3 bed units
<i>Balconies</i>	Provide primary balconies for all apartments with a minimum depth of 2 metres. Developments which seek to vary from the minimum standards must demonstrate that negative impacts from the context-noise, wind – can be satisfactorily mitigated with design solutions.	YES, refer to DCP55 compliance table for Council's specific requirements
<i>Ceiling Heights</i>	The following recommended minimum dimensions are measured from finished floor level (FFL) to finished	YES All habitable rooms have a

	ceiling level (FCL). <ul style="list-style-type: none"> - in residential flat buildings or other residential floors in mixed use buildings: - in general, 2.7 metres minimum for all habitable rooms on all floors, 2.4 metres is the preferred minimum for all non-habitable rooms, however 2.25m is permitted. 	floor to ceiling height greater than 2.7m.
<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 Combined entrances to the ground floor units of all three residential buildings are provided. Refer consideration below
	Provide ground floor apartments with access to private open space, preferably as a terrace or garden.	Yes All ground floor units have access to private open space
<i>Internal Circulation</i>	In general, where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to eight.	YES Lift provides access to a maximum of 8 units.
<i>Storage</i>	In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: <ul style="list-style-type: none"> - studio apartments 6m³ - one-bedroom apartments 6m³ - two-bedroom apartments 8m³ - three plus bedroom apartments 10m³ 	YES, additional storage areas provided within both units and basement levels
Building Amenity		
<i>Daylight Access</i>	Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter.	NO – 69.9% provided with three hours direct solar access
	Limit the number of single-aspect apartments with a southerly aspect (SW-SE) to a maximum of 10% of the total units proposed.	NO – 14.4% are orientated to the south-east

<i>Natural Ventilation</i>	Building depths, which support natural ventilation typically range from 10 to 18 metres.	NO – Building B has a depth of 26.5 metres and Building C has a depth of 19 metres
	Sixty percent (60%) of residential units should be naturally cross ventilated.	NO – only 45.7% of units achieve cross ventilation
Building Performance		
<i>Waste Management</i>	Supply waste management plans as part of the development application submission as per the NSW Waste Board.	YES
<i>Water Conservation</i>	Rainwater is not to be collected from roofs coated with lead- or bitumen-based paints, or from asbestos-cement roofs. Normal guttering is sufficient for water collections provided that it is kept clear of leaves and debris.	YES

Private open space

The ground floor private open space of Unit C11 within Building C is 24.67m², breaching the minimum 25m² set out within the Code. However, the extent of the non-compliance is minor and the unit is considered to be provided with adequate private recreational area. Therefore, no objection to this non-compliance is raised.

Building separation

The upper storeys of proposed Building C do not incorporate the required 18 metres separation to the adjacent flat building of 1-3 Duff Street. However, the proposed building will be lower than this adjacent site meaning that the upper storeys of the building will be at a level equal to approximately the third level of this neighbouring development.

Adequate room is provided within the side setback of Building C to accommodate landscape plantings and the location of the non-compliance is well set back from the street frontage. Additionally, adequate solar access to this neighbouring site will be retained.

Therefore, with respect to the above, it is considered that the proposed separation between buildings achieves the intended outcome of the RFDC guidelines.

Driveway width

The Code specifies that driveway entrances should be a maximum 6 metres in width. The proposed driveway entrance is 6.3 metres in width. However, when considered in relation to the significant width of the site and noting that ample room will be retained for landscape planting purposes, the minor nature of the proposed non-compliance is not considered to be unreasonable.

Apartment layout

Units B26 and B27 have usable floor area depths (i.e. areas not used for laundries or storage) depths up to 9.4 metres from the closest window, breaching the 8 metres specified by the RFDC. These units are of a single aspect and, given their south-eastern orientation, it is not considered reasonable to allow an excessive unit depth within a unit that has limited solar access. Therefore, this non-compliance is not supported.

Ground floor apartment entrances

The proposal seeks to provide combined entrances for the ground floor units of all three buildings, as opposed to separate entrances. While this is in-consistent with the guideline provided by the Code, it is noted that the difficult terrain of the subject site restricts the ability to utilise alternate options to that proposed. Moreover, given the notable slope of the site away from the street frontage, the provision of individual entrances to the ground floor units of the development would be of minimal benefit in terms of creating a street address (as the entrances would essentially sit below street level). Therefore, this non-compliance is deemed to be acceptable.

Daylight access

As noted by Council's Urban Design Consultant, while the application only provides direct solar access to 69.9% of the proposed units, the proposal essentially meets the requirement that a minimum 70% of the units receive at least 3 hours solar access during the winter solstice. However, 14.4% of the units are orientated to the south-east, breaching the maximum 10% specified by the RFDC. Additionally, 21.6% of the unit are orientated to the west. It is not considered that this will afford a reasonable level of amenity to the future residents of the development and that better amenity could be achieved through an alternate design. Therefore, this non-compliance is not supported.

Natural ventilation

Both Buildings B and C exceed the maximum 18 metres building depth specified by the RFDC. Building B has a depth of 26.5 metres while Building C has a depth of 19 metres. Council's Urban Design Consultant has advised that this non-compliance is particularly problematic for Building C as the proposed building depth essentially seeks to facilitate the side by side placing of units, with half of the units having poor solar orientation. The excessive depths also result in poor natural ventilation with only 45.7% of units assessed as providing cross-ventilation, well below the minimum 60% required. Therefore, these non-compliances are not supported.

Ku-ring-gai Planning Scheme Ordinance (KPSO)

Zoning and permissibility:

The site is zoned Residential 2(d3) by virtue of the effect of the savings provision (Clause 1.8A) contained within KLEP2013.

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

Residential zone objectives:

The proposed development does not satisfy the aims and objectives set out under Clauses 25C and 25D of the KPSO. The proposed development does not currently encourage the protection of the natural environment or incorporate a high level of urban or architectural design. This is evident through the failure to give due consideration to the various constraints (both natural and constructed) that affect the property and the low level of amenity that will be available to the future occupants of the development.

Development standards:

Development standard	Proposed	Complies
Clause 25E(1) - Site area (min): 1200m ²	5908.6m ²	YES
Clause 25I(2) – Deep soil landscaping (min): 50% - 2,954.3m ²	48.48% - 2,864.57m ²	NO
Clause 25I(3) - Street frontage (min): 30m for sites >1800m ²	57.525m	YES
Clause 25I(5) - Number of storeys (max): buildings on sites with an area of 2400m ² or more may have a maximum height of 5 storeys	Building A: 7 Storeys	NO
	Building B: 7 storeys	NO
	Building C: 8 storeys	NO
Clause 25I(6) - Site coverage (max): 35% - 2068.01m ²	2053.95m ² = 34.76%	YES
Clause 25I(7) - Top floor area (max): 60% of level below	Building A = 115%	NO
	Building B = 100%	NO
	Building C = 89%	NO
Clause 25I(8) – Building Height: 4 th storey must have a maximum perimeter ceiling height of 13.4m	Building A = 16.5m	NO
	Building B = 16.2m	NO
	Building C = 17.6m	NO

Clause 25K - Steep slope sites: For a building on a site with a site slope greater than 15% one storey or 3m may exceed the number of storey controls in clause 25I	24% site slope All three buildings exceed the maximum number of storeys permitted The combined floor area of the 6 th floors of the buildings equates to 63.4% of the building footprint	NO
Clause 25J – Car parking: 1 car space per dwelling plus an additional car space for each 3 bedroom dwelling (86) 1 visitor car space for every 4 dwellings (21)	90 22	YES YES
Clause 25L(2) - Zone interface The 3 rd and 4 th storey must have a minimum setback of 9m from any land (other than a road) that is not zoned 2(d3)	Building C set back 8.3 metres to 3 rd and 4 th storeys from adjacent 2(c2) zone	NO
Clause 25L(3) - Zone interface Landscaping required to screen development from any adjoining property must be provided on the site and must not rely on landscaping of the adjoining property	Landscaping for screening purposes is located on the site	YES
Clause 25N(2)(a) - Manageable housing: at least one dwelling comprises manageable housing for each 10 dwellings (or part thereof) comprising the multi-unit housing (9 units required)	8 units nominated on plans as manageable (adaptable) housing	NO
Clause 25N(2)(b) – Manageable housing: wheelchair access is provided to all dwellings comprising the manageable housing.	Wheelchair access to the apartments that are intended to be manageable apartments has been provided.	YES
Clause 25N(3) – Requirement for lifts A lift must be provided in all multi-unit housing of more than 3 habitable storeys in Zone No. 2(d3).	Lift access proposed	YES

Deep soil landscaping

As outlined above, Council's Landscape Development Officer is not in agreement with the deep soil landscaping area calculations provided by the applicant. The inclusion of the areas not considered to be calculable result in the development providing just 48.48% -

2,864.57m² deep soil landscaping area, equating to a shortfall of 89.73m². The consent authority is unable to consider a variation to a development standard without the submission of a SEPP1 objection from the applicant. No such objection has been received.

Number of storeys, top floor area, building height and steep slope sites

All three proposed buildings breach Clause 25I (5) of the KPSO in that they exceed 5 storeys, as detailed in the compliance table above. The KPSO does not define a “storey” and as such, reliance is made upon SEPP 6 – Number of storeys 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 indicate that levels located at the lower floors within each of the buildings:

- are solely used for car parking and/or plant room purposes but extend more than 1.2m above natural ground level, or
- are not solely used for car parking and/or plant purposes (i.e. also contain dwellings)

By virtue of the definitions provided above, the levels of the three respective buildings must be counted as storeys. Therefore, as nominated in the compliance table above, the buildings are technically assessed as containing the following number of storeys:

- Building A: 7 storeys
- Building B: 7 storeys
- Building C: 8 storeys

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 follows:

whether the planning control in question is a development standard

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

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

<i>Site area</i>	<i>Maximum number of storeys</i>
<i>Less than 1,800m²</i>	<i>3</i>
<i>1,800m² or more but less than 2,400m²</i>	<i>4</i>
<i>2,400m² 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:

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)).

Noting this, 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 24%. The site therefore qualifies for consideration under the provisions of clause 25K. Based on a building footprint of 2053.95m², 25% of the building footprint equates to 513.49m². Additionally, the concessions of Clause 25K allow each building to be 6 storeys in height or have a maximum perimeter ceiling height of 16.4 metres. As detailed above, all three buildings are at least 7 storeys in height and therefore, do not comply with this requirement.

The controls are considered to be development standards.

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

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

- c) to encourage the protection and enhancement of the environmental and heritage qualities of Ku-ring-gai,*
- d) to encourage orderly development of land and resources in Ku-ring-gai,*
- e) 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.*

(1) 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,*
- (e) 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,

- (g) to encourage water sensitive urban design,*
- (h) to encourage the protection and enhancement of open watercourses,*
- (i) 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, town 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).

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 variation to the building height development standards is a result of a technical interpretation of Clause 25I (9) counting the basement car parking levels, that, due to the slope of the site, are at the same level as residential dwellings:

It is noted that the development proposal complies with the height control measured from natural ground. In this case, the technical variation is acceptable in the circumstances of this case and compliance with the development standards are considered unreasonable and unnecessary based on the following:

- *The development has been designed with the basement levels below ground with the building stepping down to meet the slope of the site presenting a 4-5 storey building consistent with the height controls under the KPSO.*
- *The proposal includes localised portions of the building being 6 storeys above ground level. The 6 storey portions of the buildings are 4.8% of the building footprint and complies with Clause 25K of the KPSO.*
- *The basement levels below ground do not contribute to building height, bulk or scale and are required to meet the car parking requirements contained in the KPSO. The basement levels of the building present no change to the visual scale and form of the buildings.*
- *The development proposal complies with the density controls, notably controls pertaining to deep soil landscape area, site coverage and floor space ratio. The proposed FSR is well below the permitted 1.3:1*

- *The development proposal presents a four (4) storey built form to Lamond Drive and is compatible with the development at 1-3 Duff Street, the building under construction at 1440 Pacific Highway and 1 Lamond Drive, and the controls planned for the site*
- *The majority of the building facades will be screened by the substantial number of trees surrounding the built form to ensure that the built form is subservient to the landscape setting*
- *The technical interpretation of the height control counts the basement levels below ground and clearly these levels will 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 development proposal presents a 4-5 storey building form with a recessed upper level consistent with the height controls under the KPSO*

The applicant's SEPP 1 objection is included as **Attachment 6** of this report.

In terms of building bulk and scale, the arguments presented by the applicant have merit. In this respect, it is accepted that the proposal has been designed with due regard to the intended design outcomes of the controls. Notwithstanding the lower levels of the buildings that are to be included as storeys, those levels of the building that will be visible (i.e. above natural ground level) are consistent with the prescribed number of storeys of the controls and the top floors of the building have been set back in a manner that is visually consistent with the 60% maximum of Clause 25I (7) of the KPSO and the concessions afforded by Clause 25K. Indeed, setting aside the technical need to include the lower levels of the building, it is noted that the visual fifth storeys of the proposal (as they present to the streetscape and neighbouring properties) are as follows:

- Building A: 56.5% of the level below
- Building B: 59.4% of the level below
- Building C: 59.6% of the level below

Additionally, the sixth storeys of the building equate to just 4.8% of the building footprint.

However, as has been raised by Council's Urban Design Consultant, the units of the lower levels of the proposed buildings will have poor amenity, particularly as they are to be largely constructed below natural ground level. In this regard, it is not considered reasonable to allow a departure from the number of storeys development standard to facilitate the construction of units that offer a low level of residential amenity.

While it is accepted that the proposed non-compliances are predominantly attributable to the technical interpretations of the controls, these non-compliances are not without adverse impact. These impacts could be addressed through an alternate design. In this regard, the proposal is not considered to satisfy Objective 2(c) of Clause 25C – Aims and objectives of Part 3A of the KPSO that seeks 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.

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. Essentially, these controls seek to ensure the residential flat developments are of a high quality design that will not detract from the character of the surroundings or the amenity of neighboring properties and the future occupants of the buildings.

Zone interface

Clause 25L (2) of the KPSO requires that the third and fourth storey of Building C must be set back a minimum 9 metres from the boundary shared with No. 5 Duff Street. This site is zoned Residential 2(c2). As floors sharing units and car parking / plant areas are to be considered storeys (explained in further detail above), the third floor of this building is that to be constructed to RL166.00. This floor is set back 8.3 metres from the boundary shared with No. 5 Duff Street and does not comply with the development standard. The consent authority is unable to consider a variation to a development standard without the submission of a SEPP1 objection from the applicant. No such objection has been received.

Manageable housing

The amended plans nominate 8 manageable housing units. Clause 25N (2) (a) of the KPSO prescribes that a minimum 9 manageable housing units are to be provided within the development. While it is considered that the provision of an additional manageable housing unit would not be difficult and require only minimal amendments to the proposal, the consent authority is unable to consider a variation to a development standard without the submission of a SEPP1 objection from the applicant. No such objection has been received.

Clause 38B – Services

Clause 38B states that consent must not be issued to the carrying out of development on land unless access to a water supply, drainage and a sewerage system will be available.

The site is connected to the sewer system and reticulated water is provided.

Clause 61D and 61E – Development of and within the vicinity of heritage items

As noted, the proposal is within the proximity of several heritage items. The application has been considered by Council's Heritage Advisor who raises no concerns regarding the proposed development and its impact upon these heritage items. The proposal is therefore considered to be satisfactory in this respect.

POLICY PROVISIONS

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

COMPLIANCE TABLE		
Development control	Proposed	Complies
Part 4.1 Landscape design:		
Consolidated Deep soil landscaping (min) 50% or 2,954.3m²	48.48% - 2,864.57m ²	NO
150m ² per 1000m ² of site area = 900m ²	>2000m ²	YES
No. of tall trees required (min): 20 trees	>20 trees to be provided/retained	YES
Part 4.2 Density:		
Building footprint (max): 35% of total site area	2053.95m ² = 34.76%	YES
Floor space ratio (max): 1.3:1 (7681.18m ²)	1.19:1	YES
Part 4.3 Setbacks:		
Street boundary setback (min): 13-15 metres Lamond Drive	13-15 metres to both Building A and Building C	YES
Side and rear boundary setback (min): 6.0 metres Maximum 40% of building within setback zone	6.0 metres North-west 6.0 metres to South-east 9.0 metres South (rear)	YES
Setback of ground floor courtyards to street boundary (min) 11.0 metres	10.5 metres to courtyard of Building A	NO

% of total area of front setback occupied by private courtyards (max): 15%	13.0%	YES
Part 4.4 Built form and articulation:		
Façade articulation: Wall plane depth >600mm Wall plane area <81m ²	<600mm articulation used for 117m ² unarticulated wall plane on street facing façade of Building C	NO
Built form: Building width < 36 metres	25 metres for Building A and 22 metres for Building C	YES
Balcony projection < 1.2 metres	<1.5 metres projection for balconies located on street facing façade on Building A and Building C	NO
Part 4.5 Residential amenity		
Solar access: >70% of units receive 3+ hours direct sunlight in winter solstice	70%	YES
>50% of the principle common open space of the development receives 3+ hours direct sunlight in the winter solstice	3 hours	YES
<15% of the total units are single aspect with a western orientation	21.6%	NO
Visual privacy: Separation b/w windows and balconies of a building and any neighbouring building on site or adjoining site: Storeys 1 to 4		
12 metres b/w habitable rooms 9 metres b/w habitable and non habitable 6m b/w two non habitable 5 th storey	12 metres (min)	YES
18 metres b/w habitable 13 metres b/w habitable and non habitable 9 metres b/w two non habitable	12 metres between 4 th storey of proposed Building C and adjacent residential flat building at 1-3 Duff Street	NO
Internal amenity:		

Habitable rooms have a minimum floor to ceiling height of 2.7 metres	2.7 metres	YES
Non-habitable rooms have a minimum floor to ceiling height of 2.4m	2.7 metres (min)	YES
1-2 bedroom units have a minimum plan dimension of 3m in all bedroom	3.0m x 3.0m (min)	YES
3+ bedroom units have a minimum plan dimension of 3m in at least two bedrooms	3.0m x 3.0m (min)	YES
Single corridors: - serve a maximum of 8 units 1.8m wide at lift lobbies	Max 8 units with 1.8 metres wide clearance at lobbies	YES
Outdoor living: Ground floor apartments have a terrace or private courtyard greater than 25m ² in area	24.67m ² for courtyard of Unit C11	NO
Balcony sizes: - 10m ² – 1 bedroom unit - 12m ² – 2 bedroom unit - 15m ² – 3 bedroom unit	>10m ² >12m ² >15m ²	YES
NB. At least one space >10m ² primary outdoor space has a minimum dimension of 2.4m	2.4 metres	YES
Common Open space (30%) Of the site area 2763.42m ²	More than 30% of the site area is common open space	YES
Private open space adjoining common open space not to be enclosed with high solid fences	Private open space of ground floor units enclosed with high retaining walls	NO
Part 4.7 Social dimensions:		
Visitable units (min): 70%	71% identified as visitable units	YES
Housing mix: Mix of sizes and types	37 x 1 bedroom dwellings 43 x 2 bedroom dwellings 3 x 3 bedroom dwellings	YES
Part 5 Parking and vehicular access:		
Car parking (min): 86 resident spaces 21 visitor spaces 107 Total spaces	90 Resident space 22 Visitor spaces 112 Total Spaces	YES

Deep soil landscaping area

As identified in the assessment of the application against the KPSO, the development does not provide sufficient deep soil landscaping area. No compelling reason has been provided as to why compliance with this requirement cannot be achieved and therefore, this departure is not supported.

Setback of ground floor courtyards to street boundary

The private open space of Unit A01 in Building A is set back 10.5 metres from the site's street frontage where the DCP control requires an 11 metres setback. Given that the site slopes away from the frontage and the courtyard will be sited lower than street level, the visual impacts of the structure on the streetscape character are not considered to be unreasonable. Moreover, the front setback of the site retains ample area for tree and landscape plantings and the non-compliance will not give rise to undue impacts on neighbouring residential amenity. Therefore, this non-compliance is deemed to be unacceptable.

Wall plane depth and balcony projection

Building C presents an unarticulated street facing wall plane of 117m², breaching the maximum 81m² set out by the DCP control. Additionally, Building C contains two balconies that protrude 1.5 metres beyond the external face of the street fronting elevation, breaching the maximum 1.2 metres specified by the DCP control. However, the non-compliances do not result in any undue visual impacts and will not adversely impact on neighbouring amenity. Moreover, the façade of this building incorporates good architectural articulation through the use of varied setbacks and changes in building materials. Therefore, no objection to these non-compliances is raised.

Solar access

Further to the solar access assessment of the application against the RFDC, the proposed development provides 21.6% of units with a western orientation, exceeding the maximum 15% set out under the DCP control. This non-compliance is attributable to the use of excessive building depths and will result in poor amenity for the future residents of the development. Therefore, this non-compliance is not supported.

Building separation

This issue has been addressed in the assessment of the proposal against the RFDC. The proposed building separations achieve the intended outcomes (objectives) of the controls are deemed to be acceptable.

Outdoor living

The ground floor private open space of Unit C11 within Building C is 24.67m², breaching the minimum 25m² set out under the DCP control. However, the extent of the non-

compliance is not excessive and the unit is considered to be provided with adequate private recreational area. Therefore, no objection to this non-compliance is raised.

Private open space

As identified by Council's Urban Design Consultant, the proposal provides several units below natural ground level. As a result, the private open space of these units will be enclosed by high retaining walls that will adversely impact on occupant amenity. Therefore, this non-compliance is not supported.

Clause 6 – Consideration of isolated sites

Clause 6 of the DCP provides a series of controls relating to developments proposing site amalgamations that will leave isolated, undersized sites. The Clause provides the following controls:

C-1 Consolidation or amalgamation of sites are to avoid single detached dwellings on lots in a 2(d3) zone smaller than 1200m² or with street frontages less than 23m being left underdeveloped as a result of any development proposal.

C-2 Where a development proposal results in an adjoining single allotment or allotments in a 2(d3) zone with an area of less than 1200m² or a street frontage of less than 23m, the applicant is to demonstrate that the adjoining allotment(s) can be developed in accordance with the provisions of LEP 194 and this DCP, including but not limited to the standards and controls relating to:

- i. deep soil landscaping*
- ii. site coverage*
- iii. building setback*
- iv. solar access, and*
- v. visual privacy*

submitted material should include details and diagrams that demonstrate that such development is economically viable and that it will not detract from the character of the neighbourhood and can contribute positively to the streetscape.

The proposed development has the potential to 'isolate' the adjoining property to the north-west, 3 Lamond Drive. This property was recently rezoned from 2(d3) under the KPSO to 'R4 – High Density Residential' by Ku-ring-gai Local Environmental Plan (Local Centres) 2012 – KLEP (Local Centres) 2012. This property has an area of 995m² and a street frontage of 9.2 metres, which is less than the minimum allotment size and frontage required by the KPSO for residential flat development. Opportunity to amalgamate this site with neighbouring properties for the purpose of residential flat development is limited for the following reasons:

- i. A residential flat building has already been erected on the adjoining property to the north (1440-1444 Pacific Highway).

- ii. While consent for the development of 1444B (to the west of the site) for residential flat purposes was refused by the Joint Regional Planning Panel on 6 December 2012, this determination is the subject of an appeal to the NSW Land and Environment Court. The development currently being considered by the Court (DA0605/11) includes 1444B, 1446A, 1448, 1450, 1452 and 1454 Pacific Highway within its site area but does not seek to include 3 Lamond Drive.
- iii. The site to the rear of 3 Lamond Drive, being 20 Denman Street, has recently been rezoned 'E4 – Environmental Living'. This zone does not permit residential flat development.

In response to Council's isolation controls, the applicant has prepared a scheme demonstrating how 3 Lamond Drive could nevertheless be developed in accordance with the terms of the KPSO and DCP55. In this regard, it should be noted that any future development application lodged for the development of this site will be considered against the provisions of the KLEP (Local Centres) 2012 and its associated DCP which comes into effect on 7 June 2013. Nonetheless, it is prudent to apply the isolated site terms of DCP55 to 3 Lamond Drive, particularly as KLEP (Local Centres) 2012 prescribes that this site must have a minimum area of 1,200m² and a frontage of 24 metres if it is to be developed for the purpose of multi dwelling housing or as residential flat building.

The scheme (shown in **Attachment 9**) provides for a basement car park with three storeys of residential development above, resulting in a yield of 7 units. In accordance with Control C-2 of Clause 6 in DCP55, it is necessary for the applicant to demonstrate that the isolated site can be developed in accordance with the provisions of the KPSO and DCP55. The submitted scheme demonstrates that:

- i. Based on a land area of 995m², medium density development on 3 Lamond Drive would require 40% deep soil or 398m². The submitted scheme provides for 53% deep soil area or 527.95m², complying with the KPSO and DCP55.
- ii. The building footprint is shown as 29.22%, which is below the maximum of 35%.
- iii. Compliant building setbacks of more than 15 metres to the street frontage, more than 3 metres to the side boundaries and 6 metres to the rear boundary have been provided.
- iv. The proposed units are orientated towards the street frontage or the rear of the property and could be designed to maintain adequate visual privacy to neighbours through appropriate window positioning.
- v. All of the units are orientated in a manner that provides compliant solar access and the development would retain adequate solar access to neighbouring sites.
- vi. Sufficient private open space would be available.
- vii. The scheme provides a FSR of 0.7:1 which complies with DCP55 and the prescribed 0.85:1 FSR of KLEP (Local Centres) 2012
- viii. The scheme complies with the maximum height of 3 storeys set out under the KPSO. While the submitted plans do not confirm the maximum height of the

scheme, it would appear that a compliant height of 10.3 metres under DCP55 or 11.5 metres under KLEP (Local Centres) 2012 could be achieved.

- ix. The units of the scheme all provide opportunity for cross ventilation and are of a practical size in line with the guidance provided by SEPP65.
- x. Council's Development Engineer is satisfied that the proposal could be designed to provide sufficient parking spaces and manoeuvrability within the basement level.

While Council's Landscape Assessment Officer has noted that the consideration given to the natural constraints of the site by the scheme is basic, the Officer has advised the potential issues associated with these constraints may be resolved through the submission of additional information. However, the extent of information needed to confirm the impacts of the scheme on these constraints (such as the mapping of root systems) is considered to be beyond the level of detail needed for the assessment of an isolated site. Additionally, within the representations made to Council on behalf of the owners of 3 Lamond Drive, it is argued that the submitted scheme has not taken into account the constraints presented by the drainage easements that affect 3 Lamond Drive or the full impacts on existing and proposed neighbouring developments, particularly in terms of solar access.

In terms of the easements that affect this property, it is not considered that the process required to vary the existing terms extends so far as to render the property undevelopable or that this process would be of such an expense that it would result in a substantially different valuation to that given to the property. Further, it is considered that the submitted scheme has been sufficiently designed with consideration of the constraints presented by neighbouring developments. In this regard, while a large scale development is currently under construction to the north-west, adequate solar access will be available from the north and north-east to allow for a compliant development to be undertaken at 3 Lamond Drive.

While the applicant has demonstrated that 3 Lamond Drive could be developed as an isolated site, consideration of site isolation extends beyond the provision of compliant schematic diagrams. Before such a situation could be supported by the consent authority, the circumstance in which the potentially isolated allotment has come about needs to be explored.

The NSW Land and Environment Court has dealt with numerous developments involving a potentially isolated allotment. being created and as a consequence, has developed three planning principles that may be used to help determine the acceptability or otherwise of the potentially isolated allotment. These planning principles are not statutory considerations but are useful planning guidelines that can be applied to determine the adequacy of a proposal against a tested and accepted case.

The first and most relevant of the planning principles of the Land & Environment Court was established in *Melissa Grech V Auburn Council [2004] NSWLEC 40*.

In that matter, the Court established 3 principles that should apply to any assessment involving a potentially isolated allotment as follows:

- 1.....Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.*
- 2.Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.*
- 3.Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation and whether offers are deemed reasonable or unreasonable, and relevant planning requirements and the provisions of S79C of the Environmental Planning and Assessment Act 1979.....*

In the case of the subject application:

Principle 1:

The applicant has provided representations that several efforts to include 3 Lamond Drive with the development of No's 5, 7, 9, 11 and 15 Lamond Drive have been made in the years prior to the lodgement of the subject application. However, the only specific details of the efforts that have been provided by the applicant is a Statutory Declaration made by a Real Estate Agent that phone contact with the owner of 3 Lamond Drive was attempted on several occasions during a period between 29 August 2012 and 5 September 2012. The attempts were indicated to be unsuccessful and therefore, no agreement was reached. The Real Estate Agent also provided representations that during the period negotiations were being made with the owners of No's 5, 7, 9, 11 and 15 Lamond Drive, the owner of 3 Lamond Drive advised that he had been in negotiations with another builder to purchase his property. In this regard, while negotiations do appear to have commenced / been attempted before the lodgement of the subject DA (11 September 2012), it is not considered that sufficient evidence has been submitted to confirm negotiations with the property owner commenced at an early stage.

Principle 2:

An offer was made to the owner of 3 Lamond Drive for the purchase of the property on 9 October 2012. The offer was based on a valuation report undertaken by a property valuer appointed by the applicant. The offer was declined by the owner of 3 Lamond Drive. The representations made on behalf of the owner of 3 Lamond Drive argue that the offer was unrealistic and that a valuation undertaken on his own valuer suggests a notably higher valuation. It was indicated that this valuation was provided to the Real Estate Agent acting for the applicant but this report has not been provided to Council. In this regard, the valuation provided by the applicant as a reasonable offer could be accepted given that no alternative reports have been submitted.

Principle 3:

With respect to the above, given that the valuation provided by the applicant is considered to be reasonable and that attempts have been made to purchase the property (albeit after the lodgement of the DA), a reasonable level of weight can be given to these negotiations with regard to the assessment of the acceptability of potentially rendering 3 Lamond Drive as an isolated allotment.

Further to the above, nothing within the planning principle or Council's planning controls demands that an agreement as to acquire a potentially isolated allotment be reached. Importantly, such a position would confer a distinct commercial advantage to the owners of 3 Lamond Drive or for that matter, any other land owner that has land which allows for a higher density of development, subject to amalgamation.

The second of the Land & Environment Court cases that established a planning principle concerning isolated allotments was *Conerstone Property Group V Warringah Council 2004 NSWLEC 189*. That case considered the instance of a potentially isolated allotment and expanded on the principle established in the Grech case. Importantly, that principle established considerations where site isolation would result as a consequence of development and that no planning controls or mechanisms for dealing with potentially isolated sites existed within the relevant consent authority's planning controls. Both the KPSO and DCP 55 include controls for dealing with potentially isolated allotments as well as undersized allotments for multi-unit housing. In this respect, it is considered that the terms of that principle are not useful in the assessment of this matter.

The third Land & Environment Court case which dealt with the issue of an isolated allotment was *Karavellas V Sutherland Shire Council 2004 NSWLEC 251*. As is the case with the second planning principle, the circumstances of that case were different to that proposed in this instance, as the subject Council's applicable planning controls compelled amalgamation, through an amalgamation strategy / plan. Such a strategy does not exist in this instance, other than minimum lot and frontage size for medium density development.

It is acknowledged that in that case, the Court considered the matter as to what extent, if any the carrying of the development on the development site would compromise the ability of the potentially isolated allotment to be developed in a manner consistent with the

otherwise prevailing development controls and standards. This has been considered and demonstrated within the submitted scheme for 3 Lamond Drive.

It should also be noted that, while the representations made on behalf of the owners of 3 Lamond Drive argue that the consent authority should require the amalgamation of 3 Lamond Drive within the subject development site (i.e. refuse the application if this is not done), the refusal of the application on this basis would confer a distinct advantage to a particular party. The consent authority cannot be seen to be favouring any particular party in commercial terms. Additionally, negotiations between the property owners and developers are commercial, civil matters that the consent authority is not concerned with, nor can it influence the outcome thereof. Rather, with regard to the planning principle, the consent authority has to be satisfied that they occurred (which they did) and a reasonable offer was made. As to the reasons concerning the failure of the deal to be executed, these are not matters for assessment and the consent authority cannot compel the deal to be executed.

Furthermore, should the appeal of DA0605/11 to the NSW Land and Environment Court be unsuccessful, 3 Lamond Drive would not be rendered an isolated site should the subject DA be approved as 3 Lamond Drive could be amalgamated with the adjoining property to the west.

Therefore, in the circumstance of the case, it would be unreasonable to refuse the proposed development on the basis that it would isolate 3 Lamond Drive as it has been demonstrated that reasonable development of that site can occur within the controls of the KPSO and DCP 55.

Development Control Plan No. 31 Access

The aim of DCP 31 is to ensure access for all to public buildings, community facilities and new developments, excluding dwelling houses and dual occupancies but including all buildings and facilities owned or leased by Council and to ensure that people with a disability have equal access to employment opportunities by way of affording access to facilities, services and opportunities to meet their specific needs.

Matters for assessment under this DCP have been taken into account in the assessment of this application against DCP55 and the proposal is satisfactory in this regard.

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

The key objectives of this DCP are to encourage building design and construction techniques which will minimise waste generation, implement the principles of the waste hierarchy of avoiding, reusing and recycling building and construction materials, and commercial waste, minimise the environmental impacts of waste, promote the principles of ecologically sustainable development, meet Council's responsibilities in relation to the Northern Sydney Regional Waste Plan and assist in achieving the Federal and State Government's waste minimisation targets.

A waste management plan demonstrating compliance with the requirements of the DCP has been submitted and is acceptable.

Development Control Plan No. 43 - Car Parking

Matters for assessment under DCP43 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

The proposed development has been assessed against DCP47. As outlined in the comments of Council's Development Engineer, several issues relating to storm water management have not been adequately addressed. As such, the application does not satisfy the requirements of this DCP.

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 'Residential 2 (d3)'. The site is therefore suitable for an appropriate residential flat development.

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 effects on the surrounding area and the environment are minimised. The proposal has been assessed against the relevant environmental planning instruments and policy provisions and is unsatisfactory in its current form.

CONCLUSION

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

The proposed development does not currently encourage the protection of the natural environment or incorporate a high level of urban or architectural design. This is evident

through the failure to give due consideration to the various constraints (both natural and constructed) that affect the property and the poor level of amenity that will be available to the future occupants of the development.

RECOMMENDATION

THAT the Sydney West Joint Regional Planning Panel, as the consent authority, refuse development consent to Development Application No. 0378/12 for the demolition of existing structures and construction of two residential flat buildings containing 83 units, basement parking and landscaping on land at 5-15 Lamond Drive, Turrumurra for the following reasons:

1. Tree and vegetation impacts

Insufficient information has been submitted to allow for a comprehensive assessment of the impacts of the development upon several trees to be retained belonging to the Blue Gum High (BGHF) community. This community is listed as a Critically Endangered Ecological Community (CEEC) under the *Threatened Species Conservation Act 1995*. Additionally, the known proposed impacts upon the BGHF community are not supported.

Particulars

- a) The proposed stormwater pipes are located within the tree protection zone (TPZ) of the following trees: Trees 10 & 48 –Sydney Blue Gum, T10A Rough-barked Apple, T51-Brachychiton acerifolius and T52-Pittosporum undulatum. The arborist assessment has recommended that the stormwater pipe be installed by thrust boring. The plans do not reflect the arborist recommendations to thrust bore. Further detail is required to demonstrate how the pipe would be installed within the TPZ of these trees using thrust boring without impacting upon trees. Further details required showing the location of the pits for thrust boring to demonstrate that thrust boring can be achieved.
- b) Tree 10 Sydney Blue Gum is located within close proximity to the proposed inclinator. The inclinator design is a concept only, however it appears from the plans that inclinator differs from the concept in that it is larger and would impact upon the tree. T10 is also affected by a proposed 1m wide grass swale as shown on the stormwater plans. The arborist fails to make an assessment or provide any recommendations to ensure that T10 is not detrimentally affected by the installation of the stormwater pit, swale and the inclinator.
- c) Trees 70, 71, 72 & 73 within the lower lying area of the site are likely to be unduly affected by a decrease in groundwater movement as a result of the construction of basement car parks. The arborist assessment relies upon stormwater design to ensure that water is transferred to the lower lying areas of

the site. However, the design is not considered to be sufficient to mitigate the loss of flows to these trees.

- d) The proposal will result in the likely loss of greater than 48% or 19 BGHF canopy trees within the site. This will have an adverse affect on the local occurrence of BGHF in the immediate future placing the community at further risk of extinction.
- e) The proposal will remove habitat which is important to the long-term survival of BGHF within the locality.
- f) The proposal will further fragment the on-site and local patch (local occurrence) of BGHF.
- g) The proposal will further exacerbate “clearing of native vegetation” which is a Key Threatening process to the survival of BGHF.
- h) The development works include the relocation of the existing stormwater easement benefitting 3 Lamond Drive adjacent to the north-western and western site boundaries. The design has not taken into consideration existing trees located adjacent to the site boundary and the impacts of the installation of the pipe may have to the ongoing health, viability and stability of these trees. No arboricultural tree impact assessment has been undertaken.

2.Unsatisfactory assessment of impacts upon the Blue Gum High Forest Community

The application has not undertaken a thorough assessment of the impacts of the proposal upon all aspects of the BGHF community identified as existing on the site.

Particulars

- a) The impact assessment fails to demonstrate the “extent” of the physical area (ha) of BGHF and the compositional components of the habitat and the degree to which it is affected. The local occurrence of community in accordance with the Scientific determination is not defined as canopy trees only. The impact assessment only considers the removal of canopy trees not the extent of loss of the Blue Gum High Forest community.
- b) No field verified vegetation map has been provided which shows the extent of the Blue Gum High Forest community within the site, therefore the impact assessment (7-part test) is insufficient with respect to demonstrating the impacts of the proposal upon occurrence of BGHF on-site pre and post development.

- c) The impact assessment, prepared by Keystone Ecological, does not correctly consider the factors of the assessment as set out under section 5a part 2 factors c (i) (ii), d (ii) (iii) & g of the Environmental Planning & Assessment Act 1979. The impact assessment fails to consider the scientific determination for BGHF in undertaking the assessment and does not make an accurate assessment in accordance with the Threatened species assessment guidelines "The assessment of significance" prepared by the Department of Environment and Climate Change NSW (dated August 2007).
- d) The impact assessment, prepared by Keystone Ecological, relies upon compensatory planting measures to justify the removal of BGHF canopy trees a component of the onsite BGHF community. The threatened species assessment guidelines states the following "*Proposed measures that mitigate, improve or compensate for the action, development or activity should not be considered in determining the degree of the effect on threatened species, populations or ecological communities, unless the measure has been used successfully for that species in a similar situation*".
- e) The applicant's ecologist has proposed offsets onsite in the form of the vegetation management plan which proposes to plant a number of native Blue Gum High Forest species around the proposed buildings and within two small areas identified as Management Unit 1 & 2. However, without knowing the extent of loss of the BGHF community on site, it is not possible to determine if the area of BGHF proposed to be managed under the Vegetation Management Plan is adequate to compensate the loss of critically endangered BGHF.
- f) A species impact statement (SIS) prepared in accordance with Section 5a of the Environmental Planning & Assessment Act 1979 may be necessary due to significant impacts upon the critically endangered BGHF community as a result of the proposed development.

3. Insufficient Vegetation Management Plan

The submitted Vegetation Management Plan is insufficient and requires amendment.

Particulars

- a) No trees have been proposed within Management Unit 1 (MU 1). Trees are to be proposed within this area as only two naturally occurring trees occur within MU 1.
- b) The proposed grouping of canopy trees as shown on the Landscape Plans within Management Units 3 & 4 is not supported, trees are to be scattered such

that spatial competition does not arise and ensure canopy trees can grow to full potential.

4.Excessive building depth, excavation and consequential impacts to residential amenity

The design of the proposed development does not provide sufficient amenity to the future occupants of the proposed units. Additionally, the areas of ground level communal open space will offer poor amenity.

Particulars

- a) The 26.5 metres building depth for Building B and a 19 metres building depth for Building C exceed the maximum 18 metres wide building depth set out under Part 3 of the Residential Flat Design Code (RFDC) of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.
- b) The excessive building depths result in 18 (21.6%) of units having an orientation to the west and 12 (14.4%) of units having an orientation to the south-east. These exceed the maximums permissible by both the RFDC and Development Control Plan No. 55 Ku-ring-gai Multi-unit Housing (DCP55).
- c) The excessive building depths result in only 45.7% of units achieving adequate cross ventilation. This falls short of the minimum 60% specified in the RFDC and DCP55.
- d) Ground level units A01, B01, B02, B05, C01, C02, C03, C04, C05 and C12 are to be constructed below natural ground level and will result in a low level of amenity, particularly as the associated courtyards will be enclosed with high retaining walls.
- e) The proposed communal area located between the buildings within the centre of the site will have poor solar access during the winter months due to the adjacent high retaining walls.

5.Unsatisfactory Impacts on easements

The proposed development will impact upon several registered easements of the subject site.

Particulars

- a) The proposed development will impact on stormwater and right-of-carriageway easements that benefit adjoining properties. Council does not have the authority

to release or modify these burdens to the subject site without the written consent of the beneficiaries. No such written consent has been provided.

- b) The alterations proposed to Council's 1.83 metres wide drainage easement which traverses the site are not acceptable. The details of the proposed design for this drainage line and the maintenance that would be required are impractical.
- c) Council does not support the location of private structures (in this case the basement car park ramp) under or over Council stormwater assets.

6. Unsatisfactory water management provisions

The submitted storm water management details are insufficient and require amendment.

Particulars

- a) The Stormwater Management report by Northrop, dated 31 August 2012, has not been amended. The report requires alteration to reflect the amended proposal.
- b) The submitted hydrological impact assessment contains information that does not reflect the submitted stormwater plans, particularly in relation to the location of absorption trenches.
- c) The detention and retention tanks are connected and the system would receive runoff from landscaped and terrace areas, as well as roof water. This is stormwater and is not suitable for re-use inside the building without treatment. Separate rainwater and on site detention tanks are required for this to be acceptable, with the rainwater tank overflowing into the detention tank.
- d) The proposed absorption trenches have not been endorsed by the applicant's Geotechnical Engineer. Due to the steep slope of the site, it is imperative that the Geotechnical Engineer endorse this proposed scheme.
- e) The concept sediment and erosion control plan are to be amended to reflect the vegetation management plan, including the location of one line of silt fence above the regeneration area, rather than below it.

7. Insufficient deep soil landscaping

The proposed development does not comply with Clause 25I (2) – Minimum standards for deep soil landscaping of the Ku-ring-gai Planning Scheme Ordinance.

Particulars

- a) The deep soil landscaping calculations provided by the applicant include areas that do not constitute deep soil landscaping area as defined in the KPSO.
- b) The proposed deep soil landscaping area is calculated to be 48.48% - 2,864.57m² and does not comply with the minimum 50% - 2,954.3m² required by this Clause.
- c) The consent authority is unable to consider a variation to a development standard without the submission of a SEPP1 objection from the applicant. No such objection has been received.

8.Excessive maximum number of storeys and ceiling height

The proposed development breaches Clause 25I (5) - Number of storeys, Clause 25I (7) – Limit on floor area of top storey, Clause 25I (8) – Ceiling height and Clause 25K – Steep slope sites. The submitted objection to compliance with these development standards made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP1) is not considered to be well founded.

Particulars

- a) The lower units of the proposed development, particularly those located at the ground floor levels of the buildings, will have a low level of amenity. It is not considered reasonable to allow for a departure from the prescribed development standards, particularly with regard to an excessive number of storeys, where this departure will facilitate a poor development outcome. In this regard, the proposal does not satisfy the Aims and Objectives set out under Clauses 25C and 25D of the Ku-ring-gai Planning Scheme Ordinance.

9. Insufficient zone interface

The proposed development does not comply with Clause 25L – Zone Interface of the Ku-ring-gai Planning Scheme Ordinance.

Particulars

- a) Storeys 3 and above of proposed Building C are set back less than 9 metres from the zone interface shared with No.5 Duff Street. This property is zoned Residential 2(c2).

- b) The consent authority is unable to consider a variation to a development standard without the submission of a SEPP1 objection from the applicant. No such objection has been received.

10. Insufficient manageable housing

The proposed development does not comply with Clause 25N (2-a) – Requirements for Manageable Housing of the Ku-ring-gai Planning Scheme Ordinance.

Particulars

- a) The submitted plans nominate 8 Manageable Housing units. For a development of 83 units, a minimum of 9 Manageable Housing units are required.
- b) The consent authority is unable to consider a variation to a development standard without the submission of a SEPP1 objection from the applicant. No such objection has been received.

11. Insufficient information

Insufficient information has been submitted to allow for a comprehensive assessment

Particulars

- a) The development proposal includes numerous emergency fire egress paths within a 6.0m setback of the building. As the egress path is within a 6.0m setback, fire protection measures are required to comply with the Building Code of Australia (BCA). To enable further assessment, it is required that further detail and clarification from the applicant be submitted detailing how compliance with the BCA is proposed.
- b) The sections on Drawing DA302A require amendment to confirm that adequate headroom for the small waste collection vehicle will still be available.
- c) Details of the proposed air-conditioning arrangements have not been provided.

S Ratcliff
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M Miocic
**Director
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Attachments:

1. Location sketch
2. Zoning extract (KPSO)
3. Zoning extract (KLEP (Local Centres) 2012)
4. Architectural plans
5. Landscape plans
6. Storm water plans
7. SEPP1 objection
8. Urban Design Consultant comments
9. DP260234 showing restrictions on the use of the land
10. Concept plan for 3 Lamond Drive