

COUNCIL PANEL ASSESSMENT REPORT

Panel Reference	2017SNH066
DA Number	DA 0307/17
LGA	Ku-ring-gai
Proposed Development	Demolition of a heritage item, tree removal, earthworks, construction and use of hardware building supplies development (Bunnings Warehouse), signage, landscaping, consolidation of titles. Threatened Species Development under the Species Conservation Act 1995 (NSW).
Street Address	950-950A Pacific Highway and 2 Bridge Street, Pymble
Applicant/Owner	Bunnings Properties Pty Ltd
Date of DA Lodgement	1 August 2017
Number of Submissions	2 submissions in response to 1 st notification.
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	CIV in excess of \$30 million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • SEPP 55 – Remediation of Land • (Draft) Remediation of Land SEPP • State Environmental Planning Policy No. 64 • SEPP (Infrastructure) 2007 • SEPP (Vegetation in Non-Rural Areas) 2017 • Sydney Regional Environmental Plan (Sydney Harbour Catchment) • Ku-ring-gai Local Environmental Plan 2015 (LEP): <i>The former 3M Building at 950 Pacific Highway, Pymble is listed as a local heritage item under the LEP</i> • Ku-ring-gai Development Control Plan 2015 (DCP) • Ku-ring-gai Development Contributions Plan 2010 • Roads Act 1993 • Water Management Act 2000 • <i>Threatened Species Development</i>, Species Conservation Act 1995
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Location sketch • Attachment 2 – Zoning extract • Attachment 3 – Architecture plans – part 1-7 • Attachment 4 – Landscape plans • Attachment 5 – Civil plans – part 1 & 2 • Attachment 6 – Heritage assessment report
Report prepared by	Janice Buteux-Wheeler, Executive Assessment Officer
Report date	25 September 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **Not Applicable**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

DEVELOPMENT APPLICATION

EXECUTIVE SUMMARY

Property	950-950A Pacific Highway and 2 Bridge Street, Pymble
Lot & DP	Lot 1 in DP 718718 and Lot B in DP 371406
Proposal	Demolition of a heritage item, tree removal, earthworks, construction and use of hardware building supplies development (Bunnings Warehouse), signage, landscaping, consolidation of titles. Threatened Species Development under the Species Conservation Act 1995 (NSW).
Development Application No.	DA 0307/17
Applicant	Bunnings Properties Pty Ltd
Owner	Bunnings Properties Pty Ltd
Date lodged	1 August 2017
Issues	Heritage significance, loss of significant vegetation, public interest, urban design, tree preservation, species impact statement.
Submissions	2 submissions in response to 1 st notification
Land & Environment Court	89311 of 2018 deemed refusal lodged 20 March 2018 (<i>s34 conciliation scheduled for 14 November 2018</i>)
Recommendation	Refusal
Assessment Officer	Janice Buteux-Wheeler

LEGISLATIVE REQUIREMENTS:

Zoning	B7 Business Park
Permissible under	Ku-ring-gai Local Environmental Plan 2015
Relevant legislation	SEPP 55 – Remediation of Land (Draft) Remediation of Land SEPP State Environmental Planning Policy No. 64 SEPP (Infrastructure) 2007 SEPP (Vegetation in Non-Rural Areas) 2017 Sydney Regional Environmental Plan (Sydney Harbour Catchment) Ku-ring-gai Local Environmental Plan 2015 (LEP): <i>The former 3M Building at 950 Pacific Highway, Pymble is listed as a local heritage item under the LEP</i> Ku-ring-gai Development Control Plan 2015 (DCP)

Integrated development

Ku-ring-gai Development Contributions Plan
2010
Water Management Act 2000
Threatened Species Development, Species
Conservation Act 1995
No

History

Date	Event
16.5.2017	Commissioner Brown of Land and Environment Court approved DA115/15 for demolition and construction of a Bunnings Warehouse on the site (NSWLEC1238).
29.6.2017	The applicant lodges DA 252/17, for same development using Court approved plans.
7.7.2017	Council filed in the Land and Environment Court a s56A appeal against Commissioner Brown's decision.
12.7.2017	Council rejects DA 252/17 on the basis of absent \$320 cheque for RMS integrated development referral.
1.8.2017	<p>The applicant lodged DA 307/17, using Court approved plans, plus a \$320 cheque for RMS.</p> <p><i>Consent was sought under Development Application No. DA0307/17 for the demolition of existing structures, tree removal, earthworks and retaining wall, construction of a four storey building and its use for hardware and building supplies, driveway access from Ryde Road, signage, landscaping, consolidation of titles and subdivision for road widening at 950 Pacific Highway and 2 Bridge Street, Pymble."</i></p>
17.8.2017	Council issues Request for Information letter to the applicant.
25.8.2017	Council registers the DA with the Sydney North Planning Panel Secretariat.
31.8.2017	The applicant responds to the Council's Request for Information letter.
13.10.2017	Council's s56A appeal heard before Justice Sheahan.
25.10.2017	Council returns \$320 RMS cheque, confirming RMS do not require integrated approval.
14.12.2017	<p>RMS sends a letter objecting to the proposed Ryde Rd driveway:</p> <p>The letter from RMS on this date states: <i>"Roads and Maritime has reviewed the submitted application and does not provide concurrence to the proposed development under section 138 of the Roads Act 1993 due to the following:</i></p> <p><i>Roads and Maritime advises that current practice is to limit the number of vehicular conflict points along the arterial road network to maintain network efficiency and road safety....Ryde Road is a major arterial road, which carries a high volume of traffic, where transport efficiency of through traffic is of great importance."</i></p>

9.2.2018	RMS advises the applicant that removal of the Ryde Rd driveway is required to be shown on amended plans.
15.2.2018	The applicant provides RMS with a plan showing deletion of the driveway and associated road widening.
28.2.2018	Justice Sheahan dismissed Council's s56A appeal.
20.3.2018	The applicant lodges an appeal to the Land and Environment Court on the basis of deemed refusal.
29.3.2018	<p>RMS issues letter granting concurrence to DA based on the applicant's submission removing the access driveway from Ryde Road, dated 15 February 2018, with conditions subject to removal of driveway and reference to (future) West Street signals</p> <p>The letter from RMS to the Council on this date states: "...Roads and Maritime held a meeting with Council on 22 March 2018 confirming that Roads and Maritime does not support the signalisation of Ryde Road and West Street at this stage. Therefore Roads and Maritime raises no objection to the proposed development subject to the following conditions being included in any consent issued by Council..."</p>
2.5.2018	The Court directs the applicant to file and serve by 18 May 2018, any Motion to rely upon amended plans.
	<p>The applicant files a Notice of Motion for leave to rely upon amended plans.</p> <p>According to the affidavit filed in support of this application for leave, the amendments to the plans filed with the appeal, arose to address the matters set out in the RMS letter, dated 29 March 2018.</p> <p>The amendments included:</p> <ul style="list-style-type: none"> a) Removal of the access driveway from Ryde Rd (consent was no longer sought for subdivision to realign the boundary with and to widen Ryde Rd) b) As a result of removing the access driveway, changes were made to the southern elevation c) Minor changes were made to the finished levels and locations of drainage lines and pits in the southern corner of the site d) Removal of the access driveway also means that 13 trees could be retained in the setback to Ryde Rd e) Minor amendments to stairs from the southern through-site link
25.5.2018	<p>The Court grants leave to the applicant to rely on an amended application.</p> <p>The matter was listed for conciliation on 14 November 2018 and the</p>

	<p>applicant was directed to file and serve any SOFAC in Reply by 18 July 2018 (Council has not received any such documents).</p> <p>On making those directions, the Court noted that the parties may seek to convert the section 34 conference to a hearing, following Bunnings' review of the Council's SOFAC.</p>
25.5.2018	The applicant submits revised plans, comprising removal of driveway to Ryde Rd, and reliance on road widening. The supplementary SEE confirms the revised scope of the DA.
30.5.2018	Council re-notifies the DA (14 days).
3.7.2018	<p>RMS concurrence letter with conditions received.</p> <p>Letter from RMS to the Council, states in part: <i>"It is noted in this current submission that the amended plans now comply with all the requirements with no access from Ryde Road and no signalisation of Ryde Road and West Street, and all access to the site will be via the local road network. Therefore Roads and Maritime raises no objection to the proposed development subject to the following conditions being included in any consent issued by Council..."</i></p>
6.7.2018	<p>Council issues Statement of Facts and Contentions.</p> <p>Council's contentions are grouped as follows: heritage significance, loss of significant vegetation and the public interest, Council also listed contentions that may be resolved by amended plans, which include: urban design and tree preservation.</p> <p>Contentions that could be resolved by conditions of consent include: tree numbering, tree protection fencing and aspects of urban design including materials and finishes and the location of pallet racking in the nursery.</p> <p>Contentions involving an insufficiency of information include: species impact statement, (requiring that an amended SIS be submitted for the amended application), that no plan of subdivision was provided for the proposed widening of Ryde Road and there was insufficient information about other proposed transport infrastructure improvements.</p>
28.8.2018	<p>Email from RMS to the applicant, states in part:</p> <p><i>"Roads and Maritime raises no further comments other than what has been provided in the attached letter, dated 3 July 2018.</i></p> <p><i>It is further noted that Council is requesting additional works in the following form;</i></p> <ul style="list-style-type: none"> • <i>The widening of the Ryde Road off-ramp.</i> • <i>The provision of pedestrian crossing facilities over Pacific Highway at Bridge Street.</i> <p><i>In this regard, Council will need to refer the justification for these works</i></p>

	<p><i>to Roads and Maritime for review and assessment in the first instance prior to the determination of the application.</i></p> <p><i>To clarify, the traffic improvement works that are proposed/identified by Council is a matter to consider as part of the Development Application process, and Roads and Maritime needs to be involved in the assessment of need for any proposal on classified road and reviewing designs for these measures.”</i></p>
4.9.2018	The applicant provides a written response to Council Facts and Contentions.
5.9.2018	Sydney North Planning Panel meeting for update briefing.
14.11.2018	The s34 conciliation conference is scheduled.

THE SITE AND SURROUNDING AREA

The site:

Visual character study category:	N/A
Easements/rights of way:	Yes – RMS easement for batter
Heritage Item:	Yes
Heritage conservation area:	No
In the vicinity of a heritage item	No
Bush fire prone land:	No
Endangered species:	Yes (Blue Gum High Forest)
Urban bushland:	No
Contaminated land:	Yes

Site description:

The site comprises 2 allotments, being 950-950A Pacific Highway, Pymble (Lot 1 in DP 718718) and 2 Bridge Street, Pymble (Lot B in DP 371406). Both allotments are owned by the applicant.

No's 950-950A Pacific Highway has an area of 1.825 hectares. It is an irregularly shaped allotment on the corner of the Pacific Highway and Ryde Road, which is visually prominent. Existing on this allotment is a 5 storey commercial building in an established landscape setting, with concrete and bitumen driveways accessing Bridge Street, along with an open carpark area (on the south-western boundary) and a 2 storey carpark (on the southern boundary).

The allotment on 2 Bridge Street has an area of 0.088 hectares. It is a regular shaped allotment, in close proximity to the intersection of the Pacific Highway and Bridge Street. Existing on this allotment is a 2 storey commercial building, a driveway accessing Bridge Street and a carpark.

The site has 2 frontages to Bridge Street, each of which provides vehicular access to both allotments comprising the site. The site is burdened by easements that benefit the adjoining commercial development on the east boundary of the site.

The site is identified as a contaminated site, pursuant to State Environmental Planning Policy No.55.

The site is zoned B7 Business Park under the Ku-ring-gai Local Environmental Plan 2015.



Figure 1: Aerial photograph of development site (outlined in red) and surrounds

Surrounding development:

Development in the immediate vicinity of the site consists primarily of commercial uses accommodated in buildings of varying scales.

Commercial developments in the immediate vicinity of the Site fronting the Pacific Highway and Ryde Road, gain access from Bridge Street.

THE PROPOSAL

The proposal as amended by the Court's leave granted on 25 May 2018 ('Amended Application'), seeks consent for the demolition of a heritage item, tree removal, earthworks and retaining walls, construction of a four storey building and its use for hardware and building supplies, signage, landscaping, consolidation of titles at 950-950A Pacific Highway and 2 Bridge Street, Pymble ("Site") as follows:

(a) Demolition of:

- The existing 5 storey office building (known as the former 3M Building) at

COMMUNITY CONSULTATION

In accordance with Volume C, Part 25 of the Ku-ring-gai Development Control Plan, owners of surrounding properties were given notice of the application. In response, two submissions were received from

1. L. Burt – L1, 17-21 Macquarie Street, Parramatta
2. Friends of Pymble – frndspym@tpg.com.au

The amended plans were notified and no further submissions were received in response to the second notification. The issues raised in the submissions are summarised and addressed following:

Previous applications at the site have included a community garden but in the most recent application the community garden isn't included. It is suggested that to be more sustainable and fitting the needs of its location a disability accessible community garden would make the development sustainable and thus addressing the Council's Disability Action Plan. There would also need to be accessible pathways, adult change rooms with adult size change tables and a hoist, ambulant toilet bars etc. to support the garden users.

The previous development application DA0115/15 included a proposal for a Council sponsored community garden. Council's Community Volunteer Program Coordinator identified the following criteria for assessing potential Council sponsored community garden sites:

- the land must be owned or managed by Council
- available space for a 300m² to 500m² garden
- full sun and well drained
- in a central location to potential users
- close to public transport
- a low level of utilisation of land
- a low impact on surrounding land users
- parking availability & vehicular access
- close to public amenities including toilets

A new garden would require a substantial shed and fencing to protect produce from vermin such as rabbits and rats. It would also require water and power.

At the time there were no community groups showing an interest in a possible community garden at the site. The land is neither managed nor owned by Council. The site is not in a particularly attractive location for Pymble or Gordon residents, being in a light industrial area, it is not very close to medium density housing and there was no allocation of funds from the applicant to get the garden going. Issues of available potable water and testing of the soil contaminants were not resolved.

The creation of a community garden site in the manner proposed under the previous development application would represent a financial impost on Council that was not justified given lack of community interest.

Council would not object to Bunnings supporting and facilitating its own community garden project at the site.

The requirement for this landmark site is for 'high architectural quality' which will 'contribute significantly to the local built environment'.

"It is the intention of the DCP that the area have high quality interesting architectural buildings. Landmark buildings historically are buildings that are located in prominent positions and which are memorable due to their defining features. Quality landmark buildings are important in any urban context.

The proposed substantial signage on the Pacific Highway is excessive and should be significantly reduced, particularly as they are to be illuminated.

The style, type, and characteristics of the signs, including illumination, should better address the architectural and environmental significance of the site.

Matters relating to signage have been raised by Council as reasons for refusal of the application.

INTERNAL REFERRALS

Development Engineer

Council's Development Engineer provided the following comments:

Water management - The system as described in the report and plans by C & M Consulting Engineers includes on site detention, rainwater retention and re-use and treatment of runoff to achieve Council's objectives.

Vehicular access and parking - The floor area is reduced from the previous proposal. Council's Strategic Traffic Engineer will provide some comments on traffic and parking.

Geotechnical report - The report is based on two boreholes. Due to the variable nature of the subsurface materials, the report recommends further investigation by a grid of boreholes, prior to the commencement of bulk excavation.

Groundwater was not identified in the geotechnical investigation, but is shown on the contamination report as being below basement level.

Council's Development Engineer has recommended conditions should consent be granted to the DA.

Traffic

Council's Consultant Traffic Engineer provided the following comments:

Within the TTPA report dated September 2016, reference is made (on page 9) to "The projected traffic implications of the previous scheme were considered by RMS and the L&E Court and accepted subject to, i) the widening of the Ryde Road Off Ramp, ii) the provision of traffic signals at the Ryde Road/West Street intersection, iii) relocation of the pedestrian crossing over the Pacific Highway at Bridge Road.

The TTPA report (Page 8) states that it is not possible to widen the Off Ramp back to West Street due to the number of affected properties and buildings. The report

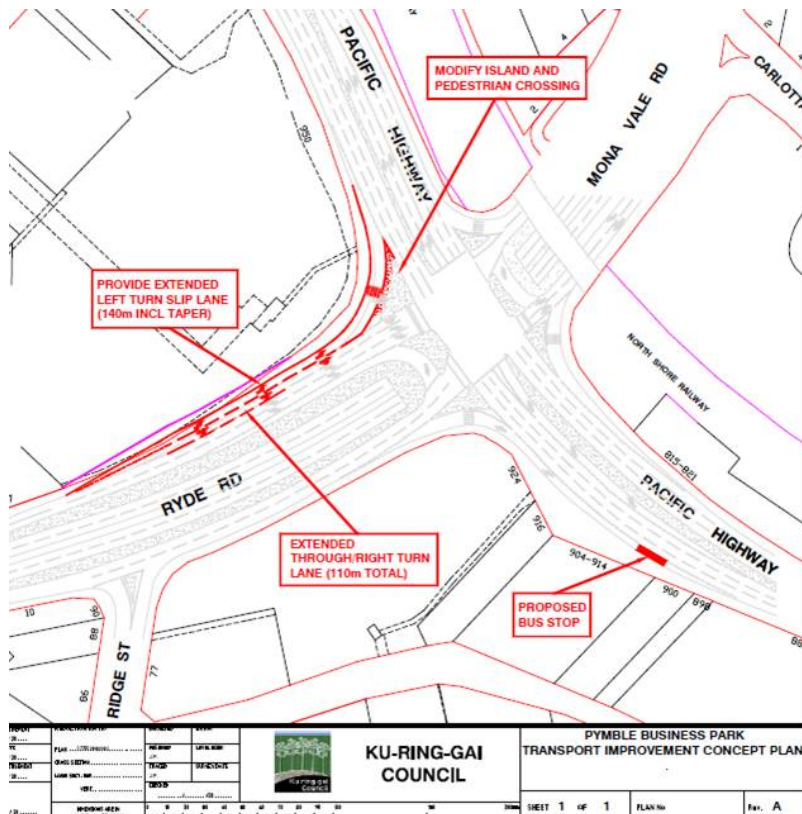
(Page 8) also states that "forcing the eastbound vehicles through the Pacific Highway intersection would have a significant detrimental effect on the operational performance of this major intersection and to extent defeat the purpose of the grade separated interchange."

Putting this together, the Court made the granting of development consent contingent on Ryde Road / West Street being converted to traffic signals. Dating back to 2011, RMS have sought investigation of alternatives to converting the intersection to signal controls, and in their letter, dated 29 March 2018, have confirmed the position that the authority does not support traffic signals at Ryde Road / West Street. The statement on Page 8 of the TTPA report (re the effect on the interchange) makes it somewhat difficult to argue that the development will have no detrimental impact on traffic if the traffic signals are not provided (i.e. send all traffic through the Pacific Highway intersection).

An independent review of traffic surveys, SIDRA modelling should be undertaken to test the veracity of the TTPA conclusions. It does seem that TTPA rely on the 2011 Pymble Business Park Study, which would have generated 300 additional vehicle trips during the weekday AM and PM peaks, and then apply the allowable FSR to suggest that the site could generate 1,045 (AM peak) and 784 (PM) trips, which is massively over the findings of the 2011 study. While the report doesn't explicitly state this, its seems to want to take the 2011 increase and rely on it totally for the Bunnings site, whereas it applies to the entire precinct.

Council's Strategic Traffic Engineer provided the following comments in relation to the application.

"The intention of the road widening on the Ryde Road off-ramp was that it was to be confined to the Bunnings frontage only and not extend further south-west towards West Street. Below is an extract of the plan of transport improvements for Pymble Business Park (which supports the works schedule in the Ku-ring-gai Development Contributions Plan) which helps to clarify the extent of road widening on the Ryde Road off-ramp and the extent of potential property affectation (purple line on Bunnings frontage).



In relation to the traffic signals at West Street and Ryde Road, Traffic Engineer's comment that "the statement on Page 8 of the TTPA report (re the effect on the interchange) makes it somewhat difficult to argue that the development will have no detrimental impact on traffic if the traffic signal are not provided is concurred with (i.e. send all traffic through the Pacific Highway intersection)"

The Development Application should be refused as there is insufficient certainty in relation to statements made in the submitted traffic impact assessment report by TTPA, in relation to the traffic impacts of the development.

Ecology

Council's Ecological Assessment Officer commented as follows:

The site contains remnant Blue Gum High Forest (BGHF) trees which form part of critically endangered ecological community (CEEC) listed under the Threatened Species Conservation Act 1995. The BGHF community within the site, and more specifically the area in which the proposed shaded nursery and community garden is to be sited, contains large remnant Eucalyptus saligna (Sydney Blue Gum) canopy trees within a modified understorey.

The large Sydney Blue Gum (Eucalyptus saligna) identified as tree 135 located within the north-eastern portion of the subject site has been mapped as a category 5 canopy remnant under the KLEP DCP 2015.

The following controls are relevant to this tree:

1 Retain trees identified as Canopy Remnant on the Greenweb map. (Refer to maps in 19R.1 of this Part).

2 Planting within land identified as Canopy Remnant is to consist of:

- i) not less than 30% locally native species;*
- ii) species that reflect the relevant vegetation communities within the area; and*
- iii) a mix of groundcover, shrubs and trees and is to exclude monocultures.*

3 A flora and fauna assessment may be required, except where council has determined otherwise or where an assessment has already been undertaken as part of a submitted Biobanking Statement.

The proposal does not retain T135, which is a canopy remnant. The proposed planting at the site does achieve the requirements of the controls above.

The applicant has submitted a species impact statement (SIS) with the development application, however the SIS submitted is not current and is required to be amended such that it references and considers the current development application.

The Species Impact Statement prepared by Cumberland Ecology dated 11th February 2015 submitted with the application should be updated in accordance with the requirements of Division 2 of the Threatened Species Conservation Act 1995.

An amended species impact statement (SIS) should address the requirements of the Act as follows:

- 1. The species impact statement that was prepared and submitted under DA0115/15 and does not refer to the current proposal (activity) submitted under DA0307/17. Part 109 and 110 of Division 2 of the Threatened Species Conservation Act 1995, as extracted below, clearly set out the requirements of an SIS. The relevant bold sections below clearly highlight that an SIS is to be prepared for the purpose of “development consent”. Reference is also made to the location and layout and action proposed. The Description of Proposal within the SIS (Section 2.1.1) refers to incorrect timing and layout of the action proposed and does not refer to the plans lodged under DA0307/17.*

109 (2)(b) if the species impact statement is prepared for the purposes of the Planning Act, the applicant for development consent or the proponent of the activity proposed to be carried out (as the case requires), or

110 Content of species impact statement

- (1) A species impact statement must include a full description of the action proposed, including its nature, extent, location, timing and layout and, to the fullest extent reasonably practicable, the information referred to in this section.*

- 2. The description of ameliorative measures and compensatory strategies referred to in the SIS (Section 7.1.2) is incorrect and does not refer to the plans lodged under DA0307/17*

110 (2)(i) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the species and populations, including a compilation (in a single section of the statement) of those measures,

3. *The discussion of feasible alternatives in the SIS (Section 5.4) is incorrect and does not refer to the plans lodged under DA0307/17.*

110 (2)(h) *a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,*

4. *The director general requirements (DGR) that were previously issued by the NSW Office of Environment & Heritage (OEH) are dated April 2014. The bionet atlas search for threatened species records was undertaken by the OEH in 2014 and as such the DGRs produced at that time do not capture any new records since 2014. The DGR's should be updated or consultation should be undertaken between the applicant and OEH to validate that the previous DGRs are acceptable for the purpose of the SIS.*

The Development Application should be refused as the applicant has not submitted an SIS that relates to the proposed development, in accordance with the Director-General requirements issued by the Office of Environment and Heritage. It is noted that concurrence (has not been sought as the proposal is not recommended for approval.

Landscape

Council's Landscape Tree and Assessment Officer provided the following comments:

"The proposal is not acceptable in its current form due to the loss of a significant tree.

Tree impacts - *The arborist assessed a total of 254 trees located within the subject site, adjoining properties and on the nature strip areas. The proposed development will require the removal of 87 trees and canopy pruning of 12 trees as follows:*

- *Removal of 19 trees that are exempt tree species being (trees 4, 9, 13, 14, 15, 17, 18, 26, 74, 139, 151, 174, 175, 178, 211, 214, 215, 216 and 217). Tree's 174, 175 and 178 straddle the boundary with 4-10 Bridge Street;*
- *Removal of 44 protected trees which fall within proposed building footprint and access paths (trees 8, 19, 20, 21, 25, 42, 43, 44, 45, 46, 47, 69, 72, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 100, 101, 113, 114, 115, 117, 128, 129, 130, 131, 132, 133, 134, 135, 149, 213 and 232);*
- *Removal of 24 trees (including the additional 11 trees to be removed for the proposed regrading of the eastern corner of the site) surrounding the proposed building and site infrastructure being (trees 11, 63, 64, 95, 98, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 116, 126, 136, 137, 138, 152, 154 and 193). Five trees are located on adjoining land and require the written consent of the RMS prior to removal - Trees 95, 110, 111, 112 and 116); and*
- *Canopy pruning of 12 protected trees (trees 27, 28, 29, 30, 150, 176, 179, 180, 181, 190, 191 and 192).*

T135 – Eucalyptus saligna (Sydney Blue Gum) - The development will result in loss of a significant tree T135 - Eucalyptus saligna (Sydney Blue Gum). The removal of T135 is considered unacceptable due to its overall size and significance in the landscape. T135 is greater than 30 metres in height with a 24 metres canopy spread. The removal of T135 cannot be supported for the following reasons:

- T135 has been identified as having high significance, good overall health and condition with visual amenity and significance to the site and surrounding areas. T135 is also a characteristic species of the Blue Gum High Forest Critically Endangered Ecological Community,
- The removal of Tree T135 is inconsistent with the objective of Clause 5.9 of LEP 2015, which seeks “to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.”
- The removal of Tree T135 is inconsistent with the objectives of Part 13.1 of DCP 2015 in that it does not “recognise, protect and enhance and aesthetic and heritage values of trees” or “Secure and maintain local character and amenity.”

To preserve T135 amended plans are required. No building works, structures and changes soil levels are permitted within a minimum distance of 15 metres from the trees trunk.

The applicant has not considered viable alternative solutions that would preserve T135 that incorporate no net loss of warehouse floor space and retain a compliant number of car spaces (see attached “marked up” plans). An alternative that incorporates an additional warehouse level would provide an opportunity to design a unique landmark building that is more visually prominent in accordance with item 6 of part 14A.5 of the DCP. The applicant has not considered changes to preserve T135 which is a highly significant specimen. These changes would enable a better relationship between the proposed built form and the landscape setting of the site.

Deep soil landscaping - In accordance with Part 9A.3 of the KDCP at least half of the required setbacks are to be deep soil landscaping (DSL) areas. The Deep Soil Compliance Plan no. 811C Revision K dated 19/09/16 indicates compliance with the controls with a DSL of 96% along the Pacific Highway setback, 81% along the Ryde Road setback, 90% along the south western side setback and 85% along the Bridge Street setback.

Landscape plans - The landscape plans are the same version as the court approved plans and are considered acceptable.

Engineering plans - The engineering plans are the same version as the court approved plans and are considered acceptable subject to some minor amendments to include the recommendations noted in Clause 2.4 of the arborist report by Rain Tree Consulting, dated 18/07/17.”

The Development Application should be refused as the applicant has not considered changes to the development that would preserve T135 which is a highly significant specimen. These changes would enable a better relationship between the proposed built form and the landscape setting of the site.

Environmental Health

Council's Environmental Health Officer provided the following comments:

In the Statement of Environmental Effects, Section 6 'Environmental Planning Assessment' item 6.2.3 'Relationship to Neighbouring Properties' the writer advocates as adjoining land uses are not sensitive noise receivers and adjacent buildings are essentially sealed boxes with limited outdoor areas or openable windows, the operation of the proposed hardware and building supply land use are unlikely to result in any significant adverse acoustic impacts.

It is understood that the applicant has indicated their unwillingness to engage an acoustic engineer to undertake an acoustic assessment of the possible impact the development might have on adjoining properties, perhaps in view of the abovementioned comment. An educational establishment was approved in 2013 (and remains operating) at 4-10 Bridge Street that includes access to terraces on that building. An approved (and operating since 2004) child care centre for 98 children is located at 20 Bridge Street, as is a café with outdoor seating. The suggestion that the adjacent buildings are essentially sealed boxes with limited outdoor areas is not accurate.

The impact that a development of the size and nature proposed by on adjoining properties needs to be given due consideration. It is therefore essential that the applicant provide an acoustic assessment/report on the impact the proposed development will have on neighbouring properties. I note Council's request to the applicant to provide an acoustic report dated 17 August 2017 and the applicant's letter whereby "the applicant confirms that the requested information will not be provided", dated 31 August 2017."

The Development Application should be refused as there is insufficient acoustic information to allow a proper assessment of the impacts of the development.

Building

Council's Building Surveyor provided the following comments:

"The letter of support from Norman Disney & Young regarding compliance with Parts C, D and E of the BCA 2014 is out of date as should be referencing BCA/NCC 2016 – amendment 1.

The reference also to Assessment Method Clause A0.9(b)(ii) is also out of date as this Clause is now not referenced with BCA 2016 – amendment 1.

The BCA letter of support submitted relates to a 2014 revision of plans, which are not the subject of this development application. The letter indicates that the 2014 plans in general comply with the (outdated) Building Code of Australia requirements.

Some areas that do not fully comply with the deemed to satisfy provisions of the (outdated) BCA include egress, construction materials, and fire protection measures, however the BCA consultant has advised that these matters can be resolved by applying an alternative solutions at CC stage.

Concern was raised by the consultant in relation to perimeter access to the site by Fire and Rescue vehicles, which will need to be determined by Fire and Rescue NSW prior to any approval. In regards to the details of Non-Compliance stated above which is now out of date any approval from Fire + Rescue NSW should be provided

as part of the Development Application so as to determine whether full access around the building as required by the Deemed to Satisfy provisions of the NCC are required or whether a Performance Solution is acceptable to Fire + Rescue NSW.

The Development Application should be refused as there is insufficient information regarding access to the development for emergency vehicles. This cannot be deferred to CC stage, as if a performance solution is not acceptable to Fire + Rescue, achieving access around the building would conflict with areas required for Blue Gum High Forest offset planting, and has implications in the preparation and assessment of the SIS. Council requested the applicant provide an updated BCA report on 17 August 2017 and the applicant responded by letter "the applicant confirms that the requested information will not be provided" dated 31 August 2017.

Heritage

Council has engaged Graham Brooks to provide detailed specialist comments in relation to the proposed demolition of the former 3M building, which is a local heritage item listed in the Heritage Schedule of KLEP2015 (Item number I593 listed in Schedule 5). The detailed assessment by Graham Brooks is attached (**Attachment 6**), and the heritage concerns in relation to the proposal are summarised below:

"The proposed demolition of the former 3M Building and removal of its landscaped setting will adversely impact on the heritage significance of the building and site, which is individually listed as a heritage item in Schedule 5 of Ku-ring-gai LEP 2015.

The former 3M Building at 950 Pacific Highway, Pymble (Lot 1, DP 718718) is individually heritage listed as Heritage Item 593 in Schedule 5 of the LEP. The heritage listing extends across the entirety of the site.

The proposed demolition of the former 3M Building and general redevelopment of the overall site, including the early landscaped setting of the 3M Building, is contrary to two of the particular aims of the LEP, as set out in subclauses (2)(a) and (2)(f) of Clause 1.2 of the LEP, which are as follows:

- (a) to guide the future development of land and the management of environmental, social, economic, heritage and cultural resources within Ku-ring-gai,...*
- (f) to recognize, protect and conserve Ku-ring-gai's indigenous and non-indigenous cultural heritage,*

The proposed demolition of the former 3M Building and general redevelopment of the overall site, including the early landscaped setting of the 3M Building, is contrary to two of the particular objectives of clause 5.10(1) of the LEP, as set out in subclauses (1)(a) and (1)(b) of clause 5.10 of the LEP, which are as follows:

- (a) to conserve the environmental heritage of Ku-ring-gai,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*

The proposed demolition of the former 3M Building and general redevelopment of the overall Site, including the early landscaped setting is contrary to the particular requirement of the first sentence of clause 5.10(4) of the LEP, which is as follows:

"The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned."

The proposed demolition of the former 3M Building and general redevelopment of the overall site, including the early landscaped setting fails to take into account the heritage listing of the site in the LEP. Accordingly, there is no evidence of any analysis of the potential to take advantage of the conservation incentives in clause 5.10(10) of the LEP when the redevelopment was being formulated, which clause provides as follows:

“The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

EXTERNAL REFERRALS

Roads and Maritime Service

The application was referred to RMS under the provisions of clauses 101 and 104 (traffic generating development) of SEPP (Infrastructure). In response, RMS provided the following comment to the original application:

Reference is made to Council’s letter, dated 4 October 2017, regarding the abovementioned application which was referred to Roads and Maritime Services (Roads and Maritime) for concurrence in accordance with Section 138 of the Roads Act, 1993 and the State Environmental Planning Policy (Infrastructure) 2007.

Roads and Maritime has reviewed the submitted application and does not provide concurrence to the proposed development under Section 138 of the Roads Act 1993 due to the following:

Roads and Maritime advises that current practice is to limit the number of vehicular conflict points along the arterial road network to maintain network efficiency and road safety. This current practice is reflected in Section 6.2.1 of Roads and Maritime current publication of the Guide to Traffic Generating Developments, which states ‘access across the boundary with a major road is to be avoided wherever possible’. Ryde Road is a major arterial road, which carries a high volume of traffic, where transport efficiency of through traffic is of great importance.

Further to the above, clause 101(2a) of State Environmental Planning Policy (Infrastructure) 2007, which reads as follows:

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

“where practicable, vehicular access to the land is provided by a road other than the

classified road”.

As the subject site has alternative vehicular access via the local road network, Roads and Maritime would not grant concurrence to the proposed access on Ryde Road under Section 138 of the Roads Act, 1993.

The applicant sought to resolve the RMS concerns. On 29 March RMS issued further advice to Council, based upon amended plans. The amended plans were provided to Council on 25 May 2018.

Reference is made to Council’s letter dated, 4 October 2017, regarding the abovementioned application which was referred to Roads and Maritime Services (Roads and Maritime) in accordance with Clauses 101 and 104 the State Environmental Planning Policy (Infrastructure) 2007.

Roads and Maritime has reviewed the submitted application and notes Bunnings’ submission removing the access driveway from Ryde Road dated 15 February 2018. Furthermore Roads and Maritime held a meeting with Council on 22 March 2018 confirming that Roads and Maritime does not support the signalisation of Ryde Road and West Street at this stage. Therefore Roads and Maritime raises no objection to the proposed development subject to the following conditions being included in any consent issued by Council:

- 1. Roads and Maritime has previously resumed & dedicated a strip of land as road along the Pacific Highway and Ryde Road frontages of the subject property, as shown by grey colour on the attached Aerial – “X”
Roads and Maritime has also previously acquired an easement for batter shown by orange colour on the attached aerial — over the subject property, as shown on DP 718718 and noted on title (Dealing L652975).*

Therefore all buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property unlimited in height or depth along the Pacific Highway & Ryde Road boundaries and the identified easement. Access to the Roads and Maritime easement is not denied; and the integrity of the easement is not compromised.

- 2. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system in Pacific Highway & Ryde Road are to be submitted to Roads and Maritime for approval, prior to the commencement of any works.*

Details and any enquiries should be forwarded to Mr Suppiah Thillai at Suppiah.Thillai@rms.nsw.gov.au or Phone at 8849 2114.

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114.

- 3. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Pacific Highway and Ryde Road.*

4. A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Pacific Highway and Ryde Road during construction activities.

5. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.

6. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.

The report and any enquiries should be forwarded to:

Details and any enquiries should be forwarded to Mr Suppiah Thillai at Suppiah.Thillai@rms.nsw.gov.au or Phone at 8849 2114.

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

On 25 May 2018, the applicant was granted leave from the Land and Environment Court to amend the application. Revised plans that propose the removal of the driveway to Ryde Rd and road widening were submitted to Council. Council referred the amended plans to RMS for comment. In response to the additional information provided by the applicant, the RMS provided the following response, dated 3 July 2018:

Reference is made to Council's email, dated 19 June 2018, regarding the abovementioned application which was referred to Roads and Maritime Services (Roads and Maritime) in accordance with Clauses 101 and 104 the State Environmental Planning Policy (Infrastructure) 2007.

Roads and Maritime has reviewed the submitted application and notes Bunnings' submission removing the access driveway from Ryde Road dated 15 February 2018. Furthermore Roads and Maritime held a meeting with Council on 22 March 2018 confirming that Roads and Maritime does not support the Signalisation of Ryde Road and West Street at this stage. It is noted in this current submission that the amended plans now comply with all the requirements with no access from Ryde Road and no signalisation of Ryde Road and West Street and all access to the site will be via the local road network.

Therefore Roads and Maritime raises no objection to the proposed development subject to the following conditions being included in any consent issued by Council:

1. Roads and Maritime has previously resumed & dedicated a strip of land as road along the Pacific Highway and Ryde Road frontages of the subject property, as shown by grey colour on the attached Aerial – "X"

Roads and Maritime has also previously acquired an easement for batter shown by orange colour on the attached aerial — over the subject property, as shown on DP 718718 and noted on title (Dealing L652975).

Roads and Maritime has no other approved proposal that requires any part of the subject property for road purposes.

Therefore all buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property unlimited in height or depth along the Pacific Highway & Ryde Road boundaries and the identified easement. Access to the Roads and Maritime easement is not denied; and the integrity of the easement is not compromised.

2. *Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works.*

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

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 8849 2114 or Fax: 8849 2766.

3. *All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Pacific Highway and Ryde Road.*
4. *A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Pacific Highway and Ryde Road during construction activities.*
5. *The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.*
6. *The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.*

The report and any enquiries should be forwarded to:

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

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

Water NSW

The application was referred to Water NSW as it was considered to be likely to be an aquifer interference activity. Water NSW provided a response which stated that no General Terms of Approval were required.

Ausgrid

The application was referred to Ausgrid pursuant to clause 45(2) of SEPP (Infrastructure) due to the existing infrastructure on the site. Ausgrid provided the following comments.

The assessment and evaluation of environmental impacts for a new development consent (or where a development consent is modified) is undertaken in accordance with requirements of Section 79C of the Environmental Planning and Assessment Act 1979. One of the obligations upon consent authorities, such as local councils, is to consider the suitability of the site for the development which can include a consideration of whether the proposal is compatible with the surrounding land uses and the existing environment.

In this regard, Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.

With Regard to: Demolition of existing structures, construction and use of hardware supplies development at 950-950A Pacific Hwy, 2 Bridge St Pymble

- Survey Plan
- Notification Plans

Ausgrid consents to the above mentioned development subject to the following conditions:-

Method of Electricity Connection

The method of connection will be in line with Ausgrid's Electrical Standard (ES)1 – 'Premise Connection Requirements.

Supply of Electricity

It is recommended for the nominated electrical consultant/contractor to provide a preliminary enquiry to Ausgrid to obtain advice for the connection of the proposed development to the adjacent electricity network infrastructure. An assessment will be carried out based on the enquiry which may include whether or not:

- *The existing network can support the expected electrical load of the development*
- *A substation may be required on-site, either a pad mount kiosk or chamber style and;*

- site conditions or other issues that may impact on the method of supply.

Please direct the developer to Ausgrid's website, www.ausgrid.com.au about how to connect to Ausgrid's network.

Conduit Installation

The need for additional electricity conduits in the footway adjacent to the development will be assessed and documented in Ausgrid's Design Information, used to prepare the connection project design.

Proximity to Existing Network Assets

Overhead Powerlines

There are existing overhead electricity network assets in Bridge St. Safework NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The “as constructed” minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, www.ausgrid.com.au Based on the design of the development provided, it is expected that the “as constructed” minimum clearances will not be encroached by the building development. However it remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site.

Underground Cables

There are existing underground electricity network assets in Bridge St, Pacific Hwy, Ryde Rd and also within the subject property.

Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed.

Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

Substation

There is an existing electricity chamber substation assets within the subject property. Based on the plans provided it is expected that the developer is proposing to have the chamber substation removed as part of the development. Please direct the developer to Ausgrid's website, www.ausgrid.com.au for information about how to apply for the removal of existing assets from Ausgrid's network.

Should the existing substation remain onsite, or another substation be installed as a replacement the substation ventilation openings, including substation duct openings

and louvered panels, must be separated from building air intake and exhaust openings, natural ventilation openings and boundaries of adjacent allotments, by separation distances which meet the requirements of all relevant authorities, building regulations, BCA and Australian Standards including AS 1668.2: The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings.

In addition to above, Ausgrid requires the substation ventilation openings, including duct openings and louvered panels, to be separated from building ventilation system air intake and exhaust openings, including those on buildings on adjacent allotments, by not less than 6 metres.

Exterior parts of buildings within 3 metres in any direction from substation ventilation openings, including duct openings and louvered panels, must have a fire rating level (FRL) of not less than 180/180/180 where the substation contains oil-filled equipment.

The development must comply with both the Reference Levels and the precautionary requirements of the Draft Radiation Protection Standard for Exposure Limits to Electric and Magnetic Fields 0 Hz – 3 kHz (ARPANSA, 2006). For further details on fire segregation requirements refer to Ausgrid's Network Standard 113 and 141.

Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid.

For further details refer to Ausgrid's Network Standard 143.

Ausgrid have also provided the following advice in relation to the installation of solar panels:

The applicant will need to make an application for the Solar Connection via a NECF04 form on Ausgrids website. Via this application the feasibility and conditions of the proposed connection will be determined.

Urban design

Given the important strategic landmark location of the site, the application was referred to an external urban designer for comment. The comments of the urban designer have been incorporated into the reasons for refusal.

STATUTORY PROVISIONS

State Environmental Planning Policy No. 55 - Remediation of Land and (Draft) Remediation of Land SEPP

The provisions of SEPP 55 require Council to consider the potential for a site to be contaminated.

A document titled *Review of Contaminated Land Issues* was prepared by Easterly Point Environmental Pty Ltd dated 22 December 2014 which identified a number of identified areas of contamination. The summary of contamination is included in the below extract from the report:

In summary, the following issues have been identified:

1. Underground petroleum storage systems

Site information identifies a petrol underground petroleum storage system (UPSS) and potentially a heating oil (diesel) UPSS in the vicinity of the delivery dock of the 3M office building, as shown in the attached figure. WorkCover records indicate that a 30,000L UST of approximately 8 m length was registered and subsequently decommissioned in situ.

An anomalous response was detected during a ground penetrating radar (GPR) survey, from beneath the concrete slab where the fuel oil storage tank was believed to have been removed. There is the potential that this response could be associated with remnant pipework, fuel lines, etc. associated with the former UST, or alternatively the UST could have been closed insitu, or an additional tank may exist.

Another anomalous response was detected adjacent to the Energy Australia transformer, although the WorkCover records did not identify a UPSS in this area.

In regard to the contamination status of the UPSS areas, samples taken by WSP (WSP 2011) from the area of the former or suspected UPSSs showed no hydrocarbon impacts to soil at depths of 4 m to 6 m. However, it is likely that some remnant contamination from this infrastructure exists beneath the tanks, which would not have been detected unless gross impacts exist.

Based on the soil results and the adjacent down-gradient monitoring well (MW01) having minor detects of petroleum compounds, further suggesting only minor impacts in the UPSS areas, any petroleum related contamination in these area is anticipated to be readily remediated during the course of the excavation and building works process.

2. Former gasholder

Part of the site and adjacent off-site areas were used for manufactured gas storage from 1923 until 1966. Deep fill, up to 8 m depth, was found in boreholes drilled in close proximity to the western perimeter of the gas holder. Fill material was shallower in the eastern portion of the gas holder, confirming that the underlying geology slopes steeply from east to west across the former gas holder footprint.

Observed fill types in the vicinity of the gas holder and the likely origin of the materials are described as:

- The gasholder tank wall appears to have been constructed with a conglomerate fill of cement/rock mix, with the tank base resting on the underlying sandstone.
- In some locations within the perimeter of the gas holder, cobbles and/or boulders interspaced by voids have been used as backfill.
- Fill depths decrease laterally away from the inferred perimeter wall, indicating the gas holder was constructed using a stepped excavation approach for stability.
- Clay was encountered at depths up to 8 m, indicating the former structure was likely sealed using clay.

There were no concentrations of potential contaminants of concern (PCOCs) detected in soils in excess of the limits of reporting (LORs) and/or

assessment criteria in the vicinity of the gas holder. The characteristics of the area associated with the gas holder however are likely highly variable, and the source, quantity and quality of the fill are poorly understood based on the limited investigations undertaken. Accordingly, and based on groundwater results elevated concentrations should be expected.

Based on the investigations conducted at the site, it is understood that the fill, soil and rock is not generally contaminated at the site, but rather at approximately 8 m depth in the vicinity of the gas holder (RL ~ 98), there exists a zone of weathered sandstone of approximately 1.5m thickness, with water filled fractures wherein exists contaminated groundwater. WSP (2012a) describes that "Odours and staining in the vicinity of the former gasholder perimeter were found within the deep fracture zone. Odours and staining were not encountered in boreholes drilled outside of the vicinity of the gas holder ring".

The odour was described as "caustic", and given the high ammonia concentrations, which is a gasworks contaminant, it is assumed that this is the discernible component and given its high environmental mobility, a good indicator compound of contamination.

High concentrations of contaminants have been detected in groundwater within the gasholder footprint, including BTEX and volatile fraction C6 – C9 total petroleum hydrocarbons (TPHs). Concentrations identified are such that both acute and chronic risks may be present, with the following contaminants considered to potentially impact site use:

- benzene maximum of 22,000 µg/L compared to NEPM 2013 health screening level (HSL) of 5,000 µg/L for commercial/industrial site use (2 – 8 m depth); and
- C6 – C9 TPHs maximum of 41,000 µg/L compared to NEPM 2013 HSL of 6,000 µg/L for commercial/industrial site use (2 – 8 m depth).

Investigations found that a distinct horizon of water filled fracture zones was encountered at depth within the weathered sandstone, and that contamination is likely to be present around the entire perimeter of the former gas holder, although it is considered to be highly variable.

Based on the development plans, and with reference to Figure 2 and Figure 3 in Cavvanba 2013, it is understood that the lower level of the proposed Bunnings warehouse is RL 105.5. This is approximately 1.5 m above the existing lower carpark level, and approximately 7.5 m above the identified gross impacts in the former gasholder area.

Site audit

A site audit statement (SAS) was prepared by Graeme Nyland of Environ in 2012. This addressed 950 Pacific Highway and 2 Bridge Street, and was described as Lot 1 DP 718718 and Lot B DP 371406. The SAS concluded that the site is suitable for a commercial/industrial landuse, subject to compliance with the WSP environmental management plan (EMP). The SAS describes that "Groundwater contamination consistent with gas storage has been identified in the southern portion of the site, beneath an existing car park, and largely confined to the annulus of the former gas holder" and that the EMP "has been prepared to provide guidance for subsurface activities or in the event of a change in land use or layout affecting the southern portion of the site".

The SAS also noted that:

Further investigation of groundwater on the site is not considered necessary to establish the suitability of the site for on-going commercial/industrial land use, providing the existing layout and use do not change. An EMP has been prepared to manage identified contamination during any subsurface excavation or in the event of future redevelopment in the vicinity of the former gas holder.

EMP requirements

In regard to changes of landuse, the EMP (WSP 2012b) described that a change of use within the management area will require the hazard assessment and control measures to be reviewed and updated. The EMP describes that:

Revised control measures shall be developed on the basis of specific changes which are made to landform or site use. For example, vapour hazards will require assessment and control if a building is constructed in the EMP Management Area.

Proposed actions

Based on the site information, the extent of the previous studies, and in view of the specific design of the proposed development of two levels of basement carparking in the area of the gas holder, with filling of between 1 – 2 m, the following actions are proposed:

- 1. Conduct additional assessment – selected existing groundwater monitoring wells will be tested to confirm the current groundwater concentrations, and soil gas sampling in the area of the gas holder will be conducted. Based on the SAS findings, it is considered that the significant issue is the potential for vapour intrusion, and the additional assessment will focus on quantification of the potential vapour intrusion risk.*
- 2. Develop a remedial action plan – using the existing and additional site information, a remedial action plan (RAP) will be developed. This will include:*
 - the removal and validation of the identified and potential UPSS areas;*
 - design and specification of any vapour controls required;*
 - general soil management in regard to potential surficial fills; and*
 - an unexpected findings protocol (UFP) to address any unexpected findings.*

Options for vapour controls include full or limited removal, installation of a vapour barrier in the area of concern, passive venting systems, depressurised systems, or a combination of controls.

Potential hazardous building materials are not addressed herein, as these are understood to have been addressed elsewhere.

- 3. The remedial works will be conducted in stages, in concert with the site development works. The UPSS removals and validation will occur early in the works, and the vapour controls, as required, will be integrated into the site development works.*

4. A remediation and validation report will subsequently be provided, which will detail the works conducted, the validation findings and conclusions regarding the site's suitability.

It is expected that an updated EMP will also be required.

The Draft Remediation of Land SEPP identifies remediation works associated with infrastructure for the storage, handling or management of hazardous chemicals (including petroleum) on site containing underground storage systems or above ground storage tanks for hazardous chemicals (including petroleum) as Category 1 remediation works.

Under the provisions of Clause 7 of SEPP 55 and on the basis of the existing known and likely further contamination at the site, a detailed site investigation in the form of a further Environmental Site Assessment is required to address the issues raised within the Review of Contaminated Land Issues document prepared by Easterly Point Environmental Pty Ltd, dated 22 December 2014.

Clause 9 of SEPP 55 and the (draft) Remediation of Land SEPP identify the remediation of the site as Category 1 remediation work, that is work needing consent, as the site is a heritage item. As such, a remediation action plan that details the proposed remediation of the site is required. If development consent is required, an RAP must be submitted with the Development Application.

A consent authority must be satisfied that a site is suitable for its proposed use or can and will be made suitable, based on what they know of the site. It is noted (within the above extract) of the submitted document titled 'Review of Contaminated Land Issues' that contamination exists on the site. In order for a determining authority to be satisfied that the site is suitable or can and will be made suitable for the proposed development, further determination of the extent of contamination and the method of remediation must be provided. A Remediation Action plan (RAP) is required based upon existing site contamination information contained in the documents referenced within the Review of Contaminated Land Issues prepared by Easterly Point Environmental Pty Ltd dated 22 December 2014 and that document should be based upon the further Environmental Site Assessment as required above.

The Environmental Site Assessment and Remediation Action Plan should be prepared by a suitably qualified contaminated land professional, experienced in contaminated site assessment and management, to address all Site contamination and remediation issues identified in the Review of Contaminated Land Issues document prepared by Easterly Point Environmental Pty Ltd, dated 22 December 2014.

Council requested the applicant provide an updated contamination report on 17 August 2017 and the applicant responded by letter "the applicant confirms that the requested information will not be provided" dated 31 August 2017." No further or updated information has not been provided to Council as part of this development application. The proposed development application should be refused as there is insufficient information regarding contamination of the site and methods of contamination remediation which is a requirement of SEPP 55.

State Environmental Planning Policy 64 – Advertising and Signage

SEPP 64 is applicable to the proposed signage. The application includes:

- One 6m x 2m “Bunnings Warehouse” logo pylon sign at the Pacific Highway
- One 7.90m x 2.55m “Bunnings Warehouse” logo sign on the Pacific Highway elevation
- One 15.53m x 8.75m Hammer and “Lowest Prices are Just the Beginning” logo sign on the Bridge Street elevation
- One 6m x 2m “Bunnings Warehouse” logo pylon sign at the Bridge Street vehicular entry
- One 13.025m x 3.85m “Bunnings Warehouse” sign on the Ryde Road elevation
- One 9.635m x 5.5m “Lowest Prices are Just the Beginning” logo sign on the Ryde Road elevation

The signs are indicated on the Signage Plan 13_052DA-A-812, with the exception of the Pacific Highway Pylon Sign, which is indicated upon the Ryde Road elevation.

The Statement of Environmental Effects states that all the proposed signs are business identification signs, however, per *Bunnings Pty Ltd v Auburn Council* (2004) 134 LGERA 386, the Court of Appeal held that a sign with a hammer in a circle and the words, ‘Lowest prices are just the beginning’, is not a business identification sign. The proposal includes two of these signs, one on the Ryde Road elevation and one on the Bridge Street elevation. These signs are wall advertisements and therefore prohibited on an elevation that also contains a business identification sign. The Ryde Road elevation has a ‘Bunnings Warehouse’ business identification sign and a wall advertisement. The wall advertisement is prohibited by clause 22(2)(g) of SEPP 64.

The following provisions of SEPP 64 are applicable to the assessment of the sign.

Prior to granting consent for signage it must be consistent with the objectives of SEPP 65 as follows:

- (a) to ensure that signage (including advertising):*
- (i) is compatible with the desired amenity and visual character of an area, and*
 - (ii) provides effective communication in suitable locations, and*
 - (iii) is of high quality design and finish, and*

The signage is not compatible with the desired amenity and visual character of the area. The 6m x 2m “Bunnings Warehouse” logo pylon sign at the Pacific Highway is large, visually prominent, and located within a part of the site that is dedicated to landscape planting to achieve ecological outcomes. The signage is contrary to the signage controls of the Ku-ring-gai Development Control Plan and is not appropriate to the location and landmark nature of the site and the provision of information panels within the signage is not supported in this location.

The 9.635m x 5.5m “Lowest Prices are Just the Beginning” logo sign on the Ryde Road elevation that is signage affixed to the colonnade screening dominates the screen design and reduces its ability to contribute to the landmark qualities of the site.

- (b) to regulate signage (but not content) under Part 4 of the Act, and*

Noted.

- (c) to provide time-limited consents for the display of certain advertisements, and*

To the extent that the above signage are wall advertisement they are prohibited by clause 22(2)(g).

(d) to regulate the display of advertisements in transport corridors, and

To the extent that the above signage are wall advertisement they are prohibited by clause 22(2)(g).

(e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.

Noted.

Further, SEPP 64 requires assessment of any sign against the Schedule 1 Assessment Criteria, as follows:

1 Character of the area

- *Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?*
- *Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?*

The signage is contrary to the controls of the Ku-ring-gai Development Control Plan, and is not appropriate to the location and landmark nature of the site and the provision of information panels within the signage is not supported in this location.

2 Special areas

- *Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?*

The site is identified as a landmark location under the Ku-ring-gai Development Control Plan. The site is a heritage area under the Ku-ring-gai Local Environmental Plan. The signage is not appropriate to the location and landmark nature of the site. Two of the signs are located on the opposite side of Ryde Road to residential apartments.

3 Views and vistas

- *Does the proposal obscure or compromise important views?*
- *Does the proposal dominate the skyline and reduce the quality of vistas?*
- *Does the proposal respect the viewing rights of other advertisers?*

The site is identified as a landmark location under the Ku-ring-gai Development Control Plan. The signage is not appropriate to the location and landmark nature of the site.

4 Streetscape, setting or landscape

- *Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?*
- *Does the proposal contribute to the visual interest of the streetscape, setting or landscape?*

- *Does the proposal reduce clutter by rationalising and simplifying existing advertising?*
- *Does the proposal screen unsightliness?*
- *Does the proposal protrude above buildings, structures or tree canopies in the area or locality?*
- *Does the proposal require ongoing vegetation management?*

The signage not compatible with the desired amenity and visual character of the area. The 6m x 2m “Bunnings Warehouse” logo pylon sign at the Pacific Highway is large, visually prominent and located within a part of the site that is dedicated to landscape planting to achieve ecological outcomes. The signage is not appropriate to the location and landmark nature of the site and the provision of information panels within the signage is not supported in this location. The signs require ongoing vegetation management.

5 Site and building

- *Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?*
- *Does the proposal respect important features of the site or building, or both?*
- *Does the proposal show innovation and imagination in its relationship to the site or building, or both?*

The signage not compatible with the desired amenity and visual character of the area. The signage is not appropriate to the location and landmark nature of the site.

The 9.635m x 5.5m “Lowest Prices are Just the Beginning” logo sign on the Ryde Road elevation that is signage affixed to the colonnade screening dominates the screen design and reduces its ability to contribute to the landmark qualities of the site. The Ryde Road “Bunnings Warehouse” signage should contain lettering only, mounted onto the cladding of the building.

6 Associated devices and logos with advertisements and advertising structures

- *Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?*

The 9.635m x 5.5m “Lowest Prices are Just the Beginning” logo sign on the Ryde Road elevation that is signage affixed to the colonnade screening dominates the screen design and reduces its ability to contribute to the landmark qualities of the site.

These signs are wall advertisements and therefore prohibited on an elevation that also contains a business identification sign. The Ryde Road elevation has a ‘Bunnings Warehouse’ business identification sign and a wall advertisement. The wall advertisement is prohibited by clause 22(2)(g) of SEPP 64.

The signage to the south-western façade (Ryde Road) is inappropriate and results in an unacceptable clutter of signage on the site.

7 Illumination

- *Would illumination result in unacceptable glare?*
- *Would illumination affect safety for pedestrians, vehicles or aircraft?*

- *Would illumination detract from the amenity of any residence or other form of accommodation?*
- *Can the intensity of the illumination be adjusted, if necessary?*
- *Is the illumination subject to a curfew?*

No information is provided in relation to illumination of the signage. A condition of any consent would require that the signage not be illuminated.

8 Safety

- *Would the proposal reduce the safety for any public road?*
- *Would the proposal reduce the safety for pedestrians or bicyclists?*
- *Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?*

With the exception of the Pacific Highway pylon sign, the proposed signage will have no detrimental implications for safety.

State Environmental Planning Policy (Infrastructure)

The application was referred to Ausgrid pursuant to clause 45(2) of SEPP (Infrastructure) due to the existing infrastructure on the site. Ausgrid have raised no objection to the proposal subject to conditions which should be included in any consent granted.

The application was referred to the RMS under the provisions of clause 101 (site with frontage to a classified road) and 104 (traffic generating development) of SEPP (Infrastructure). The RMS have raised no objection to the amended proposal subject to conditions which should be included in any consent granted.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The proposed development will result in the removal of a *Eucalyptus saligna* (Sydney Blue Gum) known as T135, which has been identified as having high significance, good overall health and condition with visual amenity and significance to the Site. T135 is also a characteristic species of the Glue Gum High Forest Critically Endangered Ecological Community.

The removal of T135 is inconsistent with the aims of the SEPP (Vegetation in Non-Rural Areas). Clause 3(b) of the SEPP outlines the aims of the policy:

“to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.”

Sydney Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005

Matters for consideration under SREP 2005 include biodiversity, ecology and environmental protection, public access to and scenic qualities of foreshores and waterways, maintenance of views, control of boat facilities and maintenance of a working harbour. The proposal is not in close proximity to, or within view, of a waterway or wetland and is considered satisfactory. Given the proposed soil and sedimentation controls, there will be no impact on downstream waterways during construction.

Ku-ring-gai Local Environmental Plan 2015

Zoning and Permissibility

The subject site is zoned B7 Business Park under the Ku-ring-gai Local Environmental Plan 2015. The proposed use is defined as hardware and building supplies which is a nominated use which is permissible with consent.

Objectives of the Zone

The objectives of the B7 Business Park zone are as follows:

- *To provide a range of office and light industrial uses.*
- *To encourage employment opportunities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

The proposal is consistent with the objectives, providing for a light industrial use and employment opportunities.

Part 4 Principal Development Standards

Height of Buildings

Clause 4.3 of LEP 2015 sets a maximum height control of 32.5m. The proposal has a maximum height of 23m above existing ground level, complying with the control.

Floor Space Ratio

Clause 4.4 of LEP 2015 a maximum FSR control of 3.5:1. The proposed GFA is 14,715.31m² and the site area is 1.825ha equating to a FSR of 0.77:1, complying with the control.

Part 5 Miscellaneous Provisions

Heritage Conservation

Clause 5.10 of LEP 2015 requires consideration to be given to the impact of development to and within the vicinity of items of heritage. The impact of the proposal upon the heritage item (former 3M building) has been assessed by Council's Heritage Consultant as unsatisfactory for the reasons stated previously in this report.

The proposal, which involves the demolition of a listed heritage item (former 3M building) is inconsistent with the objectives of this clause, being:

- (a) *to conserve the environmental heritage of Ku-ring-gai*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal object and Aboriginal places of heritage significance*

Part 6 Additional Local Provisions

Earthworks

Clause 6.1 of LEP 2015 provides the following matters for consideration in relation to applications for earthworks:

- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil*

stability in the locality of the development,

The development application was accompanied by a geotechnical report which assessed the impact upon soil stability and Water NSW has been consulted regarding the impact of interception with the water table on the drainage pattern.

(b) the effect of the development on the likely future use or redevelopment of the land,

The excavation is proposed in conjunction with the redevelopment of the site.

(c) *the quality of the fill or the soil to be excavate, or both,*

The site has been identified as being contaminated and will require remediation to make it suitable for the proposed land uses. Conditions would be required for any consent issued in relation to the preparation of a RAP, the remediation and validation of the site and the need for testing of the soil for contamination and classification prior to its disposal.

(d) *the effect of the development on the existing and likely amenity of adjoining properties,*

The amended development is unlikely to have any detrimental impacts upon adjoining properties, subject to appropriate building methods being used. Dilapidation reports would be required by a condition of consent for adjoining sites and infrastructure, including Ausgrid and RMS infrastructure should a consent be granted.

(e) *the source of any fill material and the destination of any excavated material.*

No fill material is proposed to be imported. A condition should be included were consent to be granted requiring testing of the soil for contamination and classification prior to its disposal.

(f) *the likelihood of disturbing relics.*

The site is not likely to contain any archaeological relics.

(g) *The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.*

The site is not located in proximity to any waterway, drinking water catchment or environmentally sensitive area and subject to appropriate erosion measures during construction will not detrimentally impact any such area.

Stormwater and Water Sensitive Urban Design

Clause 6.2 of LEP 2015 provides the following matters for consideration in relation to applications:

(a) *water sensitive urban design principles are incorporated into the design of the development, and*

The stormwater design has been assessed by Council's Drainage Engineer who is satisfied with the water sensitive design of the proposal.

(b) *riparian, stormwater and flooding measures are integrated, and*

The site is not in proximity to riparian land and is not flood prone.

- (c) the stormwater management system includes all reasonable management actions to avoid any adverse impacts on the land on which the development is to be carried out, adjoining properties, native bushland, waterways and groundwater systems, and*
- (d) if a potential adverse environmental impact cannot be feasibly avoided, the development minimizes and mitigates the adverse impacts of stormwater runoff on adjoining properties, native bushland, waterways and groundwater systems.*

The site is not located adjacent to and does not include native bushland or waterways. The stormwater design has been assessed by Council's Development Engineer who is satisfied with the impact upon adjoining properties and the groundwater system.

POLICY PROVISIONS

Ku ring gai Development Control Plan

The relevant provisions within Section A of the DCP include Part 9 – Non-residential and Office Buildings and Part 12 – Signage and Advertising, within Section B include Part 14 – Urban Precincts and Sites, Part 15 – Land Contamination, Part 19 Heritage and Conservation Areas and within Section C include Part 21 – General Site Design, Part 22 – General Access and Parking, Part 23 – General Building Design and Sustainability, Part 24 – Water Management and Part 25 - Notification, the relevant parts of which are addressed following.

DCP Section A – Part 9 Non-residential and Office Buildings

9A.1 Building setbacks

Refer to Part 14 (below).

9A.2 Building separation

Acceptable.

9A.3 Deep soil landscaping

All setbacks include deep soil landscaping in the order of half of the setback as specified by the DCP.

9B.1 Service access and loading facilities

The proposal meets the needs of the proposed use in terms of access for service vehicles. Service vehicles share access with general vehicle access as required by the DCP. Adequate waste collection and loading facilities are provided within the proposal.

9B.2 Car parking provision

Parking dimensions and rates are generally in accordance with the DCP, and are supported by Council's Development Engineer.

9B.3 Bicycle parking provision

Acceptable.

9C.1 Solar access

The proposal will not generate impacts to neighbouring solar collectors. The proposal includes limited openings. The warehouse nature of the use means that large expanses of glazing for natural light are not employed.

9C.2 Ventilation

The proposed works shall be naturally ventilated in accordance with the Energy Efficiency requirements of the BCA.

9C.3 – 9C.7 Floor depth, building entries, internal common circulation, roof forms, communal open space

To the extent that the provisions may be applied, the proposal is generally consistent with the controls.

9C.8 Building forms and facades

The proposed building has floorplates greater than 1200 sqm. The building length is longer than the 60m length stipulated in the DCP, however the floorplate and the building length are a product of the nature of the building use for warehouse, and its functionality. The building incorporates different building materials, to break up the façade of the building and give an appropriate street presentation. The extent of use of Bunnings typical colour scheme across the proposal and the large scale façade signs will detract from the architectural merit of the proposed building. The proposal has incorporated entry spaces of human scale and with direct relationship to the street, with the travellers visible from Ryde Road, to achieve a sense of activation of the use. The proposal, does not achieve all of the façade controls, and requires further amendment as detailed in the reasons for refusal in order to make the proposal acceptable considering the use and function of the building.

9C.9 Corner building articulation

The design of the building is contrary to Control 3 of Part 9C.9 - Corner Building Articulation of DCP 2015, which requires '*Buildings in landmark positions are to be of a high architectural quality and contribute significantly to the local built environment*'.

9C.10 Ground floor frontage

Areas of the building that have direct connection to the street frontage have been designed to consider the ground floor frontage controls of the DCP, however further design detail is required to ensure this outcome. Insufficient detailed architectural drawings clearly indicating that the wall behind the louvre screen to the bagged area does not exceed 2m in height from the floor of the bagged area. The racking in this location should not to exceed the height of this wall including the product on the pallets and racks. Finer detailed architectural drawings showing that the nursery area is to have no pallet racking above the level of the low sandstone clad base wall to the

colonnade and any racking in this location is to house only plants which can be visible through the glass blade screen.

Finer detailed architectural drawings showing that no wire fencing or panels are to be provided in addition to the louvre screen to the colonnade.

9C.11 Awnings and colonnades

The louvre screen and colonnade are essential to the architectural merit of this building. Further details are required. The coloured louvres must be varied to represent the degree of colour gradation and variation per colonnade panel as shown in the precedent image included in the materials board to ensure the louvre system presents as an 'artwork' and not as a way of representing the Bunnings colour scheme or signage. The colour palette reads too strongly as Bunnings colours and is not capturing the colour gradation or palette shown in the Precedent images which form part of the application. Insufficient detail is provided to ensure this louvre system presents as an "artwork" and not as a way of representing the Bunnings colour scheme or signage.

The timber panel soffit material such as Prodex Prodema is used at a minimum not only on the colonnade but on all roof soffits facing Ryde Road and Pacific Highway or where visible to the public domain of these two roadways and footpaths. Insufficient detail to ensure the extent of the use of the soffit material has been provided.

Finer detailed architectural drawings showing that the walls to the base of the louvre screen colonnade are to be clad in rough sawn Sydney sandstone cladding to match the other low landscape walls in the proposal are required.

Finer detailed architectural drawings showing that the nursery area is to have no pallet racking above the level of the low sandstone clad base wall to the colonnade and any racking in this location is to house only plants which can be visible through the glass blade screen are required.

Finer detailed architectural drawings showing that no wire fencing or panels are to be provided in addition to the louvre screen to the colonnade are required.

9C.12 Internal ceiling heights

Acceptable.

9C.13 Visual privacy

The proposed new building has very few new window openings. The nature of the use is such that the size of the building is not commensurate with an increase in privacy or safety impact.

DCP Section B – Part 14 – Urban precinct and sites

14A.1 Urban precinct (Pymble Business Park)

The proposal does not achieve architectural excellence and does not satisfy Control 7 of Part 14A.1 – Built Form of DCP 2015 which requires the landmark site *"to have a building design that is visually prominent and distinctive in form so as to identify the location of Pymble Business Park within the region."* The entrance structure does not successfully provide a landmark building design for the Site. The design fails when assessed against objective 5 of Part 14A.1 – Built Form DCP 2015 as it does not *"contribute to the locality by creating distinctive buildings."*

14A.2 Public domain and pedestrian access

The site includes a pedestrian through link on the south west side of the building, as per the DCP.

14A.4 Building setbacks

The proposal complies with the setbacks of the DCP.

14A.5 Built form

The proposal, being well under the maximum height and floor space for the site, does not take advantage of the landmark development potential of the site. The proposal for a warehouse use is inherently in conflict with the built form expectations of a landmark site. The development has attempted to address this with different building materials to break up the façade of the building and give an appropriate street presentation. The use of Bunnings corporate colours is not supported for this landmark site and requires further detail or materials as stipulated in the reasons for refusal. The proposal has incorporated areas of active uses such as café and nursery spaces of glazing to achieve a sense of activation.

14A.6 Heritage

The proposal to demolish a listed heritage item is not supported. Refer to the comments of the Heritage consultant (**Attachment 6**).

Part 15 Land contamination

The proposal has been assessed against the provisions of State Environmental Planning Policy 55 – Remediation of Land (SEPP 55). Refer to the SEPP 55 discussion for further details in this regard.

Part 19 Heritage Items and Heritage Conservation Areas

The proposal to demolish a listed heritage item is not supported. Refer to the comments of the Heritage consultant (**Attachment 6**).

DCP Section C

Part 21 General site design

The proposal has been assessed against the earthworks provisions contained in this Part.

In regard to the landscape design provisions, Council's Tree and Landscape Assessment Officer is satisfied that the proposed development has been designed and is consistent with the objectives of the controls and as consequence has not raised any significant issues or concerns in relation to these provisions.

As a result of the above, it is considered that the development meets the objectives of the control.

Part 22 General access and parking

The proposal has been assessed against the relevant provisions contained in this Part. The subject site provides sufficient on-site parking in accordance with the car parking rates. No issues or concerns were raised by Council's Development Engineer in relation to this Part. The proposal satisfactorily meets the relevant objectives of this control.

Part 23 General building design and sustainability

23.4 Waste Management and 23.10 Construction, Demolition and Disposal

The proposal has been assessed against the provisions contained in these Parts. The site provides waste storage and collection. The waste storage area is also suitably located to ensure minimal impacts.

Waste storage shall not be visible from the street, and shall be collected by a suitable contractor.

No issues or concerns were raised by Council's Development Engineer in relation to stormwater quality control during construction and erosion and sediment control during construction subject to conditions.

The development could be consistent with the objectives of these Parts, subject to conditions.

Part 23.5 and 23.6 General Acoustic and Visual Privacy

The proposal has been assessed against the provisions contained in these Parts.

The applicant has not engaged an acoustic engineer to undertake an acoustic assessment of the possible impact the development might have on adjoining properties. Adjoining land uses include child care centre, educational facilities and café with outdoor seating.

The impact that a development of the size and nature proposed by Bunnings onto adjoining properties needs to be considered. An acoustic assessment/report that considers the impact the proposed development will have on neighbouring properties is required. Council requested the applicant provide an acoustic report on 17 August 2017 and the applicant responded by letter "the applicant confirms that the requested information will not be provided" dated 31 August 2017."

The Development Application should be refused as there is insufficient acoustic information to allow a proper assessment of the impacts of the development.

Part 24 Water management

Council's Development Engineer is satisfied that the proposed development will not result in a significant detrimental impact contrary to the objectives of these provisions for the reasons detailed in the above referral comments. Refer to these comments for further details in this regard.

Part 25 Notification

The application has been notified in accordance with the requirements of the DCP. The submissions received are addressed above.

Ku-ring-gai Contributions Plan 2010

This development is subject to a development contribution calculated in accordance with Ku-ring-gai Contributions Plan 2010, being a s94 Contributions Plan in effect under the Environmental Planning and Assessment Act, as follows:

Key Community Infrastructure	Amount
Pymble Town Centre New Roads and Road Modifications	\$3,455,453.58
Total:	\$3,455,453.58

LIKELY IMPACTS

The proposed development has the following unacceptable public impacts:

The proposed demolition of the former 3M Building and removal of its landscaped setting will adversely impact on the heritage significance of the building and site, which is individually listed as a heritage item in Schedule 5 of Ku-ring-gai LEP 2015.

The proposed development will result in the removal of a *Eucalyptus saligna* (Sydney Blue Gum) known as T135, which has been identified as having high significance, good overall health and condition with visual amenity and significance to the Site. T135 is also a characteristic species of the Blue Gum High Forest Critically Endangered Ecological Community.

SUITABILITY OF THE SITE

The subject site is considered to be unsuitable for the development proposed as the proposal relies upon the demolition of a listed heritage item and the removal of a highly visually significant tree.

The proposal does not represent a landmark building to a sufficient degree and is inconsistent with the desired future character of the area and the LEP and DCP.

For the above reasons, the proposed development is not considered to be suitable for the development site.

SUBMISSIONS

A total of 2 submissions were received in response to the notification and have been addressed above.

PUBLIC INTEREST

Given the above described unacceptable public impacts, it is not considered that granting consent to the development application is in the public interest.

No unauthorised works were identified during the site inspection.

CONCLUSION

Having regard to the provisions of section 4.15(1) of the Environmental Planning and Assessment Act 1979, the proposal is considered to be unsatisfactory and is therefore recommended for refusal for the reasons given below.

RECOMMENDATION

PURSUANT TO SECTION 4.16(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

THAT the Sydney North Planning Panel, as the consent authority, refuse development consent to Development Application DA 0307/17 for demolition of a heritage item, tree removal, earthworks, construction and use of hardware building supplies development (Bunnings Warehouse), signage, landscaping, consolidation of titles at 950-950A Pacific Highway and 2 Bridge Street, Pymble for the following reasons:

1 Heritage significance

The proposed demolition of the former 3M Building and removal of its landscaped setting will adversely impact on the heritage significance of the building and site, which is individually listed as a heritage item in Schedule 5 of Ku-ring-gai LEP 2015.

- a) The former 3M Building at 950 Pacific Highway, Pymble (Lot 1, DP 718718) is individually heritage listed as Heritage Item 593 in Schedule 5 of the LEP. The heritage listing extends across the entirety of the Site.
- b) The proposed demolition of the former 3M Building and general redevelopment of the overall site, including the early landscaped setting of the 3M Building, is contrary to two of the particular aims of the LEP, as set out in sections 2(a) and 2(f) of Clause 1.2 of the LEP, which are as follows:
 - (a) to guide the future development of land and the management of environmental, social, economic, heritage and cultural resources within Ku-ring-gai,...*
 - (f) to recognize, protect and conserve Ku-ring-gai's indigenous and non-indigenous cultural heritage,*
- c) The proposed demolition of the former 3M Building and general redevelopment of the overall site, including the early landscaped setting of the 3M Building, is contrary to two of the particular objectives of Clause 5.10(1) of the LEP, as set out in sections 1(a) and 1(b) of the LEP, which are as follows:
 - (a) to conserve the environmental heritage of Ku-ring-gai,*
 - (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- d) The proposed demolition of the former 3M Building and general redevelopment of the overall Site, including the early landscaped setting is contrary to the particular requirement of Clause 5.10(4) of the LEP, as set out in the LEP, which is as follows:

"The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned."
- e) The proposed demolition of the former 3M Building and general redevelopment of the overall site, including the early landscaped setting fails to take into account the heritage listing of the Site in the LEP. Accordingly, there is no evidence of any analysis of the potential to take advantage of the conservation incentives in Clause 5.10(10) of the LEP when the redevelopment was being formulated, as follows:

"The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

 - (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
 - (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
 - (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*

(d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
(e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.”

2 Loss of a significant tree

- a) The proposed development will result in the removal of a *Eucalyptus saligna* (Sydney Blue Gum) known as T135, which has been identified as having high significance, good overall health and condition with visual amenity and significance to the Site. T135 is also a characteristic species of the Blue Gum High Forest Critically Endangered Ecological Community.
- b) The removal of T135 is inconsistent with the aims of the SEPP (Vegetation in Non-Rural Areas) 2017. Clause 3(b) of the SEPP outlines the aims of the policy:
“to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.”
- c) The removal of T135 is inconsistent with the objectives of Part 13.1 of DCP 2015 in that it does not
“Recognise, protect and enhance the aesthetic and heritage values of trees”,
“Secure and maintain local character and amenity”, “To sustain and enhance the tree canopy” and “To prohibit unnecessary injury to, or destruction of, trees and vegetation”.
- d) The applicant has not considered viable alternative solutions that would preserve T135 that incorporate no net loss of warehouse floor space and retain a compliant number of car spaces (see attached “marked up” plans). An alternative that incorporates an additional warehouse level would provide an opportunity to design a unique landmark building that is more visually prominent in accordance with item 6 of part 14A.5 of the DCP. The Applicant has not considered changes to preserve T135 which is a highly significant specimen. These changes would enable a better relationship between the proposed built form and the landscape setting of the Site.

3 Species impact statement

The applicant has not submitted an amended species impact statement with the Amended Application that references the application in its current form, in accordance with Part 109 and 110 of Division 2 of the *Threatened Species Conservation Act 1995* and the Director-General requirements issued by the Office of Environment and Heritage, to enable assessment.

4 Public interest

The proposed development is not in the public interest. Noting that the Panel is to have regard to the objectors’ concerns pursuant to section 79C(1)(d) and (e) of the Environmental Planning and Assessment Act, the Council contends that the proposed application should not be approved having regard to the matters raised in the submissions received by Council insofar as those matters coincide with the contentions raised in this report.

5 Tree preservation and design alternatives

The design of the proposed building results in unacceptable impacts to tree T135 which is a tree of high significance and visual amenity, good health, and is a species of the Blue Gum High Forest Critically Endangered Ecological Community.

The applicant has not considered reasonable design alternatives to preserve T135. To preserve T135, a minimum tree protection zone (TPZ) of 15 metres is required. The building is required to be modified so that no building works and changes to soil levels occur within the designated TPZ, excluding the relocation of the fire stairs.

As a result of the TPZ, the floor space on Warehouse Level 0 is required to be amended to approximately 1190m². Changes will be required to the TTS (Timber Trade Section) area and the general warehouse area within the available floor space. The internal sections of the entry and exit vehicle access paths for the TTS area are to be relocated as well as the northern end of the exit driveway for the goods delivery.

As a result of the TPZ the floor space of Warehouse Level 1 is required to be amended to approximately 1506m². The café and play area are to be relocated to the north eastern section of the building to improve both the internal and external amenity of the development. The relocation of the café to the eastern section of the building addresses Contention 4 in that it prevents stock from being stored against the external walls that could be viewed from the Pacific Highway.

As a result of the TPZ, the total loss of floor space from Warehouse Level 0 and 1 of approximately 2696m² shall be redistributed by adding an additional warehouse level above Level 1 of up to 2920m² of floor space.

The reduction in Carpark Levels 1 and 2, and a loss of approximately 1056m² of parking area. Section 5 of the Assessment of Traffic and Parking Implications (Rev C) dated May 2018 (filed in support of this application) states that the proposed development will provide 333 car spaces which is 33 spaces in excess of the minimum number required. The reconfiguring of Carpark Levels 1 and 2 and the loss of 32 spaces, shall achieve the minimum car parking requirement.

6 Tree protection fencing

Tree protection fencing that has been endorsed by the project arborist has not been clearly indicated on the following plans;

- a) Environmental Site Management Plan by C & M Consulting Engineers, Plan no. DA701 Revision 4
- b) Environmental Site Management Plan by C & M Consulting Engineers, Plan no. DA801 Revision 4
- c) Waste Management Plan by Smith & Tzannes, Plan no. 13_052 DA-A-801

7 Urban design

The design of the proposed building is inappropriate to the landmark corner location of the site and is inconsistent with the planned future character of the locality.

- a) The proposal does not achieve architectural excellence and does not satisfy Control 7 of Part 14A.1 – Built Form of DCP 2015 which requires the landmark

site *“to have a building design that is visually prominent and distinctive in form so as to identify the location of Pymble Business Park within the region.”*

- b) The entrance structure does not successfully provide a landmark building design for the site.
- c) The design fails when assessed against objective 5 of Part 14A.1 – Built Form DCP 2015 as it does not *“contribute to the locality by creating distinctive buildings.”*
- d) The design of the building is contrary to Control 3 of Part 9C.9 - Corner Building Articulation of DCP 2015, which requires *‘Buildings in landmark positions are to be of a high architectural quality and contribute significantly to the local built environment’*.
- e) The building bulk and unarticulated blank box presentation at the south west corner has an unacceptable visual prominence to Ryde Road.
- f) The Built Form statement identifies the Site as one that is a landmark site with *“the potential to serve as a memorable marker in this locality”*. The proposed building with an attached curved screen has achieved an improved level of articulation but the inclusion of dominant signage detracts from the design of the screens and does not achieve a memorable marker or a landmark quality.
- g) The extent of use of Bunnings typical colour scheme across the proposal and the large scale façade signs will further detract from the architectural merit of the proposed building.
- h) The proposal includes a curved roof form that appears to have been applied around the Bunnings box and sits over the curved screen along the Ryde Road and Pacific Highway frontages. There is insufficient information or detail provided to determine the design quality of this element including its materiality and actual form. The montages provided are poor quality and do not appear to be views that would be able to be appreciated by a pedestrian on the footpath of either roadway. No evidence is provided of the accuracy of these views.
- i) The soffit of the roof is highly visible and there is insufficient detail on plans and elevations of the extent of the proposed material identified in the Finishes and Precedent 13-052 Rev B 20-03-2017.
- j) The roof form appears to be combined with a further roof which is covered with photovoltaic panels. It is not clear the degree to which these panels will be visible from the public domain or dominate the roof form. PV panels are not considered to provide a roof expression that would achieve a landmark character for the building. Insufficient detail has been provided.
- k) The signage to the colonnade screening dominates the screen design and reduces its ability to contribute to the landmark qualities of the site.
- l) The pylon sign proposed to the Pacific Highway frontage is not appropriate to the location and landmark nature of the Site. The proposed “information panels” within the signage is not supported in this location due to visual impacts from the public domain.

m) To address the matters above, the following amendments are required:

- i. The coloured louvres must varied to represent the degree of colour gradation and variation per colonnade panel as shown in the precedent image included in the materials board to ensure the louvre system presents as an 'artwork' and not as a way of representing the Bunnings colour scheme or signage. The colour palette reads too strongly as Bunnings colours and is not capturing the colour gradation or palette shown in the Precedent images which form part of the application. Insufficient detail to ensure this louvre system presents as an "artwork" and not as a way of representing the Bunnings colour scheme or signage.
- ii. The timber panel soffit material such as Prodex Prodema is used at a minimum not only on the colonnade but on all roof soffits facing Ryde Road and Pacific Highway or where visible to the public domain of these two roadways and footpaths. Insufficient detail to ensure the extent of the use of the soffit material has been provided.
- iii. The external walls of the main warehouse box' are to be clad in a metallic silver grey panel system as indicated in the drawing Finishes and Precedent 13-052 Rev B 20-03-2017 other than the south eastern and western corner where the feature angled cladding is shown in plan and elevation. This angled cladding is to be in a light silver green metallic cladding panel as shown on the same finishes drawing. Insufficient detail has been provided. Detailed drawings that clearly show the parts of the building utilising this cladding and each of the proposed materials are required and have not been provided.
- iv. The hammer signs indicated on the louvre screen system or the precast colonnade (Pacific Highway or Ryde Road) are unacceptable. Amended drawings would be required to remove ambiguity.
- v. The submitted drawings do not show that the Bunnings sign shown to the Ryde Road frontage on the southern portion of that elevation retains the background colour of the panel wall behind this sign (being the light silver green and not the Bunnings green colour).
- vi. The architectural drawings are insufficiently detailed to clearly indicate that the wall behind the louvre screen to the bagged area does not to exceed 2m in height from the floor of the bagged area and that racking in this location does not to exceed the height of this wall including the product on the pallets and racks.
- vii. There is insufficient detail on the plans and elevations to indicate that the curved roof and pitched roof of the proposal are to be the same material as they are visible to the public domain and any solar panels are to be integrated into the roof system. The roofing is to be a raised seam steel roof with the panels recessed between the raised seams. This has not been sufficiently detailed to demonstrate an appropriate visual outcome.
- viii. The pylon sign shown on the Ryde Road elevations is to be deleted. The acceptable location for a pylon sign with a dimension of 4m height and 2m width is at Bridge Street adjacent to the site entry. The signage plans do not reflect this requirement. The signage plans and elevations are

inaccurate and insufficient in detail, and amended plans would be required to remove ambiguity.

8 Architectural detail

Insufficient detail has been provided to demonstrate that the proposed building is appropriate to the landmark corner location of the site.

- i. Finer detailed architectural drawings are required showing that the materials used are to be limited to the finishes shown on Finishes and Precedent 13-052 Rev B 20-03-2017.
- ii. Finer detailed architectural drawings are required showing that the walls to the base of the louvre screen colonnade are to be clad in rough sawn Sydney sandstone cladding to match the other low landscape walls in the proposal.
- iii. Finer detailed architectural drawings are required showing that the nursery area is to have no pallet racking above the level of the low sandstone clad base wall to the colonnade and any racking in this location is to house only plants which can be visible through the glass blade screen.
- iv. Finer detailed architectural drawings are required showing that no wire fencing or panels are to be provided in addition to the louvre screen to the colonnade.
- v. All architectural plans do not clearly indicate the numbering of all trees in accordance with the Tree Management Plan no. 13-052 DA-A-810 Revision AF, dated 16/05/18 by Smith & Tzannes.

9 Traffic

There is insufficient certainty in relation to statements made in the submitted traffic impact assessment report by TTPA, in relation to the traffic impacts of the development.

10 Building Code of Australia

There is insufficient information regarding compliance with the BCA and access to the development for emergency vehicles. The letter of support from Norman Disney & Young regarding compliance with Parts C, D and E of the BCA 2014 is out of date as should be referencing BCA/NCC 2016 – amendment 1. The proposal includes alternative solutions to emergency vehicle access to the building. This cannot be deferred to Construction Certificate Stage, as if a performance solution is not acceptable to Fire + Rescue, compliance with the Building Code of Australia by achieving access around the building would conflict with areas required for Blue Gum High Forest offset planting.

11 Site contamination

There is insufficient information regarding contamination of the site and methods of contamination remediation which is a requirement of SEPP 55. Under the provisions of Clause 7, and on the basis of the existing known and likely further contamination at the site, a detailed site investigation in the form of a further Environmental Site Assessment is required to address the issues raised within the Review of Contaminated Land Issues document prepared by Easterly Point Environmental Pty Ltd, dated 22 December 2014.

The remediation of the site is Category 1 remediation work, that is work needing consent, as the site is a heritage item. As such, a remediation action plan that details the proposed remediation of the site is required. If development consent is required, an RAP must be submitted with the Development Application.

A determining authority must be satisfied that a site is suitable for its proposed use or can and will be made suitable, based on what they know of the site. It is noted (within the above extract) of the submitted document titled 'Review of Contaminated Land Issues' that contamination exists on the site. In order for a determining authority to be satisfied that the site is suitable or can and will be made suitable for the proposed development, further determination of the extent of contamination and the method of remediation must be provided. A Remediation Action plan (RAP) is required based upon existing site contamination information contained in the documents referenced within the Review of Contaminated Land Issues prepared by Easterly Point Environmental Pty Ltd, dated 22 December 2014, and that document should be based upon the further Environmental Site Assessment as required above.

12 Acoustic impacts

There is insufficient acoustic information to allow a proper assessment of the impacts of the development. The applicant has not engaged an acoustic engineer to undertake an acoustic assessment of the possible impact the development might have on adjoining properties. Adjoining land uses include child care centre, educational facilities and café with outdoor seating.

13 Green building requirements

The proposed development does not incorporate green building design and sustainability measures as required by Part 23.2 of KDCP:

a) All non-residential buildings are required to incorporate Ecologically Sustainable Design (ESD) measures, which are to be identified in an ESD report as per Part 23.2(1), including:

- i) water efficiency
- ii) energy generation
- iii) heating and cooling
- iv) lighting

b) As the proposed total gross floor area exceeds 5,000m², Part 23.2(4) requires the development to achieve a 5 Star Green Star ('Australian Excellence') Design Rating under the GBCA *Green Star - Design & As Built* rating tool. This has not been demonstrated.

c) DA documentation has not been submitted in accordance with Part 23.2(5) as follows:

- i) Proof of registration of the proposal with GBCA for a *Green Star - Design & As Built* Certification; and GBCA Certification of the 'Design' component of the Development Application;
- ii) A signed Statement of Commitment from the applicant to implement and achieve Certification for both components of the Green Star - Design & As Built rating tool.

iii) Ecologically Sustainable Design (ESD) Report prepared by GBCA Accredited Professional, stating the Green Star point distribution for the proposal, and the strategy, methods and systems proposed to achieve the Green Star rating, including the requirements in 23.2(1) of this section;

iv) Annotated Development Application Drawings clearly indicating the Green Star rating elements described in the ESD Report.

Note: The signed Statement of Commitment binds the applicant to complete the consultation process with their GBCA Accredited Professional to complete formal GBCA Certification for the 'As Built' component of the GBCA Green Star - Design & As Built Certification.

Signed

Janice Buteux-Wheeler
Executive Assessment Officer

**Team Leader - Development Assessment
Central**

Corrie Swanepoel
Manager Development Assessment

Michael Miocic
Director Development & Regulation

Report Dated: 2 October 2018