

<b>DATE OF DEFERRAL</b>	Wednesday 17 October 2018
<b>PANEL MEMBERS</b>	Peter Debnam (Chair), Julie Savet Ward, John Roseth, Cedric Spencer, Barbara Newman
<b>APOLOGIES</b>	Sue Francis
<b>DECLARATIONS OF INTEREST</b>	Sam Nagi declared a conflict of interest having previously voted on a related matter and therefore declared a conflict of interest.

Public meeting held at Christie Conference Centre 100 Walker Street North Sydney on 17 October 2018, opened at 2.20pm and closed at 4.38pm.

#### **MATTER DEFERRED**

2017SNH066 – Ku-ring-gai – DA0307/17 at 950-950A Pacific Highway and 2 Bridge Street, Pymble (as described in Schedule 1).

#### **REASONS FOR DEFERRAL**

The majority of the Panel (Peter Debnam, John Roseth and Cedric Spencer) agreed to defer the determination of the matter until the end of January to allow the applicant to prepare an updated Species Impact Statement (SIS) that relates directly to this application and to allow the council to advertise and assess the SIS and to obtain the concurrence of the Chief Executive of the Office of Environment and Heritage.

On all other issues raised in the council's assessment report the majority of the Panel is satisfied that the application is worthy of approval. In relation to the first reason for refusal, heritage significance, the majority notes that in the court case *Bunnings Properties v Ku-ring-gai Council* (2016) NSWLEC 1658 and *Bunnings Properties v Ku-ring-gai Council (No4)* (2017) NSWLEC 1238 the opposing views of two heritage experts had been considered and the Court concluded that the heritage value of the 3M building is low and it may be demolished.

In relation to the second reason, the loss of Tree 135, the Panel notes that the Court concluded that the loss of the tree, while regrettable, did not justify the refusal of the application. The majority is satisfied that the retention of the tree would not be compatible with the development of a hardware store which relies on large floor areas at the same level.

The third reason, the absence of a revised SIS is the reason for the Panel's deferral.

The fourth reason, the public interest, refers to the letters of two objectors. However, those letters of objection do not question the fundamentals of the application and have been responded to by the conditions of consent.

The fifth reason repeats the second reason.

The sixth reason refers to the need for protection fencing and has been dealt by the conditions of consent.

The seventh and eighth reasons refer to urban design and architectural detail. The Panel notes that the design of the proposed building has been agreed to both by the council's and the applicant's urban design experts in the court case mentioned above.

The ninth reason refers to traffic. The Panel notes that the RMS has given concurrence to the proposed traffic arrangements.

The tenth reason refers to the Building Code of Australia. The Panel understands that this issue is resolved by the proposed conditions.

The eleventh issue refers to site contamination and is resolved by the conditions.

The twelfth issue refers to acoustic impacts. The Panel notes that the site adjoins two noisy arterial roads and has no residential neighbours.

The thirteenth issue refers to green building requirements and is resolved by the conditions.




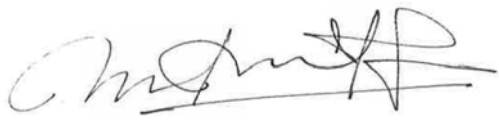

The majority of the Panel accepts the proposed conditions as they are amended by the applicant's proposed amendments in tracking handed to the Panel during the meeting. As concerns Condition 51, the majority notes that the parties have agreed to an appropriate contribution amount in a separate court case and intends to impose that amount. Since this impacts on the council's financial position, the Panel is required to consult with the council. The Chair will therefore advise the council's General Manager of the change it intends to make to Condition 51.

Since the SIS and the consultation with council will require some time, the Panel invites the council and the applicant to negotiate in an effort to resolve the remaining differences between them. The Panel will respect any agreement reached by such negotiations.

Julie Savet Ward voted to refuse the application on the basis of the proposed removal of Tree 135 (*Eucalyptus saligna*), which has been identified as being a species of the Blue Gum High Forest Critically Endangered Ecological Community, having high landscape significance, and having good overall health. The removal of Tree 135 is inconsistent with the objectives and controls for Canopy Remnant under the Kur-ring-gai Development Control Plan 2015. The applicant should have made every endeavour to redevelop the site to retain Tree 135, as indicated by Commissioner Brown.

Barbara Newman also voted to refuse the application on the basis of tree preservation and traffic concerns. The preservation of trees in the Ku-ring-gai area is ultimately very important because of the effects on people's health and the environment. Therefore she cannot support the removal of 87 trees and in particular that of Tree 135. In regard to traffic, Barbara Newman notes her concern about Bridge Street, which is the proposed entry and exit point to Bunnings. The street has a 45 degree slope. Further, exit from Pacific Highway into Bridge Street needs more consideration to ensure that traffic flow can be sustained and blockages do not occur.

The decision to defer the matter was 3:2 in favour, against the decision were Barbara Newman and Julie Savet Ward. The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

PANEL MEMBERS	
 Peter Debnam (Chair)	 Julie Savet Ward
 John Roseth	 Cedric Spencer
 Barbara Newman	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2017SNH066 – Ku-ring-gai – DA0307/17
2	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).
3	STREET ADDRESS	950-950A Pacific Highway and 2 Bridge Street, Pymble
4	APPLICANT/OWNER	Bunnings Properties Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy No.55 – Remediation of Land</li> <li>State Environmental Planning Policy (DRAFT)</li> <li>State Environmental Planning Policy No.64 – Advertising and Signage</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>Sydney Regional Environmental Plan (Sydney Harbour Catchment) (Deemed SEPP)</li> <li>Roads Act 1993</li> <li>Water Management Act 2000</li> <li>Threatened Species Development, Species Conservation Act 1995</li> <li>Ku-ring-gai Local Environmental Plan 2015</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Ku-ring-gai Development Control Plan 2015</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 5 October 2018</li> <li>Council legal advice: 16 October 2018</li> <li>Applicant response, including legal advice dated 7 October 2018: 16 November 2018</li> <li>Written submissions during public exhibition: 2</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>On behalf of the applicant – Felicity Rourke, Brian McDonald, Peter Smyth, Kendal Mackay</li> </ul> </li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Briefing: 5 September 2018 at 9.55am. Attendees <ul style="list-style-type: none"> <li>Panel members: Peter Debnam (Chair), John Roseth, Cedric Spencer</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ Council assessment staff: Janice Buteux-Wheeler, Jamie Taylor, Joseph Piccolo, Tempe Beaven, Corrie Swanepoel, Selwyn Segall, Brian O'Connell</li> <li>○ Applicant: Philip Drew</li> <li>● Site inspection: 13 October 2018 (Barbara Newman, John Roseth)</li> <li>● Site inspection: 17 October 2018 (Peter Debnam, Julie Savet Ward)</li> <li>● Final briefing to discuss council's recommendation, 17 October 2018 at 1.45pm. Attendees: <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Peter Debnam (Chair), John Roseth, Julie Savet Ward, Cedric Spencer, Barbara Newman</li> <li>○ <u>Council assessment staff</u>: Shaun Garland, Michael Miocic, Corrie Swanepoel, John Whyte, Brian O'Connell, Geoff Bird, Joseph Piccoli, Selwyn Segall, Jamie Taylor, Chris Drury (Council Solicitor), Graham Brooks (Council Heritage consultant)</li> </ul> </li> </ul>
<b>9</b>	<b>COUNCIL RECOMMENDATION</b>	Refusal
<b>10</b>	<b>DRAFT CONDITIONS</b>	Attached to the council assessment report