

SUPPLEMENTARY COUNCIL PANEL ASSESSMENT REPORT

Panel Reference	2017SNH066
DA Number	DA0307/17
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 and 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	No submissions to the notification of the amended application.
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 – Council's assessment report considered by the SNPP on 17 October 2018. • Attachment 2 – Concurrence comments from the OEH • Attachment 3 – Draft without prejudice conditions of consent • Attachment 4 – Amended architectural, landscape, engineering plans, measured drawings, archival recording report, BCA report ESA/ RAP report and heritage interpretation plan.
Report prepared by	Shaun Garland, Team Leader Development Assessment
Report date	1 May 2019

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

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

SUPPLEMENTARY REPORT

REPORT TITLE:	Demolition of a heritage item, tree removal, earthworks, construction and use of hardware building supplies development (Bunnings Warehouse), signage, landscaping and consolidation of titles. Threatened Species Development under the Species Conservation Act, 1995 (NSW).
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APPLICATION NO:	DA0307/17
PROPERTY DETAILS:	<p>Address: 950-950A Pacific Highway and 2 Bridge Street, Pymble</p> <p>Lot & DP No: Lot 1 in DP 718718 and Lot b in DP 371406</p> <p>Site area (m²): 1.825 hectares</p> <p>Zoning: B7 Business Park.</p>
WARD:	Comenarra
PROPOSAL/PURPOSE:	Demolition of a heritage item, tree removal, earthworks, construction and use of hardware building supplies development (Bunnings Warehouse), signage, landscaping and consolidation of titles. Threatened Species Development under the Species Conservation Act, 1995 (NSW).
TYPE OF DEVELOPMENT:	Local (Concurrence – SIS, Office of Environment & Heritage)
APPLICANT:	Bunnings Properties Pty Ltd.
OWNER:	Bunnings Properties Pty Ltd
DATE LODGED:	1 August 2017
RECOMMENDATION:	Refusal

PURPOSE OF REPORT

To report the application back to the SNPP to enable it to determine Development Application No DA0307/17 for the demolition of a heritage item, tree removal, earthworks, construction and use of hardware building supplies development (Bunnings Warehouse), signage, landscaping and consolidation of titles.

The reasons for the deferral of the application have been satisfied with concurrence given to the application by the Office of Environment and Heritage (OEH). Council also resolved in this time to accept the reduced s.94 contribution amount with the Panel's Chair being advised of this decision in a letter dated 6 December 2018. The application was also modified by consent of the L&E Court and these changes have addressed a number of the recommended reasons for refusal.

As a consequence of the above, the application is now referred back to the SNPP for its determination with a revised recommendation of refusal.

INTEGRATED PLANNING AND REPORTING

Places, Spaces & Infrastructure

Community Strategic Plan Long Term Objective	Delivery Program Term Achievement	Operational Plan Task
P2.1 A robust planning framework is in place to deliver quality design outcomes and maintain the identity and character of Ku-ring-gai	Applications are assessed in accordance with State and local plans	Assessments are of a high quality, accurate and consider all relevant legislative requirements

EXECUTIVE SUMMARY

Issues:

Those listed as the recommended reasons for refusal in Council's original report to the SNPP on 17 October 2018, except as amended by this supplementary report.

Submissions:

The updated SIS and amended plans/ documentation were re-notified from 10 January 2019 to 8 February 2019. No submissions were received.

Land and Environment Court:

Yes, (Land & Environment Court LEC89311 of 2018)

Recommendation:

Refusal.

HISTORY

Site history:

The Development Application was considered by the SNPP at its meeting of 17 October 2018. The SNPP resolved to defer determination of the application for the following reasons:

“...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 reasons for refusal, heritage significance, the majority notes that in the court case *Bunning 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 the 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 Manger of the change it intends to make to Condition 51...

Since the deferral, the applicant submitted an updated SIS which was referred to the Office of Environment and Heritage in accordance with the Threatened Species and Conservation Act, 1995 (NSW). The General

Manager was also advised of the intention to reduce the S.94 contribution and a report on the matter was considered by the full Council at its ordinary meeting on the 4 December 2018. The Land & Environment Court (L&E Court) also granted leave for the applicant to amend the application. The amendments have addressed a number of reasons that were contained in the recommendation of refusal and Council's contentions in the concurrent deemed refusal appeal.

CONSULTATION

Community

The amended plans, documentation and the SIS were publicly exhibited in accordance with the EP&A Regulations and Council's notification DCP for a period of 28 days, between the 10 January 2019 and 8 February 2019. No submissions were received.

Internal referrals

Health

Council's environmental health officer commented on the proposal as follows:

A noise assessment has been prepared by Wilkinson and Murray which assesses background noise levels and predicts noise impacts from the proposed development. This report concludes that the noise levels will comply.

Conditions previously provided by Environmental Health should be applied to any approval.

Building

Council's building officer commented on the proposal as follows:

As requested, the submission of Norman Disney & Young dated 23 November 2018 has been considered with regard to the building comments.

Norman Disney & Young have advised that a number of performance solutions (aka alternate solutions) will be utilised to achieve compliance with the BCA. Pursuant to clause 144 of the Environmental Planning and Assessment Act, the proposed plans, specifications and performance solution for this building are required to be submitted to the Fire Commissioner by the certifying authority (private certifier or Council) "after receiving an application for a construction certificate".

From a building certification perspective there is no requirement to present the BCA performance solution at DA stage. However, it is noted that a performance solution may impact non BCA planning assessment considerations.

Strategic Traffic Engineer

Council's Strategic Traffic Engineer commented on the proposal as follows:

"There is still one issue that doesn't appear to have been addressed:

On sheet 13_052 DA-A-101 (Version S.34) of the amended Architectural Plans (Carpark Level 1), the staff bicycle parking at the north-eastern end of the car park cannot be accessed if vehicles are parked in the aisle directly adjacent to it. An alternative location should be found where access to the staff bicycle parking is not impeded, or the car park/bicycle enclosure layout should be modified so as to provide unimpeded access to the staff bicycle parking enclosure.

This may be resolved by conditions of consent."

The following condition (**Condition 50**) has been added to the draft without prejudice conditions:

Bicycle Parking

Unimpeded access is to be provided to the staff bicycle parking, either by providing an alternative location for the staff bicycle parking or by modifying the car parking spaces or the bicycle enclosure layout. All relevant plans are to be amended and provided to the Principal Certifier prior to the release of the Construction Certificate.

Reason

On sheet 13_052 DA-A-101 (Version S.34) of the amended Architectural Plans (Carpark Level 1), the staff bicycle parking at the north-eastern end of the car park cannot be accessed if vehicles are parked in the aisle directly adjacent to it.

Heritage

Council's Heritage Advisor commented on the proposal as follows:

"Background

A Heritage Interpretation Plan, dated 15 November 2017, was prepared by Freeman Ryan Design and was submitted on November 2017. An Amended Plan was lodged on 9/1/19 and is acceptable.

An Archival photographic recording document and set of measured drawings was prepared by Brian McDonald of DFP Planning and was submitted on 9 November 2017. An Amended document and drawings was lodged on 9/1/19 and is acceptable.

A letter relating to an opinion on heritage impacts that may arise from the additional Environmental Site Assessment and Remedial Action Plan by Environmental Investigation Services dated 26 November 2018 was submitted on 9/1/19 and is acceptable.

Comments

- The amended Heritage Interpretation Plan is consistent with the original document and satisfies Condition 8 of DA 0115/15.*
- The amended Archival photographic recording document and set of measured drawings is consistent with the original document and satisfies Condition 16. of DA 0115/15.*

Conclusion

The amended documents are satisfactory on heritage grounds. "However, the demolition of the existing building remains unacceptable for the reasons previously advised.

Engineering

Council's Team Leader, Development Engineers commented on the proposal as follows:

The engineering plans do not vary significantly from the plans which were approved previously.

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. The plans are suitable for DA and both plans and report may be stamped and listed in **Condition 1**.*

Vehicular access and parking

Council's Strategic Traffic Engineer has provided comments on traffic and parking.

External referrals

Office of Environment and Heritage (OEH) – (concurrence)

The SIS was referred to the OEH for concurrence under the Threatened Species Conservation Act, 1995 (NSW). Concurrence was granted on 20 March 2019. An extract from the cover letter from the OEH is provided below with the full concurrence report is contained in **Attachment 2**.

"I refer to Council's request, dated 29 January 2019, for the concurrence of the Office of Environment and Heritage (OEH) to DA0307/17, for the proposed development of a hardware building supplies development (Bunnings Warehouse) at the above site.

I have considered your request and have decided to grant concurrence, for the reasons given in the attached concurrence report."

ASSESSMENT

The reasons for which the application was deferred are detailed below:

"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...."

"...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."

The applicant submitted the SIS and concurrence has been granted by the OEH, as detailed in the external referral discussion above. The full response from the OEH is contained in **Attachment 2**. The Chair of the Sydney North Planning Panel (SNPP) also advised Council, in a letter dated 24 October 2018, of the Panel's intention to reduce the amount of S.94 contribution. The reduction of the s.94 contribution was considered by full Council at its Ordinary meeting on the 4 December 2018. Council resolved as follows:

A. That Council notes the letter of intent from the Sydney North Planning Panel to reduce the development contributions payable for DA0307/17.

B. That if the Sydney North Planning Panel is of a mind to grant consent to the development application (DA0307/17) that it be requested to impose the following condition of consent regarding S94 contributions:

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.

The Applicant will provide a total of \$1,041,930.20 in contributions for Pymble Town Centre and Pymble Business Park Key Community Infrastructure: New Roads and Roads Modifications, comprised as follows:

(a) \$545,658.54 as works in kind in respect of those works required to be carried out by condition 30(b) and (c); and

(b) \$496,271.66 as a monetary contribution.

The works in kind referred to in paragraph (a) of this condition must be completed prior to the issue of any occupation certificate for the development. If the Applicant does not make the works in kind contribution referred to in paragraph (a) of this condition, then in lieu thereof the Applicant shall make a monetary contribution of \$545,658.54.

The monetary contributions required by this condition 51 shall be paid to Council prior the issue of any Construction Certificate, Linen Plan, Certificate of Subdivision or Occupation Certificate whichever comes first in accordance with Ku-ring-gai Contributions Plan 2010.

The monetary contributions specified above are subject to indexation and will continue to be indexed to reflect changes in the consumer price index and housing price index until they are paid in accordance with Ku-ring-gai Contributions Plan 2010 to reflect changes in the consumer price index and housing price index. Prior to payment, please contact Council directly to verify the current payable contributions.

Copies of Council's Contribution Plans can be viewed at Council Chambers, 818 Pacific Hwy Gordon or on Council's website at www.kmc.nsw.gov.au.

The payment of the s94 contribution may include a credit for 'Works in Kind' to reduce the total amount payable, where an agreement between the Applicant and Council exists, to the extent that works the subject of this consent are identified in a Contributions Plan Works Schedule.

Reason: *To ensure the provision, extension or augmentation of the Key Community Infrastructure identified in Ku-ring-gai Contributions Plan 2010 that will, or is likely to be, required as a consequence of the development.*

Condition 51 of the draft without prejudice conditions has been modified to reflect the above.

The Land & Environment Court (L&E Court) also granted leave for the applicant to amend the application. A summary of the amendments is as follows:

- i) Amended architectural Plan to address Reasons 7(m) and 8 of the recommendation for refusal of the application in Council's report to the Panel on 17 October 2018.
- ii) BCA Compliance Report
- iii) Additional Environmental Site Assessment and Remedial Action Plan
- iv) Acoustic Assessment
- v) Archival Photographic Recording and measured drawings dated May – July 2017
- vi) Heritage interpretation plan dated 9 November 2017.

The following is a brief review of the amended plans and documentation

- i) Amended architectural Plan to address Reasons 7(m) and 8 of the recommendation for refusal of the application in Council's report to the Panel on 17 October 2018.*

The amended architectural plans have addressed **Reasons 7(m) and 8** contained in Council's previous recommendation of refusal. These reasons have now been deleted.

ii) BCA Compliance Report

The BCA report undertaken by Norman, Disney & Young, dated 23 November 2018, has not addressed the main concern under **Reason 10** in the Recommendation of Refusal as reliance remains on an alternate solution for the provision of emergency vehicles access around the building which will conflict with the areas required for Blue Gum High Forest offset planting. It is noted that the outdated reference to compliance with Parts C, D and E of the BCA 2014 has been updated to the current version of the BCA 2016, this is now reflected in the amended Recommendation of Refusal.

As a consequence of the above, **Reason 10** under the previous recommendation of refusal remains, although amended to reflect the updated BCA reference which is now correct.

iii) Additional Environmental Site Assessment and Remedial Action Plan

The environmental site assessment (ESA) and remedial action plan (RAP) addresses **Reason 11** Site Contamination within the recommendation of refusal, which can now be deleted. **Condition 1** has been modified to include this report and a subsequent milestone condition has been added to the draft without prejudice conditions (**Attachment 3**) to satisfy the recommendations in the report.

iv) Acoustic Assessment

Council's Environmental Health Officer has reviewed the acoustic report and has not raised any significant issues or concerns with the report subject to conditions. Refer to the earlier comments for further detail in this regard. This has addressed **Reason 12** which has been deleted.

v) Archival Photographic Recording and measured drawings dated May – July 2017

The archival photograph recording and measured drawing are acceptable, as discussed earlier by Council's heritage officer. The draft without prejudice **Condition 1** has been amended to include a reference to these documents.

vi) Heritage interpretation plan dated 9 November 2017.

The Heritage Interpretation Plan is acceptable, as discussed earlier by Council's Heritage Advisor. The draft without prejudice **Condition 1** contains a reference to this document.

The matters for the deferral of the determination have been completed and concurrence has been granted by the Office of Environment and Heritage (OEH). Council resolved to accept the reduced s.94 contribution amount and the Panel's chair was advised of this decision in a letter dated 6 December 2018. The amended application was assessed and it has addressed a number of reasons for refusal, which is reflected in the revised Recommendation of Refusal.

As a consequence of the above, the application is now referred back to the SNPP for its determination with a revised recommendation of refusal.

PUBLIC INTEREST

The application remains unacceptable for the reasons contained in the revised recommendation of refusal. As a consequence the development is not in the public interest.

CONCLUSION

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

RECOMMENDATION

PURSUANT TO SECTION 4.17(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

THAT the Sydney North Planning Panel, as the consent authority, refuse development consent to Development Applications DA 0307/17 for demolition of a heritage item, tree removal, earthworks, construction and use of hardware building supplies development (Bunnings Warehouse), signage, landscaping and 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.

(Reason 3 has been deleted as the additional information addressed this reason for refusal)

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.

(Reason 7M has been deleted as the additional information addressed this reason for refusal)

- ~~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.~~

(Reason 8 is deleted as the additional information addressed this reason for refusal)

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.~~

~~(Reason 10 has modified to reflect the submission of the Norman Disney & Young letter dated 23 November 2018).~~

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 G, D and E of the BCA 2014 is out of date as should be referencing BCA/NCC 2016 amendment 4. 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.

(Reason 11 is deleted as the additional information addressed this reason for refusal)

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.~~

(Reason 12 is deleted as the submitted acoustic report addressed this recommended reason for refusal)

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

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Team Leader - Development Assessment
Central

Corrie Swanepoel
Manager Development Assessment

Michael Miocic
Director Development & Regulation

Report Dated: 29 April 2019

Attachments:

Attachment 1: Council's assessment report considered by the SNPP on 17 October 2018. TRIM 2018/285695

Attachment 2: Concurrence comments OEH: TRIM 2019/088417

Attachment 3: Draft without prejudice conditions of consent: TRIM 2019/101714

Attachment 4: Amended plans and documentation: TRIM 2019/004589
TRIM 2019/004597
TRIM 2019/004600
TRIM 2019/004602
TRIM 2019/004604
TRIM 2019/004605
TRIM 2019/004610
TRIM 2019/004614