

## DETERMINATION AND STATEMENT OF REASONS

### SYDNEY NORTH PLANNING PANEL

<b>DATE OF DETERMINATION</b>	Wednesday 22 May 2019
<b>PANEL MEMBERS</b>	Peter Debnam (Chair), John Roseth, Julie Savet Ward, Cedric Spencer, Barbara Newman
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held at Christie Conference Centre, 100 Walker Street North Sydney on 22 May 2019, opened at 2pm and closed at 4.01pm.

#### MATTER DETERMINED

2017SNH066 – Pymble – DA0307/17 at 950 Pacific Highway Pymble – Bunnings Pymble (as described in Schedule 1)

#### PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was 3:2 in favour, against the decision were Barbara Newman and Julie Savet Ward.

#### REASONS FOR THE DECISION

The majority of the Panel (Peter Debnam, John Roseth and Cedric Spencer) voted to approve the application despite the fact that the council's supplementary report again recommended refusal of the application.

The council's original assessment report that was before the Panel at the public meeting of 17 October 2018 listed thirteen reasons for refusal. The majority of the Panel considered that only one reason stood in the way of the approval of the application, namely the need to submit, exhibit and assess a revised Species Impact Statement (SIS). This has now been done.

The first reason for the council's recommendation to refuse the application remains the demolition of the existing 3M building, which is an item of the local heritage. The majority of the Panel notes that in the court case *Bunning Properties v Ku-ring-gai Council* (no 4) (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 that it may be demolished. All five members of the Panel accept the Court's decision.

The second reason is the removal of Tree 135. The majority notes that the Court concluded that the loss of the tree, while regrettable, did not justify the refusal of the application. The majority of the Panel accepts that the retention of the tree is not compatible with the construction of a hardware store which requires large floor plates at the same level.

The council has deleted the third reason for refusal which relates to the revised SIS.

The fourth reason is the public interest and relates to the letters of two objectors. However, those letters do not question the fundamentals of the application and the conditions of consent respond to the concerns. There were no further submissions in relation to the amended application.

The fifth reason repeats the second reason.

The sixth reason relates to the tree protection fencing and is dealt with by the conditions of consent.

The seventh reason refers to urban design. The council has deleted large sections of this reason; however, some design issues remain. The Panel notes that the design of the proposed building has been agreed to by both the councils and the applicant's urban design experts in the court case mentioned above.

The eighth reason has been deleted by the council.

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

The tenth reason relates to the BCA and has been dealt with by conditions.

The eleventh reason has been deleted by the council.

The twelfth reason has been deleted by the council.

The thirteenth reason refers to green building requirements and can be resolved by conditions.

Julie Savet Ward and Barbara Newman disagreed with the majority decision.

Julie Savet Ward voted to refuse the application on the basis of the proposed tree removal, and in particular the 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 significance, high visual amenity and prominence in the landscape and good overall health. The removal of Tree 135 is inconsistent with the tree canopy target set by the Greater Sydney Commission in the North District Plan and with objectives and controls for Canopy Remnant under the Kur-ring-gai Development Control Plan 2015. The applicant should have initiated the design with a view to retain Tree 135.

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 steep 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.

## CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report and as per the Applicants Response received 22 May 2019 (and published) with the following amendments:

- Condition 19 amended to read as follows

*Prior to the commencement of demolition works, the following plans are to be amended to identify any tree protection fencing that has been endorsed by the project arborist. Such plans are to be submitted to the Principal Certifier:*

- (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.*

*Reason: To ensure the protection of existing trees.*

Additionally, the development contributions are to be amended to read as follows:

***Development contributions – centres***

*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 is to provide a total of \$1,041,930.20 in contributions for Pymble Town Centre and Pymble Business Park Key Community Infrastructure: New Roads and Sydney North Planning Panel 2017SNH066.*

*Road modifications, comprised as follows:*

- (a) \$122,505.19 as works in kind in respect of the provisions of a pedestrian crossing facilities over the Pacific Highway at Bridge Street; and*
- (b) \$919,425.01 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 \$122,505.19.*

*The monetary contributions required by this condition 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](http://www.kmc.nsw.gov.au).*




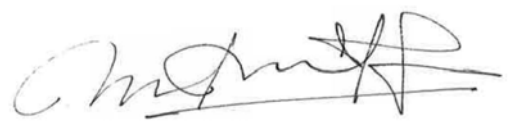

*The payment of the s94 contribution may include a credit for 'Works in Kind' to reduce the total amount payable, where an agreement between the Applicant and Council exists, to the extent that works the subject of this consent are identified in a Contributions Plan Works Schedule.*

*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.*

**CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel noted there were no further public submissions and no members of the public addressed the meeting.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

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>Council supplementary report: 6 May 2019</li> <li>Council memo received: 21 May 2019</li> <li>Applicant's response received: 22 May 2019</li> <li>Written submissions during public exhibition: 2</li> <li>Verbal submissions at the public meeting 17 October 2018: <ul style="list-style-type: none"> <li>On behalf of the applicant – Felicity Rourke, Brian McDonald, Peter Smyth, Kendal Mackay</li> </ul> </li> <li>Verbal submissions at the public meeting 22 May 2019: <ul style="list-style-type: none"> <li>On behalf of the applicant – Rebecca Pleming, Brian McDonald, Peter Smyth, Kendal Mackay, Philip Drew</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> <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> </ul> </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> <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, Robyn Askew, Catherin Morton (Council Solicitor), Jamie Taylor</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the council assessment report