

2 February 2016

Our Ref: DOD:ALT004/4001

The General Manager
818 Pacific Highway
Gordon NSW 2072

By Courier and by Email:

**Attn: Mr Michael Miocic, Director of
Development and Regulation**

Dear Sir

**Development Application no. DA180/14 ("Development Application")
Property: 870-898 Pacific Highway, Gordon**

1. Introduction

- 1.1 We act for the Applicant in this matter and refer to our attendance at the Joint Regional Planning Panel (**JRPP**) meeting on Friday, 4 December 2015 at which time the matter was deferred for legal advice.
- 1.2 We request that this letter and the enclosures be carefully considered by Council and its advisors.
- 1.3 We **enclose** the following:
- (a) A copy of our submissions to the panel dated 3 December 2015.
 - (b) A copy of GMU's submission dated 2 December 2015.
 - (c) A copy of the chronology.
 - (d) A copy of the letter from Mr Ralph Fitzgerald, Corporate Counsel of the Alto Group Pty Limited to the Council dated 3 December 2015.
 - (e) A copy of a letter from Thomas Chang and Co dated 3 December 2015.
 - (f) A copy of a Statutory Declaration of Ralph Lawrence Fitzgerald dated 3 December 2015.
 - (g) A copy of concept drawings for 900 Pacific Highway, Gordon prepared by Bianchino and Associates Architects.
 - (h) A copy of the submission from DFP dated 8 September 2015.

2. The Issue – Clause 3 of Part 3A.1 Land Amalgamation

- 2.1 Both the Council report to the JRPP and the DFP submission proceed on the untested and unexplained basis that clause 3 of Part 3A.1 Land Amalgamation of the Kur-ring-gai Local Centres Development Control Plan (**DCP**) should be interpreted to mean that adjoining sites must be developed for residential flat buildings.

- 2.2 In our opinion, to adopt such an approach misconstrues clause 3.
- 2.3 Clause 3 provides as follows "Within a Business zone, Medium density and High density residential zone, sites are to be amalgamated to avoid isolating an adjoining site or sites. In particular potential redevelopment of the adjoining site or sites in accordance with its zoning must not be compromised".
- 2.4 The last sentence of clause 3 refers to potential redevelopment of adjoining sites in accordance with its zoning must not be compromised.
- 2.5 As pointed out in our written submission, this clause must be interpreted against the background of the zoning in question, in this case, the B4 Mixed Use zone in the Kur-ring-gai Local Environmental Plan (Local Centres) 2012 (KLEP).
- 2.6 Nowhere in the zone objectives for the B4 zone does one find a requirement to maximise development for residential flat buildings. Quite to the contrary, the objectives speak of "a mixture of compatible land uses", "provision of a variety of housing choice" and the integration of a number of different uses and support for out of centre retail.
- 2.7 As the extensive material included with this short summary demonstrates, both the sites at 900 and 854-860 Pacific Highway are readily capable of being redeveloped in ways that are entirely consistent with the zone objectives of the KLEP and the B4 zone.
- 2.8 It is our primary submission that the subject proposal does not result in isolated sites being created and so the provisions of Part 3A.1 are not engaged.
- 2.9 Even if a contrary view were to be formed and the provisions are engaged, the enclosed material demonstrates that the provisions have been substantially complied with and the proposed development will not result in isolated sites being created.
- 2.10 And finally, it is clear that the remainder of this block is, in a sensible and practical matter, (see section 79C(3A)(b) of the *Environmental Planning and Assessment Act*) capable of being redeveloped in an orderly and efficient way.

3. Conclusion

- 3.1 We also note the long history of this matter, the consultative approach adopted by our client, the excellent architectural and planning outcomes achieved by the development leading the Council officers to conclude that there was only one issue to be resolved relating to the land amalgamation provisions of the DCP.
- 3.2 We strongly suggest that when the DCP is properly considered, there is no proper basis for refusal of this application on the single ground raised.

Yours faithfully

per: 
David O'Donnell
Consultant

Direct Line: +61 2 8915 1085
Direct Fax: +61 2 8916 2085
Email: david.odonnell@addisonslawyers.com.au

Encl.

Submission prepared by Addisons Lawyers on behalf of the Applicant

**Property at 870-898 Pacific Highway, Gordon
Development Application No. DA180/14 ("Development Application")**

1. In our respectful submission, the approach taken in the report recommending refusal of the Development Application, on the single issue of land amalgamation, involves a misunderstanding of Part 3A.1 of Ku-ring-gai Local Centres Development Control Plan (DCP).
2. It is also readily accepted that additional information has come to hand in the last few days which was not available to Council officers at the time the report was prepared. We refer in particular to the attached analysis conducted by GMU in relation to 854-860 Pacific Highway and the letter from the solicitor for the owners of 900 Pacific Highway.
3. Central to this submission is our contention that the proposal fully complies with the letter and the intent of the site amalgamation provisions of the DCP and does not create isolated sites.
4. The particulars contained in the recommendation for refusal are as follows and they will be dealt with in turn:

"(a) The Proposed development and amalgamation of 870-890 Pacific Highway would result in 900, 860 and 854 Pacific Highway not achieving a minimum site areas of 1200m2 and consequently hinder any reasonable development for residential flat building use including a residential flat building on those sites consistent with the B4 Zoning."

Comment

Implicit in the statement above, is that all adjoining sites in the B4 Zone must be assessed on the basis of their potential for development for residential flat buildings. There is no such objective in the B4 Zone, and this approach in our opinion is not the test.

In fact, the Aims in Clause 1.2 of Ku-ring-gai Local Environmental Plan (Local Centres) 2012 (LEP) include:

"..(c) to facilitate the development of the centres to enhance Ku-ring-gai's economic role and cater to the retail and commercial needs of the local community, and

(d) to provide a variety of housing choice within and adjacent to the centres."

We note that those housing choices would include shop-top housing.

Moreover, regard must be had to the specific objectives of the B4 Mixed Use Zone which are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support the integrity and viability of adjoining local centres by providing for a range of "out of centre" retail uses such as bulky goods premises and compatible business activities."*

In relation to 854-860 Pacific Highway, we attach a submission which has been prepared by GM Urban Design and Architecture which demonstrates that a fully compliant scheme may be developed for 854 and 860 Pacific Highway together for retail/commercial uses at the lower levels with shop-top housing above.

And in relation to 900 Pacific Highway, we are instructed that there has been a pre-DA meeting between the owner of no. 900, Prestige Locations Pty Limited, and planners at Ku-

ring-gai Council which demonstrates that the land is readily capable of being developed and will not be left as an isolated site.

It seems clear that Council planners have had regard to Clause 6.7(3) of the LEP in relation to street frontage in those pre-DA discussions for no. 900.

- “(b) The proposed development and amalgamation of 870-890 Pacific Highway would result in 900 Pacific Highway not achieving a minimum frontage of 24 metres and consequently hinder any reasonable development for residential flat building use or a mixed use including a residential flat building on that site consistent with the B4 zoning.”**

Comment

This particular relies again on the assumption that the land amalgamation provisions require adjoining land to be capable of being developed for residential flat buildings within a B4 Zone. This cannot have been the intention of the draftsman given the objective cited above.

The attached documentation demonstrates that both 854-860 and 900 are both capable of being redeveloped in their own right.

This conclusion is supported by the fact that the Council's approval of 904-914 Pacific Highway (presently under construction) took no heed of sites at 900 and 916 Pacific Highway.

It is noted in any event that 854-860 has a frontage of 34 metres to the Pacific Highway and frontage also to Merriwa Street.

Regard must also be had to the objectives of Part 3A.1 and it is submitted that there is ample evidence that these objectives of the DCP are satisfied and in particular objectives 1, 2, 3, 4, 6 and 7. It is therefore submitted that the proposal does not lead to the creation of any isolated site and that the control is therefore complied with.

- “(c) It has not adequately been demonstrated that the process required under 3A.1 “Land Amalgamation” of the DCP relating to the adjoining properties at 860, 854 and 900 has been undertaken. Specifically, there is no evidence that negotiations have taken place or that a reasonable offer including independent valuations were made/undertaken in accordance with the control.”**

Comment

As in our submission the controls of the LEP and DCP are complied with, there is no need for the applicant to demonstrate the matters referred to in Clause 6 of Part 3A.1.

Nevertheless, for more abundant precaution, the following observations are made:

- (a) So far as no. 900 is concerned, it is clear that the owner of that property has a current intention to redevelop (see pre-DA discussions and letter from the solicitor for the owner) and there is no opportunity for that site to be acquired.
- (b) So far as no. 854 is concerned discussions did occur with the owners of this site. The owner of 854 was not interested in selling.
- (c) The owner of 860 (through an agent) sought a price which was regarded as grossly excessive in relation to the real value of the site.
- (d) It is also apparent from the Council report that the subject Development Application was first publicly notified in June 2014. No submission was received from 854, 860 or 900 at that time.
- (e) Amended plans were notified again in December 2014. Again no submission was received from 854, 860 or 900.

- (f) A belated objection prepared by Don from Fox Planning was only received in September 2015 (some 16 months after the lodgement of the Development Application).
- (g) As appears above, the basis of the Don Fox submission (as adopted by the Council recommendation) is strongly contested. Not every site in the Mixed Use Zone must be developed for residential flat buildings – such an approach is fundamentally inconsistent with the aims and objectives of the LEP and the Mixed Use Zone itself.
- “(d) Submissions have been received on behalf of the property owner of 860 Pacific Highway raising concern that no negotiations have taken place in accordance with the 3A.1 of the DCP and that their site would become isolated.”**

Comment

As submitted above, no negotiation is required as 860 would not become an isolated site as it has potential to be amalgamated with 854 and successfully redeveloped.

For the owner of the subject site to seek to acquire 860 now would not in any event be logical as:

- It would leave the owner at the mercy of the owner of 854.
- It would deny the obvious development opportunities explained in the GMU report.
- It would see the enlargement of the current development site possibly in an undesirable way.
- The amalgamation of 854-860 leads to the best strategic outcome for the locality.

Section 79C(3A) of the EP&A Act 1979

The recent decision of Moore AJ in *Trinvass Pty Ltd v Council of the City of Sydney* [2015] NSWLEC 151 (decision date 21 September 2015) at [68]-[69] indicates that this statutory amendment “*mandates taking a flexible approach*” in any event to the provisions of a DCP. If contrary to these submissions a technical breach is identified, given the circumstances identified for the adjoining sites, there is nothing practical to be gained by a refusal.

It is clear that approval of this application will not create isolated sites incapable of development in their own right.

It is clear from the comprehensive report prepared by the Council planners that all other aspects of the Council controls are satisfied.

The development is commended to the panel for approval subject to the implementation of appropriate conditions.

Dated 3 December 2015.

David O'Donnell

Solicitor
Sydney

Please see:

- GMU letter dated 2 December 2015.
- Letter from Thomas Chang & Co, solicitors dated 3 December 2015.



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E. g.morrish@gmu.com.au
W. www.gmu.com.au

2 December 2015

Attention: David O'Donnell
ADDISONS Level 12, 60 Carrington Street, Sydney NSW 2000
Via email: david.odonnell@addisonslawyers.com.au

Re: 870-898 Pacific Hwy, Gordon

GM Urban Design & Architecture (GMU) has been appointed by Addisons to assess if the development of the site at 870-898 Pacific Highway (DA0180/14) will result in isolation of adjoining corner lots at 854-858 & 860 Pacific Highway, Gordon.

The lots in question create a triangular site on the corner of Pacific Highway and Merriwa Street. The resulting triangular site would consist of two properties. If amalgamated their combined area would be approximately 882m². The properties sit within the B4 Mixed Use zone with maximum allowable height of 26.5m and maximum FSR of 2.3:1.

GMU has reviewed the Ku-ring-gai LEP (Local Centres) 2012 and Ku-ring-gai DCP (Local Centres) and we have developed two potential envelopes to test the development potential of the combined triangular site. The two schemes are assumed to be mixed-use development with 2 levels of basement car parking, 2 levels of retail to the street and a 4 storeys of residential use above.

Envelope 1 – Fully compliant

Envelope 1 is a fully compliant built form that complies with the numeric controls such as setbacks that are contained within the DCP. The envelope allows for the 6m setback to Merriwa Street and 0m to Pacific Highway with a 3 storey podium as per the DCP (Vol. B Part 1D xviii for Precinct G4).

The podium configuration and the existing slope towards the south result in stepping of the lower levels. We have assumed 2 levels of retail or commercial use facing Pacific Highway with the third to sixth levels residential. We also assumed 2 car park levels, sleeved by retail use to the south-western corner. The car park entry will only be located on the southern portion of the Merriwa Street frontage and second level car park is assessable via a car lift. Alternatively, a second car park entry, on the northern portion of Merriwa Street may be possible subject to further traffic assessment. Envelope 1 will remain within the 26.5m height control and will yield a compliant FSR of 2.24:1 (excluding car parking) based on a GFA of 1,976m² with applied efficiency of 90% for commercial and 75 % for residential. Attached is a sketch of the proposed built form envelope for this scenario.

Envelope 2 – Alternative scheme meeting objectives of the desired character for Gordon G4 Local Centre

Envelope 2 is an alternative scheme, which takes into account the parameters of the surrounding context. Based on our assessment of the context, the predominant existing setbacks across Merriwa Street are 3m with the existing building on the subject site having a nil setback to both Merriwa Street and Pacific Highway.

The required 6m setback in the DCP does not actually respond to the existing context or reflect the level of exposure that is likely to be desired by any retail or commercial use on the corner. Given the prominence of the corner and the active ground floor desired by Council we consider that a better outcome may be achieved by providing a lesser setback to the corner built form allowing a nil setback to sweep around the corner itself. Such a setback would need to be tested in terms of traffic viewing cones.

To celebrate the corner and active uses, this tower envelope proposes a 6m setback to Merriwa Street and nil setback at the junction with Pacific Highway to mark the corner. The height is as per the applicable height of 26.5m and will result in an FSR of approximately 2.98:1, due to the maximised building envelope. Attached is a sketch of the proposed built form envelope for this scenario.

Based on the above envelopes demonstrating two potential outcomes for the remaining lots up to the corner, GMU considers that the amalgamated properties at 854-858 & 860 Pacific Highway retain their development potential and are able to create an appropriate development outcome for the area without amalgamation with 870-898 Pacific Hwy, Gordon.

Our testing demonstrates that the corner site should be able to realise its maximum development potential, subject to Council approval, within the prescribed envelopes outlined by KLEP LC 2012 and KDCP LC 2012. It will be able to satisfy, in principle, the desired mixed-use character of this locality with the Gordon local centre.

Conclusion -

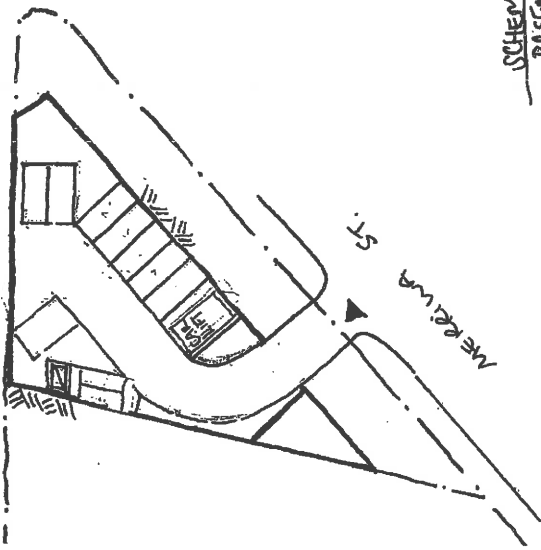
The proposed development of 870-898 Pacific Highway, Gordon (DA0180/14) as a lot grouping not including 854-858 & 860 Pacific Highway, Gordon, will not result in isolation of these adjoining lots. An amalgamation of 854-858 & 860 Pacific Highway, should be able to achieve an appropriate development outcome and their maximum yield subject to Council approval.

Please, do not hesitate to contact our office directly at 02 8920 8388 if you require further clarification or information.

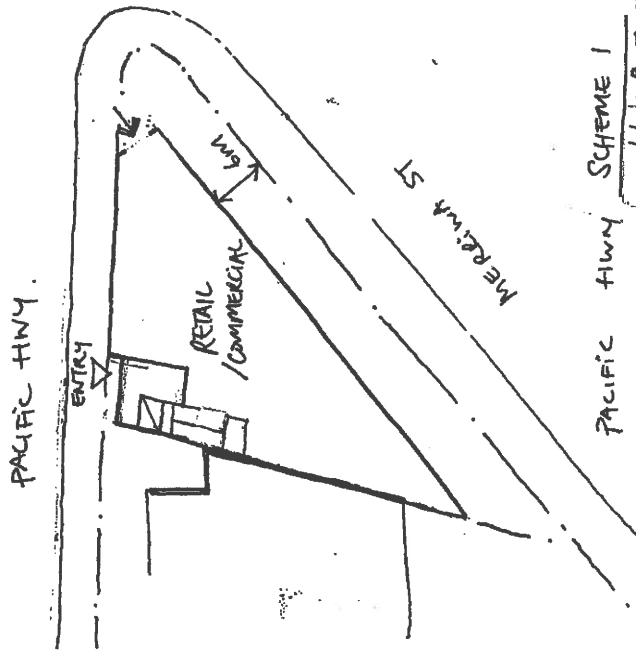
Yours Sincerely,



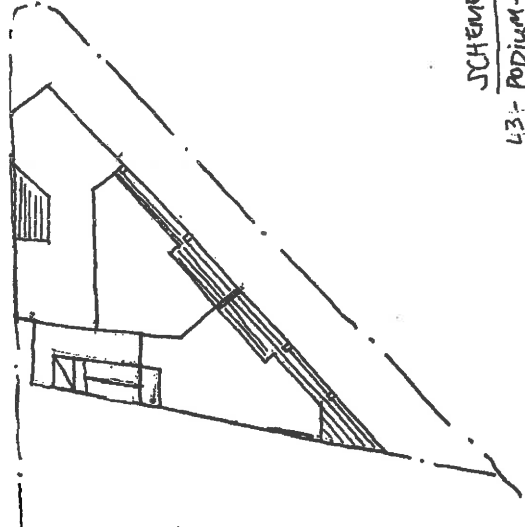
Ms Gabrielle Morrish
Managing Director
GM Urban Design & Architecture Pty Ltd



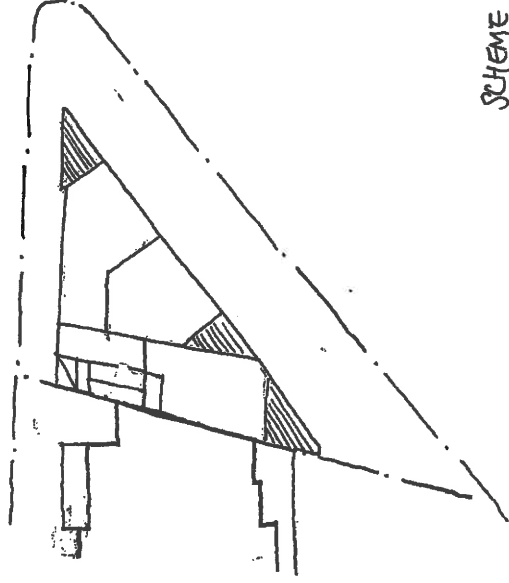
SCHEME 1
BASEMENT 2
BASEMENT 1 (SIMILAR).



SCHEME 1
L1 - PACIFIC HWY
L2



SCHEME 1
L3 - PODIUM - RESIDENTIAL



SCHEME 1
TYPICAL L3-6
RESIDENTIAL.

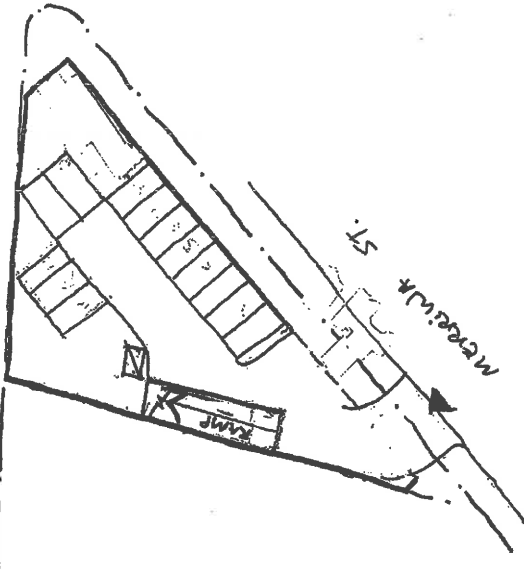
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ENVELOPE 1 - FULLY COMPLIANT

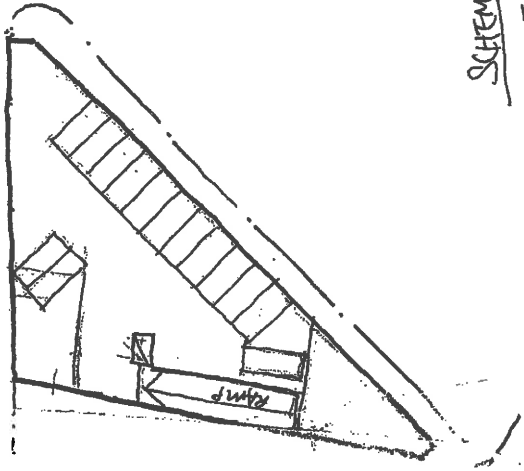
854-858 & 860 PACIFIC HWY.
GORDAN (RE: DA180/4)

GFM URBAN DESIGN
& ARCHITECTS

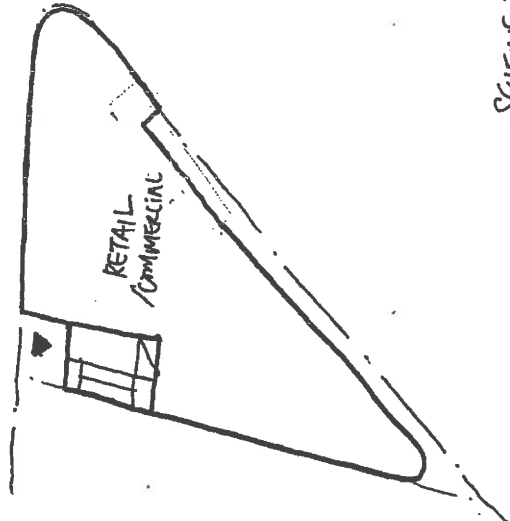
2 DEC 2015.



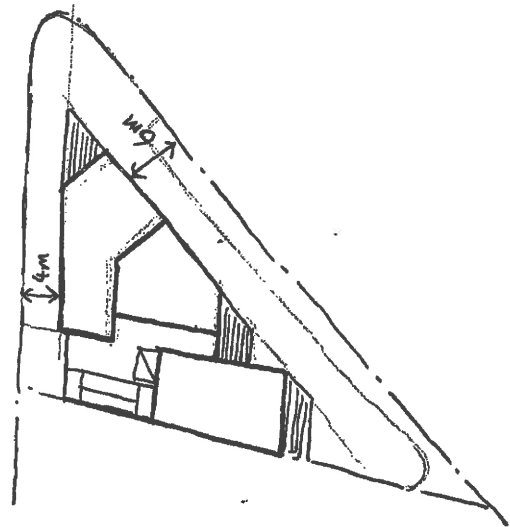
SCHEME 2
BASEMENT 2.



SCHEME 2
BASEMENT 1.



SCHEME 2
L1-L2 - RETAIL / COMMERCIAL
(PACIFIC HWY)



SCHEME 2
TYPICAL RESIDENTIAL
L3-L6

1:500.

ENVELOPE 2

- ALTERNATIVE SCHEME

854-858 & 860 PACIFIC HWY
GORDON (RE: DA 180/4)

GTM URBAN DESIGN
& ARCHITECTS.

2 DEC 2015.

CHRONOLOGY RE PROPOSED REDEVELOPMENT OF 870-898 PACIFIC HWY GORDON

3/2005	1 st meeting with KMC to discuss possible redevelopment,
6/2006	2 nd meeting with KMC re: proposed redevelopment of 870- 898 Pacific Hwy
11/2006	Council agreed to amend draft LEP to: "show 3:1 FSR and 8 storey height on 880-898 and 870 Pacific Hwy,"
12/ 2008	Applicant lodged submission to draft LEP addressing the development potential of 860 and 854 Pacific Hwy independently of 870 Pacific Hwy
3/2009	3 rd meeting with KMC to discuss possible redevelopment of 870-898 Pacific Hwy. KMC staff confirmed amalgamation does not include 860/854 corner site or 900 Pacific Hwy.
Late 2009	KMC considers Council report in response applicant's objection to Draft KLEP 2010 acknowledging Nos. 854 &860 <i>"have future potential to redevelop through amalgamation as they also achieve a frontage of more than 20 metres i.e. there is no site isolation"</i> .
7/2010	4 th meeting with KMC to discuss redevelopment potential of 870-898 Pacific Hwy
10/2010	5 th meeting with KMC to mixed retail/residential development at 870-898 Pacific Hwy
Mid 2011	1 st mixed use DA lodged
7/2011	LEC declares KLEP Town Centres 2010 is of no legal force – applicant forced to withdraw DA
12/2011	Applicant meets with KMC to discuss future of site and new LEP controls
2012	KLEP (Town centres) 2012 gazetted
5/14	2 nd (current DA) lodged
10/2014	1 st meeting with KMC staff to discuss Council's preliminary feedback to DA
12/2014	Amended DA lodged with substantial redesign to council's concerns
12/2014	Owner of 860 Pacific Hwy has pre DA meeting with KMC – and advised it is Council's position that the amalgamation with the corner lot is the best strategic planning outcome for the area, and the applicant is strongly encouraged to pursue this avenue when looking at future development of the subject lot.
1/2015	Amended plans re-notified with letters to adjoining owners
6/2015	2 nd meeting with KMC to discuss amended design
7/2015	Further amended DA lodged to address further concerns of council, including scheme for development of 900 Pacific Hwy

8/2015	Auction of 860 Pacific Hwy held. One bid only made, being a vendor's bid of \$3.9million. Property fails to sell.
9/2015	Objection to proposed development lodged with KMC by Don Fox Planning Consultants on behalf of 860 Pacific Hwy
12/2015	Letter received from Thomas Chang & Co, solicitors for Prestige Locations Pty Ltd, new owners of 900 Pacific Hwy, that its client has "no present intention to sell the property".

Alto Group

3rd December 2015

Grant Walsh

Assessment Officer

Ku-ring-gai Council

818 Pacific Highway

GORDON NSW 2072

Dear Grant

RE: Application No DA180/14

PPTY: 870-898 Pacific Highway Gordon

I refer to previous correspondence and discussions in relation to the above application and, as requested, I have contacted the owners of the two sites 900 Pacific Hwy Gordon and 854 Pacific Hwy Gordon to request confirmation from them of their previous advice to us that their respective properties are not for sale. I can provide the following further information in relation to these sites.

900 Pacific Hwy Gordon

In relation to 900 Pacific Hwy, on 18 November 2015 I spoke with Michael Tang, a solicitor with Thomas Chan & Co, who acts for Prestige Locations Pty Ltd, the recent purchasers of this property. I advised him of our application, and asked if his client had any interest in selling their site. After obtaining instructions, Mr Tang advised me on the 20th November that he had spoken with his client and they had no present intention to sell the property as they had not yet decided what they wanted to do with it. I sent Mr Tang an email on the 20th November asking for him to confirm our discussion by reply email, and he indicated that he would need to get further instructions before doing so. On Monday 30th November, Mr Tang advised me that Brendon Wu, the director of Prestige Locations Pty Ltd would contact me directly about my request.

On 2nd December I met with Mr Wu and his architect Don Bianchino. In that meeting they informed me of their pre-DA meeting held with council last Thursday, and that they were confident that they would produce a scheme to develop their site that



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would meet with council's approval. A copy of the draft scheme they provided is attached. They confirmed that they had no present interest in selling their site and have provided a letter to this effect, which is also attached.

They also advised me that the property was offered to them off market, through a mutual acquaintance of the former owners, McLennan Properties. The property was not listed for sale with an agent, and was not advertised for sale. We were not aware that the property had been offered for sale, so had no opportunity to negotiate for its purchase.

854 Pacific Hwy Gordon

In relation to 854 Pacific Hwy, I was directed by the property's tenant to speak to Mr Bill Rose who I was told was the owner's contact. I spoke with Mr Rose on the 17th November, and asked him if the owner had any interest in selling. Mr Rose told me that they were not interested in selling their site and were happy with it as it is.

I subsequently telephoned Mr Rose on several occasions and left messages for him to call me and on 23 November at 11.35am I received a phone call from Wayne Brodie, who is the sole director and secretary of R J Brodie (Properties) Pty Ltd, the company that owns 854 Pacific Hwy. Mr Brodie confirmed that the property was not currently on the market. I asked him if he would be prepared to provide me with some written confirmation of this, and he told me he was not interested in doing this.

A statutory declaration confirming this is also attached.

Yours faithfully

A handwritten signature in black ink, appearing to be 'R Fitzgerald', with a large, stylized 'R' and 'F'.

Ralph Fitzgerald

Corporate Counsel

Alto Group Pty Ltd

THOMAS CHANG & CO

Solicitors, Attorneys & Public Notary

Thomas Chang Principal, Public Notary, Migration Agent No. 9577284
Michael Tang Senior Associate, LLB, B.Com.
Tony Lee Solicitor, LLB, B.Ec.
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Patricia Chang Certified Practising Conveyancer No. 1195493

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Website: www.thomaschang.com.au

Our Ref: MT11619PU
Your Ref:

3 December 2015

Alto Group
734 Pacific Highway
Chatswood NSW 2067

Attention: Mr Ralph Fitzgerald

Dear Sir

Re: Prestige Locations Pty Ltd
Property: 900 Pacific Highway, Gordon NSW

We act for Prestige Locations Pty Ltd, which is the purchaser under a contract for the purchase of the property.

We are instructed to confirm that our client's current intention is to re-develop the property in future, and that it has no present intention to sell the property.

Please do not hesitate to contact our office if you have any questions.

Yours faithfully
Thomas Chang & Co


Michael Tang

Statutory Declaration
OATHS ACT 1900, NSW, EIGHTH SCHEDULE

I, RALPH LAWRENCE FITZGERALD, of 734 Pacific Highway Chatswood in the State of New South Wales do solemnly and sincerely declare that

1. I am corporate counsel of Alto Group, which includes Alto Prestige Pty Ltd and Georgio Altomonte Holdings Pty Ltd, the applicants for DA 180/14 for development of 870-898 Pacific Highway Gordon.
2. On 17 November 2011 I telephoned Bill Rose, who I had been informed by the tenant at 854 Pacific Highway Gordon was the representative for the owner. I advised him that Ku-ring-gai Council had raised with Alto Group the issue of potential site isolation in relation to our proposed development and I asked him if RJ Brodie Properties Pty Ltd had any interest in selling its land.
3. Mr Rose told me that their neighbour had approached them about this 2 or 3 years ago, but they were not interested in selling, and that they were happy with their site as it is.
4. I subsequently tried to contact Mr Rose, to request written confirmation of this advice from him. I rang and left messages for him on 18 November, 19 November, 20 November and 23 November but did not receive any response from him.
5. On 23 November, after having left my most recent message, I received a telephone call from Wayne Brodie, the director of RJ Brodie Properties Pty Ltd. I asked Mr Brodie if he had any interest in selling his site. He said that he did not have any price in mind for the sale, as he did not have the property on the market. I then asked if he would be prepared to provide me with a letter or email confirming this. He replied no, that he had no interest in providing any letter to me.

AND I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Declared at: Chatswood on 3rd December 2015



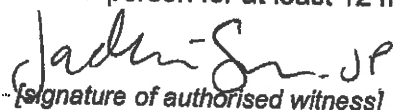
[signature of declarant]

in the presence of an authorised witness, who states:

I, Jacqueline Searson, a Justice of the Peace, certify the following matters concerning the making of this statutory declaration by the person who made it:

I saw the face of the person , and

I have known the person for at least 12 months



[signature of authorised witness]

JACQUELINE SEARSON

Justice of the Peace

No. 166282

46 Karilla Avenue, Lane Cove

3.12.15

[date]



Pedestrian link.

PROPOSED APARTMENTS
900 PACIFIC HWY
GORDON.

HIGHWAY.

PROPOSED DEVELOPMENT
900 PACIFIC HWY
D.A. N° 0075/14

PACIFIC

N° 924
3-4 STOREYS
OFFICE BUILDING

N° 904 - 910
D.A. Approved
Mixed Use
DA 0407/13
UNDER CONSTRUCTION

COURT
YARD

N° 870 - 896
DEVELOPMENT SITE
DA 0180/14

FITZSIMONS

VACANT SITE
CLEARED FOR
DEVELOPMENT.

CONG. CAR PARK

N° 7-9.
3 STOREY
OFFICE BUILDING.

N° 1
3 STOREY
OFFICE BLDG.

900 PACIFIC HWY.
PROPOSED APARTMENTS
OPTION : A..12 OCT. 2015.

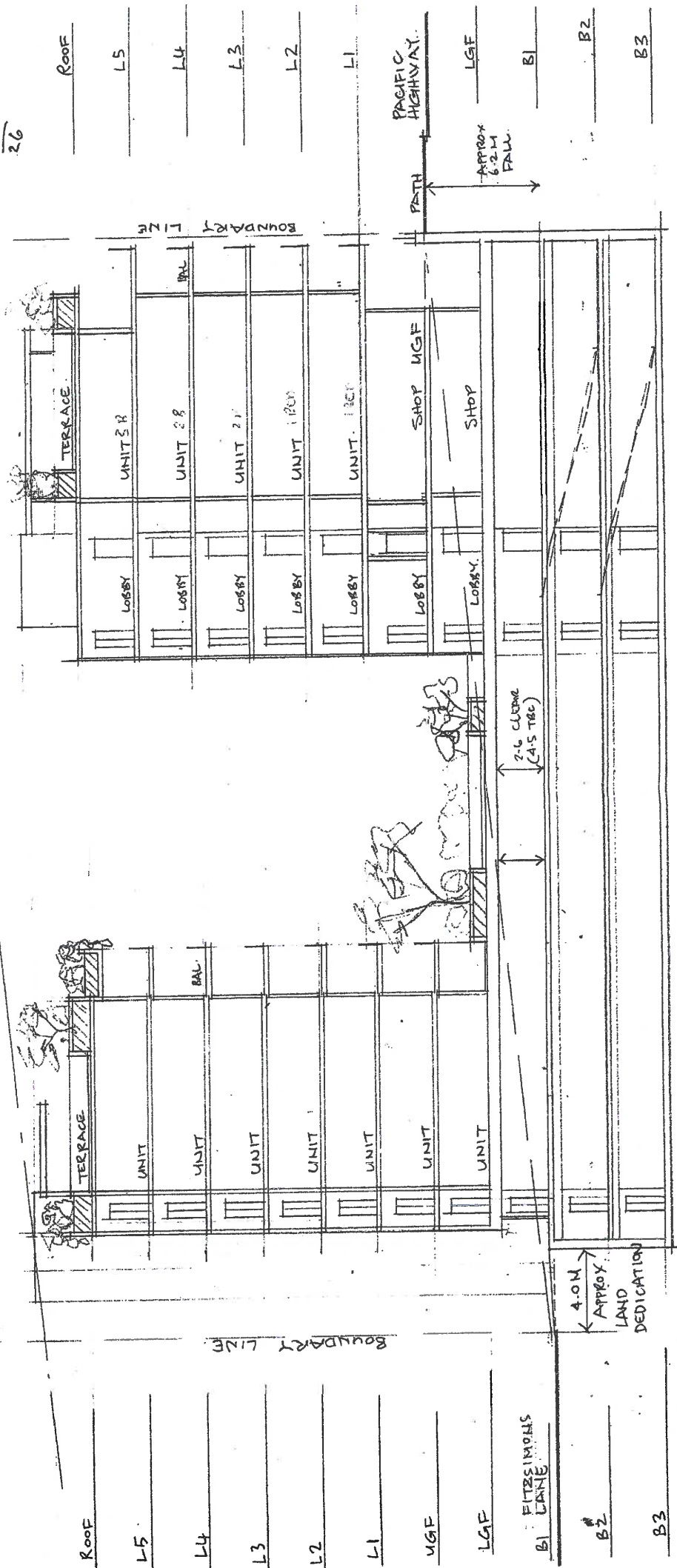
SITE ANALYSIS PLAN.

MERRIMA ST.

HEIGHT LINE
26.5 M

BLDG A

BLDG 3

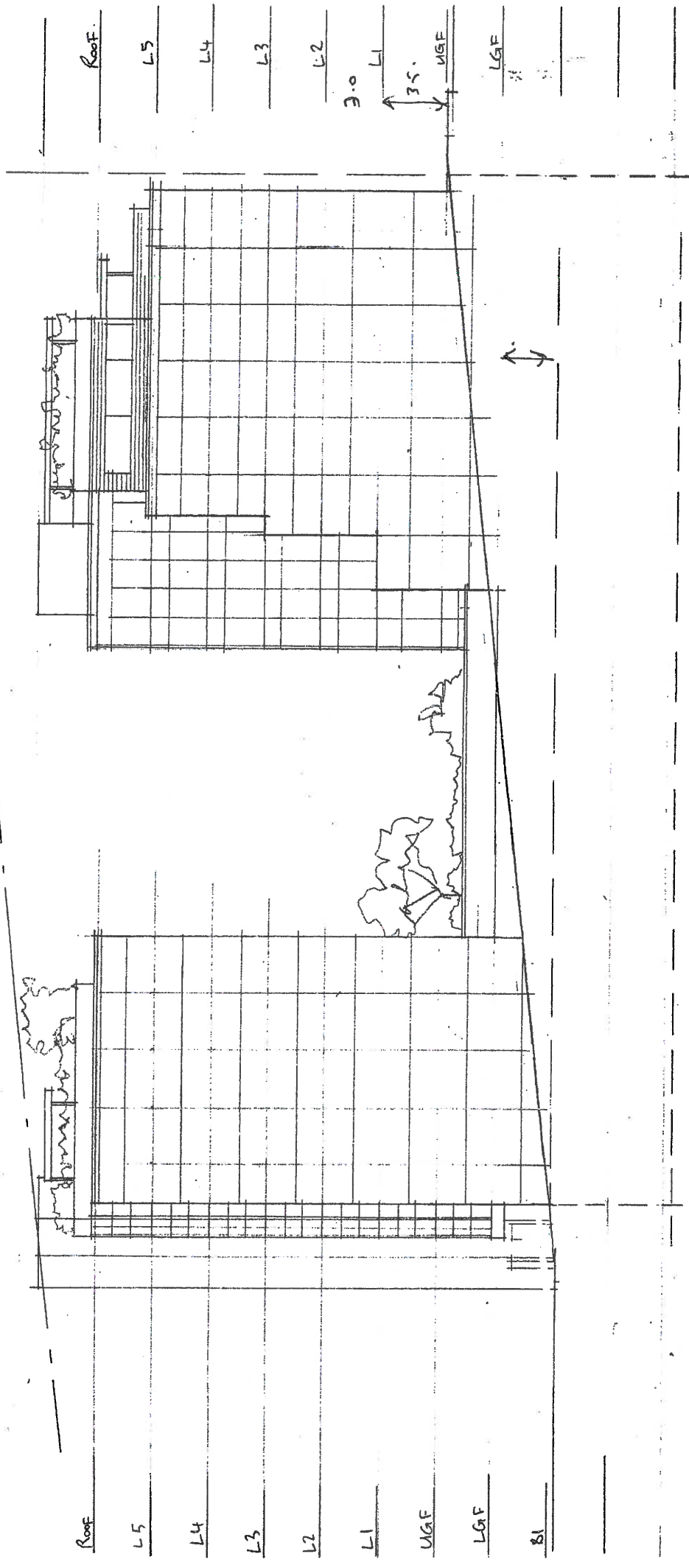
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TYPICAL SECTION A.A. 1:200

900 PACIFIC HWY GORDON N.S.W.
 PROMISED APARTMENTS.
 12 OCT. 2015
 OPTION A

DIVA 09

26.5 M. H.L.-



ELEV. STH/EAST. 1:200

900 PACIFIC HWY GORDON N.S.W.
PROPOSED APARTMENTS

OPTION A
12 OCT. 2015



planning consultants

8 September 2015
Our Ref: 8656A.7DW

The General Manager
Ku-ring-gai Municipal Council
818 Pacific Highway
Gordon NSW 2072

Dear Sir

**Submission of Objection
DA0180/14: 870 Pacific Highway, Gordon**

We have been engaged by Sakha & Sons Pty Ltd the owners of the adjoining property at No. 860 Pacific Highway, Gordon (No. 860) to review the amended plans and updated material lodged with DA0180/14 at No. 870 Pacific Highway, Gordon (No. 870) for a seven storey mixed use development with basement/podium car park, and prepare a submission if appropriate. In particular, the owners of No. 860 hold significant concerns regarding the potential isolation of their site should DA0180/14 be approved.

Site Amalgamation and Isolation

The subject property is located within the B4 Mixed Use Zone and the provisions of Part 3A.1 of *Ku-ring-gai Local Centres Development Control Plan* apply. This clause provides that "*Within a Business Zone....., sites are to be amalgamated to avoid isolating an adjoining site or sites. In particular potential redevelopment of the adjoining site or sites in accordance with its zoning must not be compromised.*"

The development of No. 870 Pacific Highway will result in the isolation of No. 854 and No. 860, as these allotments either individually or combined will not have sufficient area to be developed in accordance with the provisions of Ku-ring-gai Local Environmental Plan (Local Centres) LEP 2012 (LCLEP 2012). These properties could not comply with the area requirement imposed by cl.6.5(2), as they are significantly less than the 1200m² standard. As such, approval of DA0180/14 would prevent out client's land from being redeveloped in accordance with its zoning, which permits the erection of residential flat buildings.

The relevant judgment and Planning Principle of the NSW Land and Environment Court for site amalgamation and isolation is *Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189*. These principles apply when there is an *isolation of a site by redevelopment of adjacent site(s) where an intensification of development is anticipated*.

The **first principle** is to assess whether amalgamation of the isolated site is "*feasible*". This is determined having regard to the following steps, which were devised in the earlier decision of *Melissa Grech v Auburn City Council [2014] NSWLEC 40*:

- *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.*

- *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.*
- *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, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 197*

Adopting these points in regards to the subject development application and the land owned by our client:

- No. 860 will be isolated such that it cannot meet the minimum lot requirements required by cl6.5(2) of LCLEP 2012. There has been no negotiations between the owner of No. 870 and our client either prior to lodgement of the development application or post lodgement;
- There has been no reasonable (or any) offer put to our client nor has an independent valuation been prepared. As such the development application does not contain details of negotiations. Our client is eager to discuss a possible amalgamation with No. 870 Pacific Highway as this would represent the most orderly and economic development of No. 854 and No. 860 Pacific Highway.
- The lack of any negotiations is a significant consideration in Council's assessment under s.79C of the Act.

The **second principle** involves an assessment of whether the isolated site can be developed in accordance with Council's controls. The judgment states:

Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

- *In answering this question the key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.*
- *To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.*

The applicant has not provided concept plans that demonstrate that No. 860 can be developed in isolation. Indeed, No. 860 is approximately 560m² in area and has a frontage to the Pacific Highway of 13.55m. Council's Pre-Development Application Meeting Report (**Attachment A**) states the following with respect to Ku-ring-gai LEP (Local Centres) 2012:

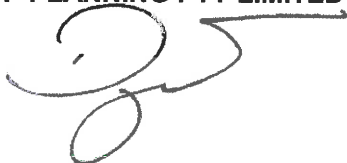
"The proposal would result in breaches of the maximum FSR control of 2.3:1 (Clause 4.4), Minimum Site area requirement of 1200m² (Clause 6.5), minimum site frontage for a residential flat building of 24 metres (Clause 6.5) and minimum frontage for a business zone of 20 metres (Clause 6.7) development standards of the Ku-ring-gai Local Environmental Plan (Local Centres).....Clause 4.6 with the LEP provides flexibility to those development standards, however, given the extent of the proposed breaches, it is unlikely the development would be supported in its current form.

Accordingly, in Council's opinion the site circumstances of No. 860 are such that it could not (or is unlikely to) be developed in isolation. Which would be precisely the situation the owners of No. 860 would find themselves should Council approve DA0180/14 in its current form.

Further, concept designs indicating the amalgamated No. 860 and No. 854 sites provided in the SEE of DA0180/14 by Nettleton Tribe Architects do not adequately satisfy the second bullet point of *Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189* in that only indicative floor plates have been provided and no concept elevation diagrams or development statistics. In any event, the indicative floor plates appear non-compliant with Ku-ring-gai Local Centres DCP 2013 in that the concept mixed use development of No. 860 & No. 854 provides nil setbacks to all boundaries and no street activation of Merriwa Street.

It is requested that the site isolation concerns detailed above be afforded the utmost consideration in the assessment of the DA and that Council not grant development consent to a DA that would give rise to a demonstrable isolation of an adjoining site, namely No. 860. Should you have any questions in regard to the above matter please contact Daniel West or Rob Player on 9980 6933.

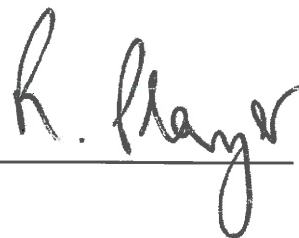
Yours faithfully
DFP PLANNING PTY LIMITED



DANIEL WEST
PRINCIPAL PLANNER

dwest@dfpplanning.com.au

Reviewed: _____





planning consultants

ATTACHMENT A

PRE-DEVELOPMENT APPLICATION MEETING REPORT

REFERENCE No:	PRE0150/14		
SITE ADDRESS:	860 Pacific Highway GORDON NSW 2072		
PROPOSAL:	Retail/Commercial (over 4 units)		
DATE OF MEETING:	10 December 2014		
PRESENT AT MEETING:	<i>Council</i>		
	<i>Name</i>	<i>Title</i>	
	Grant Walsh	Executive Assessment Planner	
	Janice Buteux-Wheeler	Senior Assessment Planner	
	Kathy Hawken	Team Leader – Engineering	
	Geoff Bird	Senior Landscape Officer	
	Michael Zanardo	Consultant Urban Designer	
	Christopher Mills	Senior Environmental Health Officer (Building)	
	<i>Applicant's representatives</i>		
	<i>Name</i>	<i>Capacity</i>	
	Byron Sakha	(Director - Seraphic Developments)	
	Sam Yasseen	(Design Manager - Seraphic Developments)	
	Robert Player	(Director - Don Fox Planning)	
	Stephen Bowers	(Director - Stephen Bowers Architects)	
PLAN REFERENCES:	Plan no.	Drawn by	Dated
	Unnumbered architectural plans	Stephen Bowers Architects	Undated.
KEY ISSUES:	<p>Non-compliance with minimum site area requirement of LEP</p> <p>Non-compliance with FSR requirement of LEP</p> <p>Non-compliance with minimum frontage requirement for Residential Flat Building of LEP</p> <p>Non-compliance with minimum site frontage for Business zone requirement of LEP</p> <p>Non-compliances with Ku-ring-gai Local Centres DCP 2013</p> <p>Activation of Street Frontages</p> <p>Need to amalgamate lots.</p>		

THE PROPOSAL:

An eight storey mixed use building comprising small retail spaces and twenty residential units, with three levels of basement car parking. Vehicular access is provided via Merriwa Street.

PLANNING COMMENTS

KU-RING-GAI LOCAL ENVIRONMENTAL PLAN (LOCAL CENTRES) 2012

A mixed use building comprising retail and residential flat building is a permitted land use within the B4 "Mixed use" zone. Any application would have to demonstrate that the zone objectives have been met.

The proposal would result in breaches of the maximum FSR control of 2.3:1 (Clause 4.4), Minimum Site area requirement of 1200m² (Clause 6.5), minimum site frontage for a residential flat building of 24 metres (Clause 6.5) and minimum site frontage for a business zone of 20 metres (Clause 6.7) development standards of the Ku-ring-gai Local Environmental Plan (Local Centres). It is noted that the height has been nominated as compliant at 26.5 metres on the submitted architectural plans (Please refer to definitions of the LEP to ensure the correct definition of existing ground level to ensure compliance). Clause 4.6 within the LEP provides flexibility to those development standards, however, given the extent of the proposed breaches, it is unlikely the development would be supported in its current form.

As discussed at our meeting, further consideration is warranted and should be given to the ground floor uses in a mixed use development. Given the narrow frontage to the Pacific Highway further consideration must be given to providing active (non-residential) uses at the ground floor and a defined street frontage to the Pacific Highway.

Part 4 Principal development standards

4.3 Height of Buildings

26.5 metres maximum permitted - The proposal is nominated as compliant. As discussed above please refer to the definition of existing ground level to ensure compliance.

"The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map."

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

ground level (existing) means the existing level of a site at any point.

4.4 Floor space ratio

- Site area 860 Pacific Highway 583.4m²
- Site area 858 Pacific Highway 324.8m²

A maximum FSR of 2.3:1 is permitted for the site(s). The plans have nominated an FSR of 2.407:1 which would breach the development standard. Council preference is for strict compliance with the standard.

858 Pacific Highway has a nominated FSR of 2.27:1.

A Clause 4.6 request to vary development standards could be utilised but would have to be well founded.

The site is constrained, however it is unlikely that the constraints are of a nature to warrant a variation to the FSR standard.

5.9 Preservation of trees and vegetation

Refer to Landscape comments

6.1 Earthworks

Refer to Engineering comments

6.2 Stormwater and water sensitive urban design

Refer to Engineering comments

6.3 Biodiversity Protection

The site is not indicated as affected on the Natural Resource Biodiversity Maps

6.4 Riparian land and waterways

The site is not indicated as affected on the Natural Resources Riparian Lands Map

6.5 Site requirements for multi dwelling housing and residential flat buildings

(1) The objectives of this clause are:

- (a) to provide site requirements for development for the purposes of multi dwelling housing and residential flat buildings so as to provide for the orderly and economic development of residential land while maintaining the local character, and*
- (b) to ensure that lot sizes and dimensions of medium and high density residential sites allow for generous landscaped areas and setbacks to ensure the amenity of adjoining properties and to support the desired future character of those areas.*

(2) Development consent must not be granted for the erection of multi dwelling housing or a residential flat building on a lot unless the lot has an area of at least 1,200 square metres and at least 1 street frontage of not less than:

- (a) if the area of the lot is less than 1,800 square metres—24 metres,*
- or*
- (b) if the area of the land is 1,800 square metres or more—30 metres.*

(3) Despite subclause (2), development consent must not be granted for the erection of multi dwelling housing or a residential flat building on any

lot on the land identified as "Area 1" on the Lot Size Map unless the lot has an area of 5,000 square metres or more.

(4) For the purposes of this clause, if a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.

The proposal is for a mixed use building comprising retail and residential flat buildings. As such, the minimum lot size and frontage requirements of Clause 6.5 apply to the development. A clause 4.6 variation must be provided as part of any amended development application. These clauses should be specifically addressed.

6.6 Ground floor development in business zones

(1) The objective of this clause is to ensure that active uses are provided at the street level in business zones to encourage the presence and movement of people.

(2) This clause applies to land in the following zones:

- (a) Zone B2 Local Centre,*
- (b) Zone B4 Mixed Use,*

(3) Development consent must not be granted to development for the purposes of commercial premises or to a mixed use development with a commercial premises component, or a change of use of a building to commercial premises, on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building:

- (a) will not be used for the purposes of residential accommodation or a car park or to provide ancillary car parking spaces, and*
- (b) will provide uses and building design elements that encourage interaction between the inside of the building and the external public areas adjoining the building.*

(4) Subclause (3) (b) does not apply to any part of a building that:

- (a) faces a service lane that does not require active street frontages, or*
- (b) is used for 1 or more of the following purposes:*
 - (i) a lobby for a commercial, residential, serviced apartment or hotel component of the building,*
 - (ii) access for fire service*

Council considers the above clause to be a development standard. Where an application provides good activation to the required frontages, those parts of the building that cannot achieve street activation may be varied where supported by a Clause 4.6 variation.

The ground floor level for the purpose of this clause is the street level, in which case, your development has two. The proposal does not provide sufficient floor space that is allocated to uses that will encourage street activation. The ground floor relationship of building to Merriwa Street is schematic, but does not appear to be a good outcome in this regard.

While the application seeks approval as a mixed-use development, it is noted that the non-residential component is very small and is located on the same level as residential units. This is not supported for the following reasons:

- residential use at ground level is not permitted under Ku-ring-gai development controls for this site (Clause 6.6 KLEP (Local Centres) 2012).
- Ground level residential use with minimal setbacks to the street will not achieve the expected levels of amenity for a residential use.
- The need to provide amenity to ground floor residential with direct frontage in proximity to the street conflicts with the urban objectives of Ku-ring-gai planning policies surrounding

activation of the street frontages. The public/private domain interface with high level walls will not achieve the desired streetscape character and will not activate the street frontage.

The intended future character for this part of the Gordon Local Centre is that of activated street frontages for retail and commercial activity.

6.7 Minimum street frontages for lots in business zones

A minimum of 20 metres is required. Should 860 Pacific Highway be developed in isolation the application will have to demonstrate that the following can be utilised:

(3) Despite subclause (2), the consent authority may grant consent to the erection of a building on land referred to in that subclause if the consent authority is satisfied that:
(a) due to the physical constraints of the land or adjoining land, it is not possible for the building to be erected on land with a primary street frontage of at least 20 metres, and
(b) the development is consistent with the aims and objectives of this Plan.

KU-RING-GAI LOCAL CENTRES DEVELOPMENT CONTROL PLAN 2013

Land amalgamation

Council's preference is that the site would be amalgamated with an adjoining site so as to achieve minimum lot frontages and site area. Any application would have to specifically address the requirements of 3A.1 of the DCP to demonstrate all attempts have been made in this respect.

Building setbacks

The development as proposed would result in non-compliance with the front setback provisions of the DCP to Pacific Highway relating to the lower level requirements of 4m and the 8m requirement to the 4th storey and above requirements fronting the Pacific Highway.

The proposal cannot achieve the required 6 metres setback requirement relating to side property boundaries. It is noted that a mixed use development is able to propose a nil setback in accordance with the DCP. Building separation requirements relating to residential development would still apply in accordance with the DCP and the Residential Flat Design Code.

Justifications would have to be made in this respect and it is noted that the site width does constitute a constraint provided the amalgamation component of the application was supported.

Building separation

The proposal must carefully consider building separation as a key planning consideration for the application will be whether or not the development would inhibit development on adjoining sites. This issue is related to the minimum site area and minimum frontages standards in the LEP in that unsatisfactory amenity impacts in this respect gives further argument toward amalgamation of the site.

It is expected that the development will meet half of the required separation for habitable rooms/balconies in a reciprocal arrangement that will not unreasonably burden the development of adjoining lots.

Access and parking

The proposal includes a carpark that extends out of the ground on the Merriwa Street frontage. Concern was raised at our meeting in this respect relating to this component of the application not meeting a required activation of the street frontages.

Communal open space

The proposal does not indicate Communal Open Space. The DCP requires 10m² of communal open space per dwelling. Further, the COS must have a minimum 80m² and 8 metres dimension with 3 hours of sunlight and disabled access.

Communal Open Space with good amenity outcomes must be provided within the development.

Private open space

Proposed private open space within the development must achieve the minimum 2.4 metre dimension as per the DCP.

Natural ventilation

The proposal appears to satisfactorily meet natural ventilation requirements. The BCA report submitted with the application would have to discuss the issue of openings onto common corridors. Acoustic and privacy impacts would also have to be addressed in this respect.

Solar access

The proposal must meet solar access requirements of the DCP. Shadow diagrams and a solar access report would have to be submitted with any development application to demonstrate compliance. It is noted that solar access requirements for a mixed use development are not as stringent as for a residential flat building.

Apartment mix and sizes

The proposal includes a unit mix of 34X1 and 5X2 bedroom units. Council would prefer a mix of units that included 3 bedrooms. As noted at our meeting by Council's Urban Design consultant, the use of larger apartments may assist in a greater compliance with Council requirements relating to amenity of the units. It is noted that 10% must be "Adaptable" and 70% of units must be "Visitable".

Building entries

Particular concern is raised in how the proposal would address the street frontages and create "Active frontages" as per the requirements of the DCP.

As noted above, carparking structures located within frontages is not considered desirable. The DCP includes specific controls in relation to corner building articulation. Corner buildings are to address both street frontages.

Internal ceiling heights

The following internal clearance (ceiling heights) should be applied to the development:

3.3m ground floor retail or commercial uses
3.0m first floor commercial or residential
2.7m for residential on floors above, or 3.0m for commercial on floors above.

Storage

The minimum storage provisions as required by the DCP and the RFDC should be nominated on the plans. It would be helpful to include a matrix within the submitted statement of environmental effects detailing each unit and the storage provided. In addition, percentages between "in unit" storage and basement storage would also assist.

State Environmental Planning Policy 55 Contaminated land

The site has been mapped as possibly containing contaminated land. A stage 1 assessment would have to be submitted prepared by an appropriately qualified consultant which meets the requirements of the above mentioned SEPP.

SEPP 65 Design Quality Principles and the Residential Flat Design Code

The development must be designed having regard for the 10 design quality principles of SEPP 65

Principle 1: Context

The applicant must demonstrate that the proposed residential flat building is appropriate within the existing surrounding commercial and mixed use context.

Principle 2: Scale

The applicant must demonstrate that the proposed residential flat building is of an appropriate scale. In this regard, it is expected that a proposed application would be compliant with both height and FSR controls contained within Ku-ring-gai Local Environmental Plan (Local Centres) 2012. It is noted the proposal exceeds the allowable height control.

Principle 3: Built form

Refer to discussions in relation to the proposal's compliance with built form controls and anticipated impacts on adjoining properties.

Principle 4: Density

The proposed development in its current form exceeds the maximum permissible FSR under the KLEP (Local Centres) 2012, and has additional non-compliances with minimum frontage and site area. The proposal is unacceptable in this regard.

Principle 5: Resource, energy and water efficiency

The applicant must address design principle 5.

Principle 6: Landscape

The proposal will result in likely conflicts between the existing trees located within adjoining properties and the Merriwa Street road reserve.

Principle 7: Amenity

There are significant amenity issues in relation to the dwellings that need to be addressed. Visual and acoustic privacy, solar access, cross ventilation are all issues in relation to the current proposal.

Principle 8: Safety and security

The applicant must address design principle 8. In this regard, the location of foyer's at entrance levels for pedestrian access must be incorporated within "Active" street frontages to Pacific Highway Merriwa Street.

Principle 9: Social dimensions

The applicant must address design principle 9. A lack of 3 bedroom units is a concern in this respect.

Principle 10: Aesthetics

The schematic designs provided do not allow Council to comment. The applicant must address design principle 10 as part of their application.

The Residential Flat Design Code would be utilised to assess the development. Particular attention should be paid to the provision of disabled access and would require you to submit an accessibility report prepared by an appropriately qualified access consultant. Other issues that have been identified include building separation and an ability to achieve communal open space areas with good amenity. Any proposal should fully meet the requirements of the Residential Flat Design Code. Refer to Council's Urban Design Consultant's discussion points below for further guidance.

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

A valid BASIX certificate that demonstrates compliance with the provisions of the SEPP must be submitted. Please ensure all submitted documentation is consistent with the BASIX certificate.

State Environmental Planning Policy (SEPP) Infrastructure 2007

The above mentioned SEPP applies to the proposal due to its location on Pacific Highway. Division 17, Clause 101 and 102 will have to be addressed and will require the submission of an acoustic assessment prepared by an appropriately qualified consultant.

Public domain

Works proposed within the public domain, including landscape elements, should be consistent with the Town Centres Public Domain Plan 2010, which is available from Council's web site.

Services and air conditioning

It is Council's position that they will not allow individual air compressors for air conditioning to be housed on balconies or in visible locations (for example part of the roof). Services shall be housed, preferably in the basement, or in some cases may be appropriate in certain screened rooftop locations.

URBAN DESIGN COMMENTS

Please refer to attached urban design report.

LANDSCAPE COMMENTS

Trees

Eucalypts - The two most significant trees associated with the site are the remnant *Eucalyptus saligna* (Sydney Blue Gum) located adjacent to the southwest site corner within the neighbouring property. The trees are considered to be remnant specimens and part of the critically endangered Blue Gum High Forest plant community. Therefore they have significant broader ecological and landscape value.

While the trees are not located on site, their root zones continue across the site and therefore may be impacted by proposed works. It is recommended that if ANY development works are proposed within the root zone of the tree/s, which may extend greater than 15m from the trees, that an AQF5 arborist undertake a tree impact assessment.

Due to the tree/s ecological significance, if there is ANY impact to the trees as a result of development works, an ecological assessment (seven part test) is necessary (this is in addition to the arboricultural impact assessment). Impacts may include excavation up slope which may impact upon the water table and available moisture regimes to the trees. A hydrological impact report may also be required.

Street trees

The removal of existing street trees within the Pacific Hwy site frontage is supported. No tree replenishment planting within the Pacific Hwy frontage is requested.

The removal of existing trees within the Merriwa St frontage is supported. Replenishment tree planting is required along with public domain works to improve the streetscape character. Street tree planting species will be consistent with Council's Public Domain DCP.

Vehicular access

It is strongly recommended the proposed driveway adjacent to the southwest site corner be deleted to minimise tree impact. It is recommended existing grades and levels be maintained as much as possible within the root zone of the neighbouring Eucalypts (subject to arboricultural impact assessment).

Communal Open Space

The provision of functional COS at ground level is not possible given the site's size and shape constraints. Therefore COS will be provided on podium and the roof top, where there is opportunity for expansive views over the Sydney basin to the south west. COS is to provide a high level of amenity for residents and provide equitable access to the principal COS area. Shared facilities such as shading devices/structures, BBQ, seating and protection from winds shall be provided to encourage resident interaction and use.

ENGINEER COMMENTS

Stormwater drainage

The site has a fall of approximately 6-7m from the front to rear side towards the intersection of Merriwa Street and Fitzsimons Lane. The subject site is located within the B4 'Mixed Use' zone.

The DA must be accompanied by a stormwater management plan prepared by a suitable qualified hydraulic engineer. The stormwater design is to in accordance with Part 4 Water Management of Ku-ring-gai Local Centres Development Control Plan (DCP) 2013.

The Stormwater Management plan shall include the following:

- Show location of detention and retention storages and basement pump out system.
- Only 10% of the site storage requirements (SSR) from OSD can be deducted for on-site retention (Refer to Part 4B.5).
- The BASIX water commitments must be shown on the DA plans where required.
- Water quality measures to be addressed using MUSIC Modelling as required in Part 4B.6 Water Management of KDCP 2013.
- A water balance model (can be done using MUSIC) must be provided to demonstrate compliance with the 50% reduction in runoff days required under Volume C Part 4B.3-4 of the DCP.

Vehicle access and accommodation

Application will be referred to Roads and Maritime Services (RMS).

The site is further than 400 metres from Gordon Station, so the parking rates for the retail component are given in Volume C Part 2R.2 of the DCP and the residential rates in Volume A Part 8B.2-10.

Vol. A Part 8B.2 Car Parking Provisions

Apartment Size	Min. & Max. Parking Space Requirement per dwelling
One bedroom	0.6 - 1 space
Two bedroom	1 – 1.25 spaces
Three or more bedrooms	2 spaces
Visitor car spaces	1 space for every 6 apartments

Proposed – 28 parking spaces with 2 disabled car spaces and 5 visitor spaces. The required on-site parking shall comply with the above parking rates.

- Temporary space for service and removalist vehicles is to be provided. This space is to have a minimum dimension of 3.5m x 6m and a minimum manoeuvring area of 7m wide.
- At least one visitor parking space is to be adaptable by complying with the requirements of AS2890.6.
- Disabled parking spaces shall be designed in accordance with AS2890.6:2009 i.e. 2.4x5.4 with a shared area adjacent to the dedicated space. Ideally the disabled space should be located close to the lift or pathway crossing. Basement plan 1 shows disabled space No.1 to have a shared area between the fire stairs. This is not compliant with the BCA.
- All dimensions of parking spaces, aisles, driveways, circulation roadways, particularly at the minimum thresholds to be shown.
- Driveway gradients / ramps and transitions including reduced levels at transition points.
- Show vehicle swept paths using the AS2890.1:2004 B99 design template demonstrating vehicles can safely manoeuvre within the basement and enter and exit the site in a forward direction.
- Provide on-site, secure bicycle parking spaces and storage at the following rates:
 - 1 bicycle parking space per 5 units (or part thereof) for residents within the residential car park area; and
 - 1 bicycle parking space (in the form of a bicycle rail) per 10 units for visitors in the visitor car park area.

A qualified and experienced civil/traffic engineer must assist in the design of the vehicle access and accommodation arrangements. A traffic report will need to be submitted and confirm that the parking spaces are satisfied and that the car park complies with AS2890.1:2004 *Off-street car parking*.

Traffic and surrounding road network

A Traffic Impact Assessment Report, based on an assessment of the proposal on the surrounding road network, carried out by a consulting civil/traffic engineer. Consideration of the cumulative traffic impact of medium density development in the surrounding lots permitted under zoning, and the effect of this on road network.

Work Zone is to be made available along the site frontage of Merriwa Street. A work zone along Pacific Highway will not be supported by RMS.

Geotechnical investigation

A geotechnical report is required, to address such matters as excavation methods and support, dilapidation survey of neighbouring structures or vibration control, and groundwater inflow. Volume C Part 2.3-4 of the Local Centres DCP requires a tanked basement. This is to be addressed in the report.

Construction management

A Construction Traffic Management Plan must be submitted with the DA demonstrating how construction vehicles will approach and depart from all directions, enter and leave the site and manoeuvre on site.

Waste collection

Plans must indicate location of garbage collection area complying with Volume C Part 3.4 of the Ku-ring-gai Local Centres DCP.

- Plans to show critical control dimensions as specified and garbage collection vehicle manoeuvring area.
- Submit a longitudinal section through the driveway and into the basement car park which clearly demonstrates that there will be 2.6 metres clear headroom along the whole of the travel path required for the small waste collection vehicle. The section is to include realistic slab/beam depths, and be endorsed by a structural engineer.
- Garbage collection vehicle must be able enter the site, collect the garbage, then turn and leave the site in a forwards direction with a maximum three point turn. A modelling computer software Auto Track or equivalent is to be submitted to clarify that the swept paths comply with Australian Standards for Parking Facilities (Part 2: Off-Street commercial vehicle facilities) AS 2890.2:2002.
- Maximum grade negotiable by laden (small) garbage truck is 20%. Manoeuvring area (turning bay) within site to be relatively flat grade to ensure stability of vehicle.

Note: For 'Mixed Use' the development controls is to be referred to Volume C Part 3 of the Ku-ring-gai Local Centres DCP. The applicant is encouraged to contact Council's Waste Services Section to confirm whether waste from the small retail component can be collected on-street.

INFORMATION TO BE SUBMITTED

- Refer to Council's DA Guide

http://www.kmc.nsw.gov.au/resources/documents/DA_Guide.pdf

- All plans (survey plan, architectural plans, landscape plans, stormwater plans, compliance diagrams) must be at a consistent and workable scale (1:100 preferable or 1:200). All plans must show consistent detail.
- The plans must be clear and legible and sharp in detail. Poor photocopied plans will not be accepted.
- Ensure correct and complete owner's consent is provided with development application. Owners consent for adjoining properties also to be supplied where works impact adjoining trees.

CONCLUSION

The current proposal requires re-design and further refinement. Of particular note, the isolation of the adjoining corner allotment requires substantial further consideration and design detail. It is Council's position that the amalgamation with the corner lot is the best strategic planning outcome for the area, and the applicant is strongly encouraged to pursue this avenue when looking at future development of the subject lot.

The amendments/ additional information needed for your proposal to be acceptable are substantial. Further, given the above issues Council staff cannot guarantee that further issues would not be raised that may be significant in arriving at the optimal environmental outcome for the site. In this regard, we believe your proposal would highly benefit from a further pre-DA meeting prior to lodgement of a formal development application.

While the pre-lodgement meeting and these minutes attempt to identify significant issues during the initial phases of design, the assessment provided in these minutes does not have the benefit of a full planning assessment and should not be considered exhaustive.

We hope that this advice assists you. If you have any further enquires please contact Grant Walsh on 9424 0888 during normal business hours.


GRANT WALSH

EXECUTIVE ASSESSMENT OFFICER

RICHARD KINNINMONT

TEAM LEADER – DEVELOPMENT ASSESSMENT

DATED: 2/3/15

DISCLAIMER

The aim of pre development application consultation is to provide a service to people who wish to obtain the views of Council staff about the various aspects of a preliminary proposal, prior to lodging a development application (DA). The advice can then be addressed or at least known, prior to lodging a DA. This has the following benefits: -

- Allowing a more informed decision about whether to proceed with a DA; and
- Allowing matters and issues to be addressed especially issues of concern, prior to lodging a DA. This could then save time and money once the DA is lodged.

All efforts are made to identify issues of relevance and likely concern with the preliminary proposal. However, the comments and views in this letter are based only on the plans and information submitted for preliminary assessment and discussion at the pre DA consultation. You are advised that: -

- The views expressed may vary once detailed plans and information are submitted and formally assessed in the development application process, or as a result of issues contained in submissions by interested parties;
- Given the complexity of issues often involved and the limited time for full assessment, no guarantee is given that every issue of relevance will be identified;
- Amending one aspect of the proposal could result in changes which would create a different set of impacts from the original plans and therefore require further assessment and advice;
- This Pre-DA advice does not bind Council officers, the elected Council members, or other bodies beyond Council in any way whatsoever.