

JOINT REGIONAL PLANNING PANEL (Sydney West Region)

JRPP No	2014SYW090
DA Number	DA0180/14
Local Government Area	Ku-ring Gai Council
Proposed Development	Demolish existing structures and construct a mixed use development containing 3 buildings, 144 residential apartments, retail space, basement parking and landscaping works
Street Address	870-898 Pacific Highway, Gordon
Applicant/Owner	Alto Prestige Pty Ltd Alto Prestige Pty Ltd Georgio Altomonte Holdings Pty Ltd
Number of Submissions	Original proposal – 3 submissions Amended proposal – 1 submission Further amended proposal – 1 submission
Regional Development Criteria (Schedule 4A of the Act)	CIV of \$50, 942, 985
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • s79C(1)(a)(i) <ul style="list-style-type: none"> KLEP (Local Centres) 2012 SEPP 55 SEPP 65 SEPP (Infrastructure) 2007 SEPP (BASIX) 2004 SREP (Sydney Harbour Catchment) 2005 • s79C(1)(a)(iii)

	<p>KDCP (Local Centres) 2013</p> <p>Ku-ring-gai Contributions Plan 2010</p> <ul style="list-style-type: none"> • s79C(1)(a)(iv) <p>Environmental Planning & Assessment Regulation 2000</p>
List all documents submitted with this report for the panel's consideration	<ol style="list-style-type: none"> 1. Location sketch 2. Ku-ring-gai Planning Scheme Zoning Extract 3. Submission by Addison Lawyers 4. Original JRPP report 5. Architectural plans 6. Landscape plans 7. Stormwater management plans 8. Basix certificate 9. Clause 4.6 variation submission
Recommendation	Refusal
Report by	Grant Walsh, Executive Assessment Officer
Report date	2 March 2016

EXECUTIVE SUMMARY

Primary Property	870-898 Pacific Highway, GORDON NSW 2072
Lot & DP	Lot 1 DP 654047 Lot 3 DP 609007 Lot 16 DP 249171
Proposal	Demolish existing structures and construct a mixed use development containing 3 buildings, 144 residential apartments, retail space, basement parking and landscaping works.
Development Application No.	DA0180/14
Ward	GORDON
Applicant	Alto Prestige Pty Ltd
Owner	Alto Prestige Pty Ltd Georgio Altomonte Holdings Pty Ltd
Date lodged	22 May 2014
Issues	Site isolation, height, extent of retail floor space, street activation
Submissions	Original proposal – 3 submissions Amended proposal – 1 submission Further amended proposal – 1 submission
Land & Environment Court	N/A
Recommendation	Refusal
Assessment Officer	Grant Walsh

LEGISLATIVE REQUIREMENTS:

Zoning	B4 – Mixed Use
Permissible under	KLEP (Local Centres) 2012
Relevant legislation	SEPP 55 SEPP 65 SEPP (Infrastructure) 2007 SEPP (BASIX) 2004 SREP (Sydney Harbour Catchment) 2005

Integrated development

KLEP (Local Centres) 2012

KDCP (Local Centres) 2013

Ku-ring-gai Contributions Plan 2010

No

BACKGROUND

The Development Application (DA0180/14) was considered by the JRPP at its meeting of 4 December, 2015. The application was recommended for refusal because the development would result in the site isolation of the adjoining properties at 854, 860 and 900 Pacific Highway, Gordon contrary to Clause 3A.1 Land Amalgamation under Ku ring gai Local Centres Development Control Plan. At the 4 December 2015, meeting the applicant submitted the following information to the JRPP (**Attachment 3**) for its consideration:

- a submission prepared by Addison Lawyers
- a letter from GM Urban Design and Architecture regarding potential development schemes associated with two development concepts for 854 and 860 Pacific Highway
- a letter from Thomas Chang and Co, Solicitors, representing the purchasers of 900 Pacific Highway, Gordon
- a statutory declaration regarding conversations between the applicant and the owner of 854 Pacific Hwy
- a draft preliminary scheme for 900 Pacific Hwy

At the meeting the JRPP resolved to defer the matter for the following reason:

"While the Panel considers the proposed development would add [sic] the supply of choice of housing of the North Metropolitan subregion and add to the potential retail capacity of Gordon as planned, the Panel is not satisfied that orderly an[sic] economic development of this and adjacent land occurs as the development will result in isolated sites. Accordingly the matter is deferred to enable advice to be provided to the Panel on the latest submission and to seek legal advice about the issue of isolation and whether the terms of the relevant planning principles have to be satisfied."

COMMENTS

The submission provided for the applicant by Addison Lawyer's provides the opinion that 854 and 860 Pacific Highway would not be isolated as development for the purpose of "shop top housing" is permissible on those sites under the B4 Zoning. This form of development does not have a requirement for a minimum allotment size. The applicant also suggests that this type of development better meets the mixed use zone objectives over a residential flat building. Based on this position, the applicant argues that the site is not isolated and therefore does not need to satisfy the DCP provisions.

It is agreed that shop top housing is a permitted land use within the zone, does not require a minimum site area and would achieve the minimum 20 metres frontage for sites in a business zone under the provisions of the Local Centres LEP. No opinion is offered in relation to whether a 'shop top housing' development would better meet the objectives of the control given the hypothetical nature of any future development. It is not agreed that such a narrow view of the development capabilities of the site should be applied to determine whether the site is isolated as defined by the DCP. Consideration must be given to the range of uses permissible within the zone for its best and highest development potential to fulfil the relevant Objectives of the Local Centres LEP and associated DCP which operates to meet the Objects of the Environmental Planning and Assessment Act, 1979 (EP&A Act). In this regard, the relevant part of the EP&A Act that should be noted for the purposes of the assessment is Section 5(ii), which seeks *"the promotion and co-ordination of the orderly and economic use and development of land"*. To limit consideration of any future development of adjoining development to one specific use is contrary to the relevant planning objectives of the DCP, the site's zone and the EP&A Act. As a result, this is not considered a sound planning approach for an informed assessment. Supporting Council's DCP's approach in assessing 'site isolation' is a long established Planning Principle developed in the NSW Land and Environment Court, which precedes Council's controls:

Melissa Grech v Auburn Council [2004] 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 1979.

The above was further developed in the planning principal established in **Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189** which requires the submission of development schemes for isolated site(s) where negotiations have failed, as is required under the Local Centres DCP.

The applicant has submitted building schemes for an amalgamated 854-860 Pacific Highway, Gordon. However, before determining whether a building scheme is acceptable, as required by the DCP, you must be satisfied that the appropriate steps have been taken to amalgamate any potentially isolated sites. It is not until this process is followed that consideration should be given to building schemes on an isolated site(s). In the first instance, amalgamation with the subject property is likely to achieve a better planning outcome. This would also enable the development to meet Objectives 1, 2, 3, 4 and 7 of Clause 3A.1 of the Local Centres DCP. As noted above, there is no evidence that the established process in terms of negotiations and the making of a reasonable offer has occurred.

It is acknowledged that there may not be an agreement for the sale of the adjoining properties, however, it is not unreasonable to require information to determine whether an acceptable approach has been made to avoid site isolation as is required under the Local Centres DCP, which is a compulsory consideration under s.79C of the EP&A Act. If this process is not followed the issue has not been reasonably considered and therefore any decision is unsound.

In relation to 860 Pacific Highway, no evidence has been provided in terms of negotiations including an independent valuation and a reasonable offer between property owners. It is noted that the property owner of that site made objections to the proposal based on site isolation at the JRPP meeting of 4 December 2015 and written submissions reflecting this position were also received.

In relation to 854 Pacific Highway, the applicant has submitted a statutory declaration from the corporate counsel of Alto Group indicating that contact had been made with the owners of 854 Pacific Highway in November of 2015. The declaration indicates that the owner of 854 Pacific Highway advised that the site was not for sale, that they were not interested in selling the site and they were not prepared to put that in writing. It is noted that no submissions have been received from the property owner of 854 Pacific Highway. The applicant has not provided any evidence of an independent valuation or a copy of any formal offer to the neighbouring property irrespective of the adjoining properties position stated in the statutory declaration.

In relation to 900 Pacific Highway, evidence has been provided from the purchasers of that property indicating that they have no wish to sell. However, it is not clear if an independent valuation and therefore a reasonable offer was made to the owners of this property.

CONSULTATION – COMMUNITY

The information submitted by the applicant was not required to be notified in accordance with Council's notification provisions. The property owner of 860 Pacific Highway who presented at the JRPP meeting of 4 December has requested and received a copy of the applicant's additional information.

CONSULTATION – WITHIN COUNCIL

Nil.

Section 94 Development Contributions Plan 2010

The development would attract a section 94 contribution should it be approved.

LIKELY IMPACTS

The likely impacts of the development have been considered within this report.

SUITABILITY OF THE SITE

The site is considered to be suitable for a mixed use development, however, the application has not adequately demonstrated that the process required for addressing isolated sites has been undertaken.

ANY SUBMISSIONS

The amended application was not notified. The original assessment report contained within **Attachment 4** includes consideration of all previous submissions received.

PUBLIC INTEREST

The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and by Council ensuring that any adverse impacts on the surrounding area are minimised. The proposal has been assessed against the relevant environmental planning instruments and policy provisions and is deemed unsatisfactory in its current form.

The proposed development is not considered to be in the public interest as the development of the site would result in isolated adjoining sites as defined in the DCP and relevant caselaw/planning principles and given the absence of evidence demonstrating that the correct process of avoiding site isolation, has been followed.

CONCLUSION

This application has been assessed under the heads of consideration of Section 79C of the Environmental Planning and Assessment Act 1979 and all relevant instruments and policies. The proposal would result in the isolation of adjoining sites and the applicant has not demonstrated that the correct process as required by the DCP has been undertaken to determine the planning merits of the proposal in this regard. Therefore, it is recommended the application be refused.

RECOMMENDATION

That the Sydney West Joint Regional Planning Panel, as the consent authority, refuse development consent to DA0180/14, for the demolition of the existing structures and construction of a mixed use development containing 3 buildings, 144 residential apartments, retail space, basement parking and landscaping works, on land at 870-890 Pacific Highway, Gordon, for the following reasons:

1. Site isolation of 854, 860 and 900 Pacific Highway, Gordon

Particulars

(a) The proposed development and amalgamation of 870-898 Pacific Highway would result in 854, 860 and 900 Pacific Highway not achieving a minimum site area of 1200m² and consequently hinder any reasonable redevelopment for residential flat building use or a mixed use including a residential flat building at that site consistent with the B4 Zoning.

(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 redevelopment for residential flat building use or a mixed use including a residential flat building on that site consistent with the B4 zoning.

(c) It has not adequately been demonstrated that the process required under 3A.1 "Land Amalgamation" of the DCP or the established caselaw/planning principals relating to the adjoining properties at 854, 860 and 900 Pacific Highway 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.

(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.

Grant Walsh
Executive Assessment Officer

Shaun Garland
**Team Leader Development
Assessment**

Corrie Swanepoel
**Manager Development & Assessment
Services**

Michael Miotic
Director Development & Regulation

Attachments:

1. Location sketch
2. Ku-ring-gai Planning Scheme Zoning Extract
3. Submission by Addison Lawyers
4. Original JRPP report
5. Architectural plans
6. Landscape plans
7. Stormwater management plans
8. Basix certificate
9. Clause 4.6 variation submission