

**Sydney East Joint Regional Planning Panel meeting of 9 May
2013SYE017 – DA 13/24- 62-70 Gordon Crescent, Lane Cove North**

Property: 62-70 Gordon Crescent, Lane Cove North

DA No: DA 13/24 (2013SYE017)

Date Lodged: 7 February 2013

Cost of Work: \$20,131,026.00

Owners: B A De Crummere & Y Umemura (62 Gordon Crescent)
S & V M T Tan (64 Gordon Crescent)
D R Cox & T A Harvey (66 Gordon Crescent)
C R Downs & J M Tucker (68 Gordon Crescent)
M T & K V Hoy (70 Gordon Crescent)

(All land owners' consents have been submitted along with the development application.)

Applicant: Urban Link Pty Ltd

DESCRIPTION OF PROPOSAL TO APPEAR ON DETERMINATION	Demolition of 5 existing dwelling houses and construction of a residential flat building comprising 69 dwellings and basement car park for 101 cars
ZONE	R4 – High Density Residential under Lane Cove Local Environmental Plan 2009 The site is also partly affected by a riparian zone.
IS THE PROPOSAL PERMISSIBLE WITHIN THE ZONE?	Yes
IS THE PROPERTY A HERITAGE ITEM?	No
IS THE PROPERTY WITHIN A CONSERVATION AREA?	No
DOES THE PROPERTY ADJOIN BUSHLAND?	No, However, the site is opposite Batten Reserve.
BCA CLASSIFICATION	Class 2, 7a & 10b
STOP THE CLOCK USED	Yes – 2 days
NOTIFICATION	Neighbours: 522-560 Mowbray Road, 46-60 and 72-84 Gordon Crescent, Lane Cove North West Ward Councillors: Councillor Bennison, Gold, & Strassberg Progress Association: Stringybark Creek Residents Association.

REASON FOR REFERRAL

This application has been referred to the Sydney East Joint Regional Planning Panel as per Schedule 4A of Environmental Planning and Assessment Act 1979 as the proposed development has a capital investment value of greater than \$20 million.

EXECUTIVE SUMMARY

The proposed development involves:

- Demolition of five existing dwelling houses and construction of a residential flat building comprising 69 dwellings and basement parking for 101 cars.
- The site is located within R4 – High Density Residential zone and residential flat building developments are permissible in accordance with Lane Cove Local Environmental Plan 2009 (the LEP) as amended.
- The proposed development does not comply with the floor space ratio (FSR) of 1.6:1 and the 14.5m building height standard of the LEP.
- The applicant has not lodged written requests for the exception to the development standards of the LEP.
- The proposed building has two living levels below the existing ground level on the north elevation which fails to meet the building height objectives of the LEP which requires the development relates to the topography of the site.
- The proposed development has a number of non-compliances with the requirements of the Lane Cove Development Control Plan (the DCP).
- The proposal fails to meet the following requirements of the Lane Cove Development Control Plan
 - building depth
 - building width
 - car parking
 - setbacks
 - excavation
 - mixture of dwellings
 - solar access
 - cross ventilation
 - number of dwellings with southerly aspect
 - landscaping and
 - waste management.
- Council's consulting architect has advised that the proposed design does not adequately meet the design principles of the Residential Design Code (SEPP 65) relating to the energy efficiency and amenity.

- The design fails to meet the general Residential Flat Building objectives of the DCP which are:
 - To achieve a reasonable level of amenity for the residential flat buildings, neighbouring properties and the surrounding area.
 - To achieve sustainable development whilst providing a concentration of residents close to public transport and facilities.
 - To create entrances which provide a desirable residential identity for the development, orient visitors and contribute positively to the streetscape and building facade design.
 - To provide opportunities for lifestyle choice and dwelling mix.
- The site is located within Bushfire Prone Land and the proposal was referred to NSW Rural Fire Service (RFS) in accordance with Section 79BA of Environmental Planning and Assessment Act 1979. RFS has advised that the service does not support the applicant's bushfire assessment report and the proposed building is located in the frame zone.
- Part of the proposed asset protection zone (APZ) is located within Council's road reserve adjacent to Batten Reserve and Council does not support any proposed APZ on Council's road reserve.
- 5 submissions were received from the notification of the development proposal. The major concerns raised relate to the non-compliances with the requirements of the DCP and impact on nearby bushland.
- On 14 March 2013, the JRPP was briefed on the proposal.
- Supporting the proposed development would lower the residential flat building design standards in Lane Cove and set an unacceptable precedent for other developments in Mowbray precinct.
- The development application is recommended for refusal.

SITE

The site is located on the northern side of Gordon Crescent between Centennial Avenue to the east and Girraween Avenue to the west in Lane Cove North. The site comprises five properties, being Lots 9, 10, 11, 12 and 13 of DP 27911 and is known as 62-70 Gordon Crescent, Lane Cove North.

The site is irregular in shape and has a frontage of 85.19m to Gordon Crescent with varying depths of 34.36m to 42.59m. The site falls from its north-eastern corner at the rear to the south-western corner at the front (Gordon Crescent) by approximately 5.5m. The site has an area of 3256.4m².

Five existing dwelling houses are located on the site. All five dwelling houses contain 3 bedrooms each and there are total of 15 bedrooms on the site.

Surrounding development consist predominantly of one and two storey dwelling houses. A residential flat building located at 532-534 Mowbray Road and 72-74 Gordon Crescent is currently under construction. The construction of another residential flat building at 76-82 Gordon Crescent is at a near completion stage.

Batten Reserve is located to the south of Gordon Crescent opposite the subject site.

The site has been rezoned from low density residential to R4 - High Density Residential since the gazettal of the Lane Cove LEP 2009 in February 2010. Amendments to the LEP relating the zoning, building height were gazetted on 18 January 2013 followed by amendments to the DCP.

PROPOSAL

The proposal involves demolition of 5 dwelling houses and construction of a residential flat building comprising 69 dwellings and basement parking for 101 cars.

The distribution of the dwellings is summarised in the following table:

Level	1 Bedroom	2 Bedroom	Total Units	GFA (m²)
Ground	2	4	6	574.43
1	8	7	15	1186.54
2	8	7	15	1112.13
3	8	7	15	1146.09
4	8	6	14	1041.92
5	2	2	4	301.66
Total	36	33	69	5362.77

14 dwellings are designed to be adaptable. There are no three bedroom dwellings proposed in the development.

PREVIOUS APPROVALS/HISTORY

Development application DA 12/143 for the demolition of 5 existing dwelling houses and construction of two attached residential flat buildings comprising 74 dwellings with basement car park for 114 cars was lodged with Council on 20 August 2012. The application was withdrawn on 5 November 2012.

The current development application is not relevant to the previous development application.

The applicant has lodged an appeal to Land and Environment Council against the deemed refusal of development application DA 13/24 on 27 March 2013.

PROPOSAL DATA/POLICY COMPLIANCE

Site Area: 3256.4m²

Lane Cove Local Environmental Plan 2009

LEP 2009	Provision	Proposed	Complies/ Comment
Zone	R4 – High Density Residential zone	Residential Flat Building development	Yes
Maximum permitted FSR	1.6:1	1.65:1	No
Maximum permitted building height	14.5m	16.13m	No

Lane Cove Development Control Plan

Part B – General Controls

Clause	DCP	Proposed	Complies/ Comment
B3 – Site Amalgamation & Isolated site	To encourage site consolidation of allotments for development in order to promote the desired urban design outcomes and the efficient use of land and to avoid the creation of isolated sites.	Consolidation of 5 allotments for a residential flat building development The proposed development would not create isolated sites.	Yes Yes
B8 – Safety & security	Ground floor dwellings have direct access or entries from the street and at least one habitable room with windows facing the street	The building has 2 pedestrian entries from Gordon Crescent and most windows facing Gordon Crescent are habitable room windows (bedrooms or living rooms)	Yes

Part C3 – Residential Flat Buildings

Clause	Requirement	Proposed	Complies/ Comment
3.2 Density	Minimum site area 1500m ²	Area of site approx 3256.4m ²	Yes
3.3 Building depth	18m exclusive of any balcony	23.8m	No
3.4 Building width	40m maximum fronting the street	72.5m fronting Gordon Crescent	No
3.5 Setback Front	Minimum 7.5m	7.5m	Yes
Side	6m up to 4 storeys 9m for 5-8 storeys	6m 6m	Yes No
Rear	6m 9m for 5-8 storeys	6m 6m	Yes No
3.5.3 Parking Podium Height			
Height adjoining front boundary	1.2m	Nil	Yes
Height adjoining east boundary	1.2m	Nil	Yes
Height adjoining west boundary	1.2m	Nil	Yes
Height adjoining rear boundary	1.2m	Nil	Yes
3.6 Building separation within development	9m between non- habitable rooms and blank wall to any other window, well or balcony for 5-8 storeys up to 25m	N/A	N/A. There is only one building proposed on the site.
3.8 Excavation	Encroachments into setback zone of up to 2m may be permitted for underground parking structures no more than 1.2m above ground level.	2.5m encroachment into the eastern side setback area.	No

Clause	Requirement	Proposed	Complies/ Comment
3.9 Design of roof top area	Detailed landscape plan required	Detailed landscaped plans submitted	Yes
3.10 Size & mix of dwellings	<p>Minimum 40m²</p> <p>A mixture of 1, 2, & 3 bedroom dwellings should be provided</p> <p>At least 10% of each unit type is to be provided (At least 7 dwellings of each type are required)</p>	<p>Minimum 50.3m²</p> <p>The proposal comprises 36X1 bedroom and 33X2 bedroom dwellings.</p> <p>There is no 3 bedroom dwelling proposed.</p>	<p>Yes</p> <p>No At least 7 x 3 bedroom dwellings are required.</p>
3.11 Private open space	<p>Primary balconies - 10m² with minimum depth 2m</p> <p>Primary terrace - 16m² with minimum depth 4m</p>	<p>Balconies meet minimum dimensions</p> <p>Private terraces meet minimum dimensions (10m² to 32.4m²)</p>	<p>Yes</p> <p>Yes</p>
3.12 Number of car parking, motorcycle and bicycle spaces	<p>35 x 1 bedroom dwellings = 36 spaces (36x1)</p> <p>33 x 2 bedroom dwellings = 49.5 spaces (33x1.5)</p> <p>Visitor 1 per 4 dwellings = 17.25 spaces (69/4)</p> <p>Required car parking space: 103</p> <p>1 motor cycle space per 25 car spaces (5 spaces required)</p>	<p>101 car spaces proposed</p> <p>2 Motor cycle spaces proposed on Ground Level</p>	<p>No There are 36 stack car spaces. 65 non-stack car spaces are insufficient for the proposed 69 dwellings.</p> <p>No</p>

Clause	Requirement	Proposed	Complies/ Comment
	1 bike locker per 10 dwellings (7 lockers required)	8 bike lockers are proposed in the basement car park	Yes
	1 Bike rail per 12 dwellings (6 rails required)	7 Rails are proposed on B2 Level.	Yes
3.13 Ceiling heights	Minimum 2.7m	2.7m	Yes
3.14 Storage	6m ³ per 1 bedroom dwelling 8m ³ per 2 bedroom dwelling Total = 470m ³ 50% of the storage volume within the dwelling	Designated storage areas equivalent to 235m ³ are proposed on the Basement and the Lower Ground Floor Levels Internal storage areas are proposed within the dwellings. The internal space of the dwellings would be sufficient to meet the requirements of storage volume (235m ³)	Yes Yes
3.15 Solar access	Living rooms and private open spaces of 70% of the units to receive 3 hours of direct sunlight between 9am – 3pm on 21 June Maximum 10% dwellings with a southerly aspect	57% of dwellings would receive more than 3 hours solar access (39 dwellings) 23% of dwellings have a southerly aspect (16 dwellings)	No 30 dwellings would not receive adequate solar access No
3.16 Natural ventilation	Minimum 60% of the dwellings should have cross ventilation.	58% of dwellings would have cross ventilation (40 dwellings)	No 29 dwellings would not have proper cross ventilation

Clause	Requirement	Proposed	Complies/ Comment
	Minimum 25% of kitchens have access to natural ventilation	32% of kitchen would access to natural ventilation (24 dwellings)	Yes
3.17 Visual privacy	Provide visual privacy between the adjoining properties	Privacy screens are not proposed to all windows directly facing each other in the building	No (the proposed building does not meet the side and rear setback requirements)
3.18 Communal open space	Minimum 25%	26.5% proposed	Yes However. The proposed communal open space on the ground level is dominated by landscaping and a pathway which would limit the utility & function of communal activities.
3.19 Landscaped area	25% provided at ground level and up to 15% provided on structures (40% required)	25% landscaped area proposed on the ground level and 15% on the structure (40% proposed)	No. OSD system located in the proposed deep soil area.

Note: 23 % of dwellings (16 dwellings) would neither have adequate solar access nor proper cross ventilation.

Locality 6 – Mowbray Precinct

Provisions	Requirement	Proposed	Compliance
a) Maximum No. of storey	4 storey in LEP height 14.5m area	5 storey	No
b) Maximum floor area for 5 th storey	Maximum of 50% floor area of the storey below and be set back 3m from that lower storey's building façade line (9m setback required)	91% 6m setbacks to the east, the west and the north boundary	No No

Provisions	Requirement	Proposed	Compliance
c) Deep soil area	Minimum of 40%	25%	No
d) Tree retention	Driveway design should avoid tree loss on Council land	No trees are worth for retention on the site.	Yes
e) At the interface between the high and low density residential zones	A design consideration by stepping the building in at least 3m after the second level.	N/A	N/A
f) Materials, finish and design	Are in harmony with the natural landscape and complementary with the bushland setting of the precinct	Proposed	Acceptable
g) Bushfire protection	Buildings are to be constructed to meet AS 3959-2009	The site is within a bushfire prone land	It is able to be conditioned to comply
h) The asset protection zone (APZ)	The APZ is measured from the top of the kerb on the side of the road adjacent to the reserve.	Approximately 5m of the APZ is proposed on Council's road reserve which currently forms parts of the reserve	No Council does not agree to locate the APZ within the road reserve.

Part F - Access and Mobility

DCP	Proposed	Complies/ Comment
Adaptable housing to be provided at the rate of 1 dwelling per 5 dwellings (20%) (Minimum of 14 dwellings are required)	The SEE states that 14 adaptable dwellings are proposed. However, they are not shown on the plans	No information provided to confirm compliance
Provide 1 accessible parking space for each adaptable housing unit (minimum of 14 spaces required)	14 accessible parking spaces provided on B1, B2 & Ground Levels car park	Yes

REFERRALS

Manager Environmental Health

The Waste Service Co-ordinator does not support the proposal because the proposed waste management plan does not comply with the requirements of Part Q of the DCP relating to the following.

- The size of the bulky waste storage room is 24m² which is less than the minimum required size of 30m².
- The access door to the bulky waste storage room is inadequate to accommodate the transport of bulky goods.
- No open air collection point is proposed for the on-site collection of bulky waste.
- Inadequate space in the car park to allow the turning motion required by waste collection truck.
- The design of the car park would not allow waste collection truck to enter and exit unhindered.
- The plans fail to identify a composting/worm farming facility.

Manager Urban Design and Assets

The development engineer has assessed the proposed stormwater concept plan and advised that the stormwater concept plan has provided adequate OSD but the design needs to be amended to pipe all outlets directly into Council's drainage system and not to the kerb as proposed and to gross pollutant traps in accordance with Council's DCP.

The engineer has provided draft conditions, in the event that the JRPP is of the view to approve the application.

Traffic Engineer

Council's traffic engineer has raised the following concerns:

- *AS 2890.6:2009 recommends that shared spaces for disabled parking bays are 2.4m. The proposed 1.4m shared spaces do not comply with this standard.*
- *The stacked parking spaces must be allocated to the same dwellings to avoid vehicles from being blocked in. The allocation of parking spaces is to be clearly marked on the plans.*
- *The Traffic and Parking Impact Report does not provide traffic layout plans of site access. The developer is to provide these plans accompanied with swept-paths of typical vehicles accessing and egressing the site.*

- *There is no commentary on Council's waste collection procedure. The developer is to provide details on the traffic impacts of waste collection. Swept-paths of the proposed manoeuvres are to be provided.*

Officer's comment:

Stacked parking may be supported where such are allocated to a single dwelling. Stacked parking is not considered appropriate where allocated to more than one dwelling as vehicles could get blocked in. The applicant has been requested to address the above issues and no additional information has been submitted.

Manager Bushland

The Assistant Manager Open Space has provided the following advice:

The major bushland issue with the proposed development is the construction of a large Asset Protection Zone, which appears to fall partly on the Gordon Crescent road reserve, which is managed as a part of Batten Reserve bushland and possibly a small section of Batten Reserve itself. The APZ appears to fall approximately 5 metres into the area managed as Batten Reserve.

The NSW Rural Fire Service has previously advised Council that any proposed dedication of land for Council maintenance, as part of a subdivision proposal, requires Council approval and a Plan of Management before the issue of a Bush Fire Safety Authority from the Rural Fire Service. In regards to Asset Protection Zones on Council land, the RFS would not consider this if this cannot be guaranteed by Council then it may be necessary that the applicant revise their design to meet the required Asset Protection Zone in accordance with the requirement of Planning for Bush Fire Protection 2006.

The applicant would need to do one of the following to satisfy the NSW Rural Fire Service requirements of Planning for Bushfire Protection 2006:

- *Increase the separation distance from the hazard by increasing the front setback; or*
- *Arrange for an agreement with Council under Section 88B of the Conveyancing Act 1919 to provide for a restriction on the land owned by Council to the south to create an easement on their land to form part of the required Asset Protection Zone.*
- *Obtain a Plan of Management from Council stating that a portion of the land owned by Council to the south is to be managed in perpetuity as part of the Asset Protection Zone required for the development.*

In order to comply with the RFS requirements for an APZ, hazard reduction works would need to be undertaken and maintained by Council in perpetuity. Hazard reduction methods that would be required to reduce bush fire fuel in proposed APZ for development at 62 – 70 Gordon Cres (from RFS Standards for Asset Protection Zones):

- 1/ *Raking or manual removal of fine fuels – ground fuels such as fallen leaves, twigs (less than 6 mm in diameter) and bark should be removed on a regular basis. Fine fuels can be removed by hand or with tools such as rakes, hoes and shovels.*
 - 2/ *Mowing or grazing of grass – grass needs to be kept short and, where possible, green.*
 - 3/ *Removal or pruning of trees, shrubs and understorey.*
- *The control of existing vegetation involves both selective fuel reduction (removal, thinning and pruning) and the retention of vegetation.*
 - *Prune or remove trees so that there is not a continuous tree canopy leading from the hazard to the asset. Separate tree crowns by two to five metres. A canopy should not overhang within two to five metres of a dwelling.*
 - *Native trees and shrubs should be retained as clumps or islands and should maintain a covering of no more than 20% of the area.*

The above hazard reduction works would need to be undertaken on a regular basis, at a considerable cost to Council. In addition, the construction of an APZ at this location would also result in the loss of current and future wildlife habitat. The vegetation community in the proposed APZ is classified as Sydney Turpentine-Ironbark Forest, an endangered Ecological Community; the proposed APZ would degrade this community and limit any capacity for regeneration and planting in the future.

I do not agree with the proposal to construct an APZ in the Council bushland area as there will be substantial environmental damage and the maintenance of an APZ will be a considerable financial burden to Council in future years. This development application should not proceed unless the applicant is able to contain the required APZ within private land and the existing built road – to the lower kerb only.

Officer's comment:

Council does not agree with the applicant's proposal to locate the APZ on Council's road reserve. The required APZ must be within private land and the existing built road. The proposed development should be redesigned to meet the APZ requirement for bushfire management by setting the building back.

NSW Rural Fire Service (RFS)

The subject site is located within Bush Fire Prone Land and the application was referred to NSW Rural Fire Service seeking advice regarding bush fire protection for the proposed land use in accordance with Section 79BA of the Environmental Planning and Assessment Act 1979.

RFS has provided the following advice:

The Rural Fire Service does not support the determination of effective slope and Bushfire Attack Level (BAL) on the southern aspect of the subject site in the Bushfire Hazard Assessment Report dated 16 August 2012. It has determined that the proposed residential apartment building is located in the flame zone.

RFS has requested to review the proposal and lodge any supplementary information through Council for further consideration. Refer to Attachment 1 for the letter from RFS in AT 1.

Officer's comment:

RFS considers that the proposed building is located within the flame zone. The concerns of RFS indicated above have been forwarded to the applicant and no further information relating to the concerns of RFS has been submitted to Council since 22 March 2013.

LANE COVE LOCAL ENVIRONMENTAL PLAN 2009 (Section 79C(1)(a))

Aims and objectives

The particular aims of this plan are as follows:

- (a) *to establish, as the first land use priority, Lane Cove's sustainability in environmental, social and economic terms, based on ecologically sustainable development, inter-generational equity, the application of the precautionary principle and the relationship of each property in Lane Cove with its locality,*
- (b) *to preserve and, where appropriate, improve the existing character, amenity and environmental quality of the land to which this Plan applies in accordance with the indicated expectations of the community,*
- (c) *in relation to residential development, to provide a housing mix and density that:*
 - (i) *accords with urban consolidation principles, and*
 - (ii) *is compatible with the existing environmental character of the locality, and*
 - (iii) *has a sympathetic and harmonious relationship with adjoining development,*

The objectives of R4 zone are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a high concentration of housing with good access to transport, services and facilities.*
- *To ensure that the existing amenity of residence in the neighbourhood is respected.*
- *To avoid the isolation of sites resulting from site amalgamation.*

- *To ensure that landscaping is maintained and enhanced as a major element in the residential environment.*

The site was rezoned from Low Density Residential to R4 High Density Residential through gazettal of the LEP 2009 in February 2010. The proposed development would increase the housing density of the site. The proposed development comprises of 1 bedroom and 2 bedroom dwellings. There are no 3 bedroom dwellings proposed. 20% of the dwellings are adaptable dwellings which include 1 bedroom and 2 bedrooms dwellings, although plans fail to reflect this.

Residential flat building developments are not compatible with the existing low density residential character of the locality currently dominated by single dwelling houses. However, a well designed and complying residential flat building development would meet the future housing character of the area and the R4 High Density Residential zone objectives. Consents for construction of residential flat buildings adjacent to the subject site have been granted since February 2010.

The site is located adjacent to an Environmental Conservation zone (Batten Reserve). The development proposes part of the APZ on Council road reserve which currently forms part of the Batten Reserve. Hazard reduction works within part of Batten Reserve for the construction of the proposed development would not be a sustainable for the local environment.

Clause 4.3 – Height of buildings

The objectives of the building height require the proposed developments to relate to the topography of the site.

The maximum permissible building height for the site is 14.5m.

The proposed building exceeds the building height standard of the LEP. The height of Lift 2 overrun of is 16.13m which is 1.63m over the building height standard of the LEP.

The majority of the building is below 14.5m. Given the major communal open space is located on the roof of the building, and there are limited facilities such pergola or covered area proposed on the roof top terrace, it is reasonable to assume that future facilities would be erected for the communal open space which would further increase the height of the building.

Comment:

The proposed building breaches the height control and would likely seek further breaches to ensure reasonable amenity to the roof terrace in the future.

Clause 4.4 – Floor space ratio (FSR)

The proposed FSR is 1.65:1 which exceeds the FSR standard of the LEP. The proposed GFA exceeds the maximum permissible GFA by approximately 153m².

Clause 4.6 – Exceptions to development standards

Clause 4.6 states development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant by demonstrating:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development does not meet the building height and FSR standards of the LEP. A written request for the exception to the development standard is required in accordance with Clause 4.6 of the LEP. The application states that the proposed design meets the building height and FSR standards. A written request for the exceptions has not been lodged.

Significant excavation would be carried out for the construction of the building which would result in two dwelling levels being located below the existing ground level.

The northern section of the site has a deep drop towards to the south. Proposed dwellings with RL 44.4 on the first floor of the proposed building are more than 6m below the existing ground level at the north-western side of the site. Dwellings with RL 41.5 at the north eastern section of the site are significantly below the existing ground level. The dwellings would be shadowed by the topography of the site and would receive insufficient solar access and natural ventilation.

The common area proposed at the northern section of the site is dominated by planter boxes on various sections and a pathway. The common area on the ground level would provide limited utility for communal activities of future occupants of the development. The pathway at the northern section would create over looking impacts on the northern aspect private open spaces of the dwellings on Ground, First and Second Levels.

The building has not been sufficiently designed in response to the topography of the site and would not provide an acceptable level of amenity to its future occupants. The proposal fails to meet the objectives of the LEP.

OTHER PLANNING INSTRUMENTS

State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65)

Part 2 of SEPP 65 sets out ten design quality principles as a guide to assess a residential flat development. The “Residential Flat Design Code” (the Code) is referred to as an accepted guide as to how the principles are to be achieved.

Council’s consulting architect has advised that the proposed design does not comply with scale and amenity design principles.

Officer's comment:

It is agreed that the proposed development would not provide an acceptable level of amenity to its future occupants. 24% of the dwellings (18 dwellings) with southerly aspect would have insufficient solar access and lack of natural cross ventilation. The amenity of these dwellings is considered poor. Refer to Attachment 2 - SEPP 65 assessment advice in **AT 2**.

Lane Cove Development Control Plan

As indicated in the compliance table, the proposed design has a number of fundamental non-compliances with the DCP requirements. The non-compliances are discussed in the following section of the report.

Council has amended the provisions of the LEP and DCP since January 2013. Relevant DCP changes include:

- Objectives to *“enhance the amenity of the existing and future residents in the precinct”*, and *“provide an appropriate transition between adjoining high and low density residential uses”*.
- Maximum number of residential storeys - 4.
- A minimum deep soil area of 40% of the site is to be provided for residential flat buildings.
- Development applications are to be in character with the palette of materials, finishes and design elements that are in harmony with the natural landscape and complementary with the bushland setting of the Precinct. In addition, roof form articulation is encouraged.

The proposal neither satisfies the above objective nor meets the above amended provisions.

The proposed building includes 5 residential storeys. This is in excess of the 4 storey policy requirement accompanying the LEP height limit.

The proposed deep soil areas, insufficient for the above controls in any case, appear to include landscaping above OSD which should not be included in deep soil calculations.

VARIATIONS TO COUNCIL'S CODES/POLICIES (SECTIONS 79C(1)(a), (1)(b), and (1)(c))

The preceding policy assessment table identifies the controls that the proposal does not comply with. Each departure is discussed below.

Building width

The DCP states the objectives for building width are:

1. *To avoid large continuous building bulk and massing.*
2. *To ensure that residential flat building responds to the character of the area.*

Provisions

- a) *The maximum overall width of the building fronting the street shall be 40m. Greater widths may be permissible if the proposed building articulation is satisfactory in the streetscape.*

The widths of the proposed buildings present a 72.5m building frontage to Gordon Crescent.

The applicant seeks a variation to the requirement and states that the building is to be highly articulated. The applicant adds that the building would create a desirable and attractive streetscape element in its presentation to Gordon Crescent.

Officer's comment:

The proposed building width exceeds the maximum building width requirement by 80%. This variation is considered excessive and unreasonable. The proposed buildings would present an unacceptable visual bulk impact on the streetscape.

Building depth

The DCP states that the objectives for building depth are:

- 1 *To ensure that the bulk of the development is in scale with the existing or desired future context.*
- 2 *To provide adequate amenity for building occupants in terms of sun access, daylight and natural ventilation.*
- 3 *To provide for dual aspect dwellings*

Provisions

- a) *The maximum residential flat building depth is to be 18m.*

The proposed building depth is 23.8m which exceeds the maximum building depth requirement of the DCP.

Officer's comment:

The proposed building is 5 storeys high with two levels of dwellings located below the existing ground level. The proposed ground level is approximately 10m below the existing ground level of the adjoining properties to the north. The proposal would not provide adequate amenity for future occupants in terms of solar access and natural cross

ventilation. The proposal does not meet the objectives of the DCP and the variation is not supported.

Setbacks

The proposed side and rear setbacks are 6.0m from the property boundaries.

Officer's comment:

The DCP states that the minimum side and rear setback shall be 6m up to 4 storey and 9m for 5-8 storeys.

The proposed building is 5 storeys. The side and rear setbacks of the proposed building are 6m. The required side and rear setbacks of level 4 and level 5 are 9m.

The proposed side and rear setbacks would create adverse visual and privacy impacts to its adjoining development. The proposed building does not meet the building separation requirements with the adjoining building at 72 Gordon Crescent, Lane Cove. This non-compliance would also create an unreasonable constraint to the future residential flat building development to the north of the site. This variation is not supported.

Excavation

The DCP states in general, no part of a building or above ground structure may encroach into the setback zone.

The proposal involves 12m deep excavation for two levels of dwellings and associated private open space below the existing ground level and three levels of basement at the rear of the site. The excavation is considered excessive and is not supported.

Car parking

The parking requirement for the proposed development is 103 car spaces including 17 spaces for visitors. The proposal provides 101 car spaces including 19 stacked car spaces. 65 (101-17-19) non-stacked car spaces would be insufficient for the proposed 69 dwellings. At least two dwellings need to share stacked car spaces which would be blocked by car spaces belonged to separate dwellings. The proposal does not meet the car parking requirements of the DCP.

Motor bike parking

The required motor bike parking provision of the proposed development is a minimum of 5 spaces. 3 motor bike spaces are shown on the plans. Given that the proposal provides two car spaces above the minimum car parking requirements of the DCP, it is considered that the compliance with the motor bike parking requirement is achievable by a minor amendment to the basement car park. The non-compliance could be addressed by a condition of consent if the JRPP approves the development.

Solar access

A maximum of 57% of the dwellings in the proposed development would receive more than 3 hours of solar access in mid winter. The proposed development does not meet the solar access requirements of the DCP which requires that a minimum of 70% of the dwellings receive more than 3 hours of solar access in mid winter.

Natural cross ventilation

A maximum of 58% of the dwellings have natural cross ventilation which does not meet the minimum 60% requirement of the DCP.

Note: 23% of dwellings (16 dwellings) in the proposed development would neither receive adequate solar access in winter nor have proper cross ventilation. The amenity of these dwellings is considered poor.

South aspect dwellings

The DCP requires that a maximum of 10% of the dwellings can have a single southerly aspect. There are 23% dwellings (16 dwellings) with a single southerly aspect in the proposed development. All these dwellings would not receive adequate solar access in winter and would have insufficient natural cross ventilation. In the proposed development too many dwellings have poor amenity.

Landscaping

The applicant states that the proposed development has 25% deep soil area. However, the assessment reveals that the proposed development has only 22% deep soil area. The pathway surrounding the building does not meet the definition of landscaped area and should not be included in the landscaped calculation.

The applicant seeks variation to a number of DCP requirements. Supporting the variations would result in setting a precedent to lower the amenity standards in Lane Cove. The requirements of the DCP are considered to be the minimum necessary standards to ensure that residential flat developments in Lane Cove provide an acceptable level of amenity to the future occupants.

The variations do not meet the objectives of the DCP and are not supported.

Section 94 Contribution Plan

Lane Cove Section 94 Contribution Plan applies to the proposal for the increase of population in the area as a consequence of the development. The Section 94 contribution is calculated in the following manner:

The population of the existing dwelling houses:

Property address	No. of bedrooms	Average occupation rate (persons/dwelling)
62 Gordon Crescent	3	2.8
64 Gordon Crescent	3	2.8
66 Gordon Crescent	3	2.8
68 Gordon Crescent	3	2.8
70 Gordon Crescent	3	2.8
Total existing population		14

The development as proposed requires the following Section 94 Contribution.

No. of bedrooms	Average occupation rate	Population
35 x 2 bedroom	1.9	66.5 (35 x 1.9)
39 x 3 bedroom	2.4	93.6 (39 x 2.4)
Total proposed population		160.1

The Section 94 contribution applicable for 146.1 persons (160.1 – 14) at the current rate of \$9,180.35/person is \$1,341,249.1 (or \$18,124.99 per dwelling). The required Section 94 contribution is less than \$20,000 per dwelling and it would not exceed the cap of the Reforms of the Local Development Contributions.

RESPONSE TO NOTIFICATION (Section 79C(1)(d))

The proposed development was notified in accordance with Council's notification policy. 4 submissions were received in response to the notification of the development application. The issues raised in the submission are summarised as follows.

- The area should not be rezoned for high density residential development.

Officer's comment:

The LEP 2009 was gazetted on 19 February 2010 and the proposed development is permissible in accordance with the LEP 2009. The application must be assessed in accordance with the LEP which is in place.

- The development exceeds the LEP building height standard.

Officer's comment:

It is agreed that the proposed design exceeds the maximum permitted building height standard of the LEP and the statement of environment effects could not demonstrate that development with the exception to the building height standard of the LEP would achieve a better planning outcome.

- The bulk and scale of the proposed building is excessive.

Officer's comment:

It is agreed that the bulk and the scale of the proposed building would be excessive.

- The availability of sunlight to many dwellings is inadequate.

Officer's comment:

It is agreed that the proposed building would not meet the solar access requirement of the DCP and the variation is not supported.

- There is inadequate landscaping within the development.

Officer's comment:

It is agreed that the proposed development would not meet the landscaping requirement of the DCP. The proposed building has a large basement footprint. The proposed OSD and the pathway surrounding the building reduce the landscaped area. The proposed landscaped area on the ground level is 22% which does not meet the landscaping requirements of the DCP.

- The proposed design does not comply with many requirements of the DCP.

Officer's comment:

The applicant seeks several variations to the requirements of the DCP and the variations are not supported.

- The development locates its asset protection zone on Council's reserve.

Officer's comment:

It is agreed that the APZ for the development is 25m from the building. The proposed development will require part of the APZ to be located on Council's road reserve and this is unacceptable to Council.

- There is inadequate information in the traffic study.

Officer's comment:

The proposed development would increase local traffic movement by the increasing the housing density of the site. The proposal is able to comply with the parking requirements of the DCP. However, Council's traffic engineer raised concerns that the applicant has not provided adequate information demonstrating that the proposed design meets the relevant design standards.

All submissions were taken into consideration during the development assessment process.

CONCLUSION

The development application has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

The design of the proposed development pays little respect to the provisions of Lane Cove LEP and the DCP.

The proposed development does not comply with the maximum building height and FSR standards of the LEP. A written request for the exceptions to the development standards has not been lodged with the development application.

The proposal has numerous non-compliances to the requirements of the DCP. The applicant seeks a number of variations to the DCP requirement. Supporting the variations is likely to lower the development standard within Lane Cove and would not serve public interest and would significantly demolish the available amenity to future and adjoining residents.

Accordingly, the proposal is not supported and the application is strongly recommended for refusal on this basis.

RECOMMENDATION

THAT pursuant to Section 80(1) (b) of the Environmental Planning and Assessment Act, 1979, as amended, the Sydney East Joint Regional Planning Panel refuse development consent to Development Application DA 13/24 for the demolition of 5 dwelling houses and construction of a residential flat buildings comprising 69 dwellings and basement car park for 101 cars on Lot 9, 10, 11, 12 and 13 of DP 27911 and is known as 62-70 Gordon Crescent, Lane Cove North for the following reasons:

1. The proposed development does not meet the aims of the Lane Cove Local Environmental Plan 2009 (the LEP) and would not promote a sustainable development in Lane Cove area.

Particulars:

- a. The proposed development would not provide an acceptable housing mix of dwellings.
 - b. The proposed design is not compatible with the desired streetscape and the residential flat building character of the locality.
 - c. The proposed development would not have a sympathetic and harmonious relationship with adjoining developments.
2. The proposal fails to comply with the building height standard of the Lane Cove Local Environmental Plan 2009 and the variation does not result in a “better planning outcome”.

Particulars:

- a. The maximum permitted building height is 14.5m for the site. The maximum proposed building height is 16.13m and the proposal exceeds the building height standard by 1.6m.
 - b. The applicant has not lodged a written request for the exception to the building height standard of the LEP.
 - c. There is insufficient planning ground to support the exception to the building height standard of the LEP.
 - d. The exception to the building height standard would not achieve a better planning outcome.
3. The proposal fails to comply with the floor space ratio (FSR) standard of the Lane Cove Local Environmental Plan 2009 and the variation does not result in a “better planning outcome”.

Particulars:

- a. The maximum permitted FSR is 1.6:1 for the site. The proposed FSR is 1.65:1 and the proposed gross floor area (GFA) exceeds the maximum permitted GFA by approximately 153m².
- b. The applicant has not lodged a written request for the exception to the FSR standard of the LEP.
- c. There is insufficient planning ground to support the exception to the FSR standard of the LEP.

- d. The proposed building is in an excessive bulk and scale and would be incompatible to future planning character of the locality which would be dominated by four storey buildings.
- 4 The proposed development does not meet various requirements of Part C 3 – Residential Flat Building of Lane Cove Development Control Plan (DCP).

Particulars:

The proposed design does not meet the following requirements of the Lane Cove Development Control Plan:

- a. Building depth
- b. Building width
- c. Side and rear setbacks
- d. Excavation
- e. Dwelling mix
- f. The number of car spaces
- g. Number of motor cycle parking spaces
- h. Solar access
- i. Cross ventilation
- j. Number of southerly aspect dwellings
- k. Landscaping
- l. The dwellings below the existing ground level have poor amenity.
- m. The proposed development would result in excessive excavation.
- n. The development does not respect the topography of the site and surrounding.

- 5 The proposed development does not comply with the provisions of locality requirements of Lane Cove Development Control Plan

Particulars

- a. The proposed building exceeds four storeys.
 - b. Deep soil area is below 40% of the site area.
 - c. The building is located within flame zone.
 - d. The asset protection zone (APZ) is located within Council's reserve.
- 6 The proposed design does not comply with three out of the ten design quality principles of State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development.

Particulars:

The proposed design does not meet the follows:

- a. The resource, energy and water efficiency principle objectives.
 - b. The amenity principle objectives.
 - c. The social dimensions principle objectives.
- 7 The proposed development would provide poor amenity to its future occupants.

Particulars:

- a. The development does not respect the topography of the site and surrounding.
- b. The dwellings below the existing ground level have poor solar access.
- c. Too many south facing dwellings in the development neither have adequate solar access nor cross ventilation.
- d. The communal pathway would create over looking impacts to the private open spaces of the dwellings below.

- e. The distance and height of the excess ramps that needs to be travelled by the mobility impaired does not provide for equitable access.
- 8 The design of vehicle access and car parking do not meet the requirements of Lane Cove Development Control Plan and relevant standards.

Particulars:

- a. The number of car spaces is below the minimum requirements of the DCP.
 - b. The number of motor cycle parking spaces is below the minimum requirement of the DCP.
 - c. Too many stacked car spaces would result in some dwellings to share stacked car spaces.
 - d. Disabled car spaces do not meet the provisions of AS2890.6 (2009).
- 9 The proposed development does not meet the waste management requirements of Lane Cove Development Control.

Particulars:

- a. The proposal fails to meet the bulky waste storage requirement.
 - b. The proposal fails to provide communal composting/worm farming facility.
 - c. There is inadequate space in the car park to allow for the turning motion required by waste collection trucks.
 - d. The design of the entrance to the car park does not allow waste collection vehicles to enter and exit the site in a forward direction.
- 10 The proposal fails to meet the provisions of Planning for Bushfire Protection 2006.

Particulars:

- a. The proposed residential flat building is located in the flame zone.

- b. The Asset Protection Zone is located within Council's land and Council is not willing to grant consent to use the road reserve for APZ.
- c. Council does not support any part of APZ on the road reserve adjacent to Batten Reserve.
- d. The proposed development has to be redesigned to increase the separation distance from the hazard area by increasing the front setback.
- e. The APZ must be contained entirely within the private property and the existing built road.