

## COUNCIL PANEL SUPPLEMENTARY ASSESSMENT REPORT

<b>Panel Reference</b>	2017SNH084
<b>DA Number</b>	DA0610/17
<b>LGA</b>	Ku-ring-gai
<b>Proposed Development</b>	Demolition of existing structures and construction of a mixed use development comprised of shop top housing containing 56 apartments, use of ground floor commercial space as an Aldi supermarket and small retail suite, basement parking, signage and associated works
<b>Street Address</b>	810-818 Pacific Highway, Gordon
<b>Applicant/Owner</b>	RPS Group / Pacific Highway Gordon P/L & Ku-ring-gai Council
<b>Date of DA Lodgement</b>	11 December 2017
<b>Number of Submissions</b>	7 submissions in response to 1 <sup>st</sup> notification, 1 submission in response to notification of amended plans
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	CIV in excess of \$20 million Works on land to which Council has an interest in excess of \$5 million
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• SEPP 55 – Remediation of Land</li> <li>• State Environmental Planning Policy No. 64</li> <li>• State Environmental Planning Policy No. 65</li> <li>• SEPP (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (BASIX)</li> <li>• Sydney Regional Environmental Plan (Sydney Harbour Catchment)</li> <li>• Ku-ring-gai LEP (Local Centres) 2012</li> <li>• Ku-ring-gai Local Centres DCP 2016</li> <li>• Ku-ring-gai Development Contributions Plan 2010</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Annexure A - original assessment report and supporting plans and documents</li> <li>• Annexure B - response from applicant to the original assessment report</li> <li>• Annexure C - unsolicited architectural and landscape plans</li> <li>• Annexure D - applicant's response to initial draft with prejudice conditions</li> <li>• Annexure E - response from the RMS</li> </ul>
<b>Report prepared by</b>	Kerry Gordon, Michael Zanardo and Kerry Hunter – consultants on behalf of Ku-ring-gai Council
<b>Report date</b>	31 October 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?	<b>Yes, in original assessment report</b>
---	---

---

**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? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	<b>Yes, in original assessment report</b>
---	---

---

**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?	<b>Yes</b>
--	------------

---

**Special Infrastructure Contributions**

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

---

**Conditions**

Have draft conditions been provided to the applicant for comment? <i>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</i>	<b>Yes</b>
--	------------

## DEFERRAL BY SYDNEY NORTH PLANNING PANEL

An assessment report in relation to this matter was considered by the Sydney North Planning Panel on 12 September 2018. The Panel deferred the application as follows:

*The Panel notes that the applicant has submitted amended plans which it claims address the reasons for refusal and which have not yet been assessed; and the assessment officer has prepared “without prejudice” conditions, which the applicant has not yet responded to. Consequently, the Panel has decided unanimously to defer the determination to allow the following to occur before a further public meeting.*

*The Panel requests the assessment officer to assess the amended plans and to provide, before the end of October 2018, a supplementary report stating whether they satisfactorily respond to the concerns raised in the assessment report of September 2018. The Panel also request the assessment officer to provide the applicant with the “without prejudice” conditions, and the applicant to respond to them.*

*The Panel also requires the written concurrence of the RMS to the proposed traffic arrangements in Pacific Highway and Dumaresq Street.*

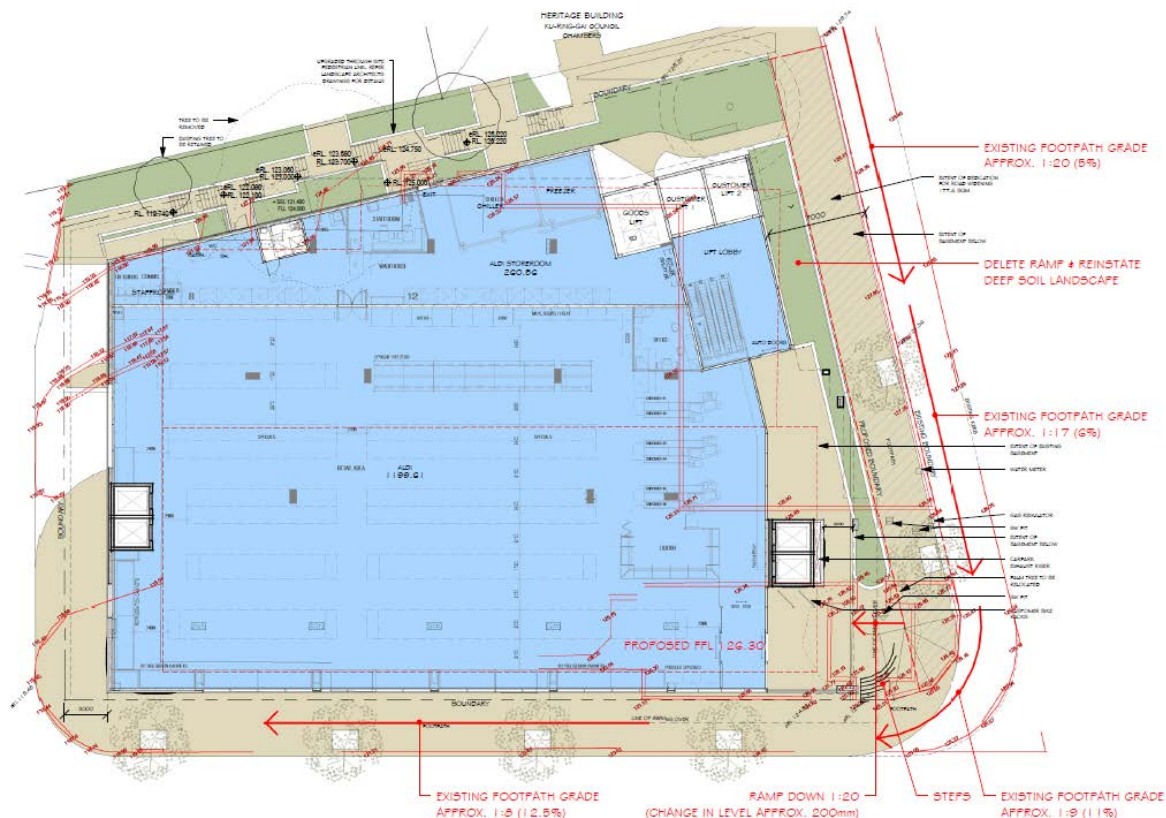
*When the above matters have been attended to, the Chair will arrange for a further public meeting.*

## AMENDED PLANS

Whilst the Panel deferral refers to amended plans submitted by the applicant, the information provided by the applicant was limited to the following and did not include a comprehensive set of amended plans showing the suggested amendments.

- a letter, prepared by RPS Group, dated 7/9/18, outlining the history of the application and purporting to address the reasons for refusal
- amended supermarket level plan (**Figure 1**) – changes include raising the ground floor by 600mm, deleting the access ramp to the supermarket and changing the access courtyard for the supermarket at the corner of Pacific Highway and Dumaresq Street
- amended clause 4.6 variation request
- copy of pre-DA meeting minutes
- information in relation to footpath grades
- revised soil depth plan and landscape plan LA-02
- catchment plan
- civil details sheet with revised OSD calculation
- copy of current set of civil drawings

On 24 September 2018, the applicant, unsolicited, submitted an amended (full) set of architectural and landscape plans which incorporated the changes listed above (**Annexure C**). Despite these plans being unsolicited, they have nonetheless been used in the assessment contained in this report and the basis for Council to consider and respond to the Panel’s deferral.



**Figure 1**

Amended plan raising the ground floor level by 600mm, deleting the ramp to the supermarket from the street and altering the access courtyard at the corner of Pacific Highway and Dumaresq Street.

## ASSESSMENT OF WHETHER APPLIANT'S CHANGES ADDRESS REASONS FOR REFUSAL

The additional amended plans received 24 September 2018 have been assessed and were found to not satisfactorily respond to the concerns raised in the original assessment report of September 2018 (**Annexure A**).

The original assessment report recommended refusal for 11 reasons. Each reason for refusal is detailed below, with a discussion of whether the applicant's additional information/amendments satisfies or addresses the reason for refusal. The discussion in relation to Reason for Refusal 1 also addresses the response from the Roads and Maritime Service.

A total of 9 of the 11 reasons remain and 3 additional reasons for refusal have been added. These reasons are set out at the end of this report.

### Reason for Refusal 1

*The mitigation measures proposed by the applicant of modifying the traffic signals and road markings in Dumaresq Street have not been given concurrence by the Roads and Traffic Authority. In the absence of the mitigation measures, the development application should be refused as the functioning of the intersection of Pacific Highway and Dumaresq Street will be detrimentally impacted by the proposal by increasing the queuing length of traffic waiting on Dumaresq Street to turn into the Pacific Highway. Unless queuing lengths are shortened, the proposed development will result in unacceptable delays to traffic entering and exiting the Gordon Centre and Radford Place.*

The following excerpt response has been received from the Roads and Maritime Service (**Annexure E**) to Council's request for clarification as to whether it supports and gives concurrence to the mitigation works within Dumaresq Street and modifications to the traffic signals at the intersection.

*Roads and Maritime has reviewed the submitted application and the additional modelling information provided on 8 March 2018. Roads and Maritime further held a meeting with the developer inclusive of Council on 4 June 2018 and determined that the mitigation measures would be required to accommodate the proposed Aldi development at this site. To alleviate queuing on Pacific Highway southbound due to proposed development, the right turn bay shall be extended by 40 metres at full cost to the developer. It is further noted that all access to the site will be provided via the local road network from Radford Place. Additionally, Roads and Maritime does not support the mitigation measure of providing dual right turns out of Dumaresq Street onto Pacific Highway as this will result in increased delays on the road network.*

*Roads and Maritime raises no objections to the development proposal and provides Section 138 Concurrence under the Roads Act 1993, subject to the following conditions being included in any determination issued by Council.*

The implication of the refusal of the Roads and Maritime Service to grant concurrence to the mitigation measures recommended by the applicant's traffic engineer of providing dual right turns out of Dumaresq Street onto Pacific Highway upon the local road network is discussed as follows.

As part of additional information provided by RPS/Cardno, details of existing and future eastbound queue lengths in Dumaresq Street (on the approach to Pacific Highway) are shown in the table below:

**Table 2      Queuing within Dumaresq Street**

Scenario	Queue Distance (vehicles / distance)		
	AM	PM	SAT
Site Observations	8 / 56m	11 / 77m	9 / 63m
2018 Base Model	5 / 35m	11 / 77m	7 / 49m
Future Base Model	5 / 35m	14 / 98m	14 / 98m
Future Base Model w Development	5 / 35m	14 / 98m	14 / 98m

Of note are the site observations of queue lengths, reflecting existing conditions in Dumaresq Street, where the queue lengths are observed to be 56 metres in the weekday am peak, 77 metres in the weekday pm peak and 63 metres in the Saturday peak.

The diagram below highlights the distance between the holding line in Dumaresq Street

1. Intersection with Radford Place (approximately 66 metres); and
2. Intersection with car park exit from Gordon Centre (approximately 82 metres).





*Authority. In the absence of the mitigation measures, the development application should be refused as the functioning of the intersection of the intersection of Dumaresq Street and Radford Place/Gordon Centre car park entrance would be detrimentally impacted as a result of the increased the queuing length of eastbound traffic on Dumaresq Street waiting to turn into Pacific Highway. Unless queuing lengths are shortened, the proposed development will result in unacceptable delays to traffic entering and exiting the Gordon Centre car park access and Radford Place.*

## **Reason for Refusal 2**

*The development application should be refused as the height of the proposal is excessive, in breach of Clause 4.3 of Ku-ring-gai Local Environmental Plan (Local Centres) and is not supported by a well-founded clause 4.6 variation request as there are not sufficient environmental planning grounds to justify contravening the development standard.*

An updated clause 4.6 variation request to the height standard has been submitted by the applicant (**Annexure B**). The clause 4.6 request indicates the maximum variation to the standard is 5.11 metres and that this is appropriate for the following reasons:

- The breach in height does not result in a breach of the maximum floor space ratio (FSR) of the site and the extent of the variation is minimal;*
- The proposed development benefits the Gordon Local Centre through an additional anchor store increasing customers to Gordon;*
- The design of the proposed development benefits the adjacent heritage listed Council Chambers through the landscaping of the 'green' buffer, Council's Landscape Officer has proposed specific plants which suit the Council Chambers setting;*
- The design of the proposed development will not result in any detrimental impacts on local amenity or on any sensitive land uses such as open space or heritage items;*
- The development will be in keeping with the desired future character of the Gordon local centre being a local retail hub complementing the existing Gordon Centre; and*
- The site's proximity to local services, retail and the Gordon railway station means that it is in an ideal strategic location to increase population density within the Ku-ring-gai LGA.*

The applicant's clause 4.6 variation request claims that the following environmental planning grounds justify the variation of the height control:

- The proposed development will fully comply with the objectives of the B2 Local Centre zone within which the site is located as it will:*
  - provide employment opportunities in an accessible location;*
  - maximise public transport patronage and encourage walking and cycling;*
  - provide for residential housing close to public transport, services and employment opportunities; and*
  - be a mixed use building integrating commercial and residential use.*
- The creation of the supermarket space for ALDI provides an additional anchor store for the Gordon Town Centre.*
- Contravention of the height control will enable the provision of seven levels of residential apartments above the ground floor thus providing greater housing supply and choice in the Ku-ring-gai LGA and assisting with achieving regional housing targets.*
- The breach in height in part is a result of the built form having a slender building, with increased separation to the adjacent heritage listed Council Chambers at 818 Pacific Highway, Gordon. This building siting and design allows for increased visual separation and landscape buffer to the adjacent Council Chambers.*
- The proposed slender design situated on the southern boundary allows for improved environmental amenity to the pedestrian through site link.*

- *The breach in height does not result in a breach of the maximum floor space ratio (FSR) of the site and the extent of the variation is minimal.*
- *The design of the proposed development will not result in any detrimental impacts on local amenity or on any sensitive land uses such as open space or heritage items.*
- *The site slopes steeply from its front boundary to the rear of the site therefore the minor contravention of the height control enables the building to respond to the topography appropriately.*
- *There will be no adverse amenity impacts upon surrounding uses, including the heritage-listed Council Chambers to the north of the site.*
- *The height contravention will not be out of character with the desired future character of the Gordon local centre and the greater density which the zoning of the centre provides for.*

Clause 4.3 of LEP 2012 sets a maximum height of 26.5 metres on the subject site. It is noted that the amendments made by the applicant do not alter the height of the development as previously assessed.

The proposal has maximum heights as follows (note the calculations of the assessing officer do not correspond with those of the applicant who indicates the maximum breach is 5.11 metres):

roof to western portion of building	RL 146.7 - 28.7 metres – breach 2.2 metres
roof to eastern portion of building	RL 153.5 - 31.1 metres – breach 4.6 metres
western lift overrun	RL148.0 - 29.6 metres – breach 3.1 metres
eastern lift overrun	RL 154.4 – 30.9 metres - breach 1.5 metres
mechanical plant on western portion of building	RL148.4 – 29.6 metres – breach 3.1 metres
mechanical plant on eastern portion of building	RL153.0 – 29.5 metres – breach 4.4 metres

The building height control is a numerical development standard, being consistent with the definition of “*development standards*” contained within Section 1.4(1) of the Environmental Planning and Assessment Act and is not a prohibition and as such can be varied under Clause 4.6 of the LEP.

#### *Assessment of variation request*

Clause 4.6 has objectives as follows:

- to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(3) requires the clause 4.6 variation request to justify contravention of the development standard by demonstrating:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- that there are sufficient environmental planning grounds to justify contravening the development standard.*

Further, clause 4.6(4) requires the consent authority must not grant consent to a development that contravenes a development standard unless it is satisfied that:

- the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*



- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

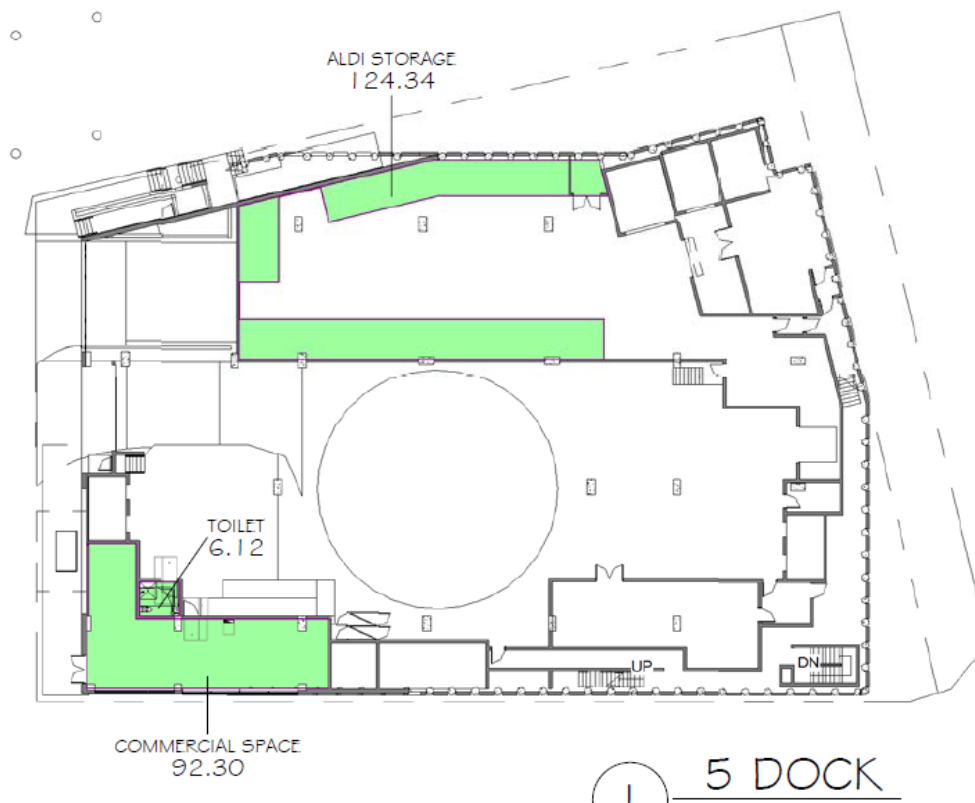
and concurrence has been received. In this case the Panel does not need the concurrence of the Secretary and can assume concurrence. However, clause 4.6(5) requires consideration of the following when considering whether to grant concurrence:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

In assessing whether the proposal with significant breaches of the height control (up to 4.6 metres) when assessed based on the survey plan and the proposed RLs on the architectural plans, seeks an appropriate degree of flexibility and achieves a better outcome than a compliant development, the reasons for the variation are relevant. In this instance, several of the applicant's reasons are not considered to adequately address that there are sufficient environmental planning grounds to justify contravening the development standard.

Firstly, in contrast to the applicant's assertions, the proposal does result in a breach of the maximum floor space ratio by approximately 89m<sup>2</sup> (see Reason for Refusal 12). No Clause 4.6 variation request has been provided for this departure to the development standard and therefore the standard cannot be lawfully varied.

In addition, the volume and height of the building is exacerbated by the dock level which has a floor-to-floor height of 6.1 metres but does not contribute to gross floor area (due to the LEP definition) even though its volume is largely above ground level (towards the rear of the building).



**Figure 2**

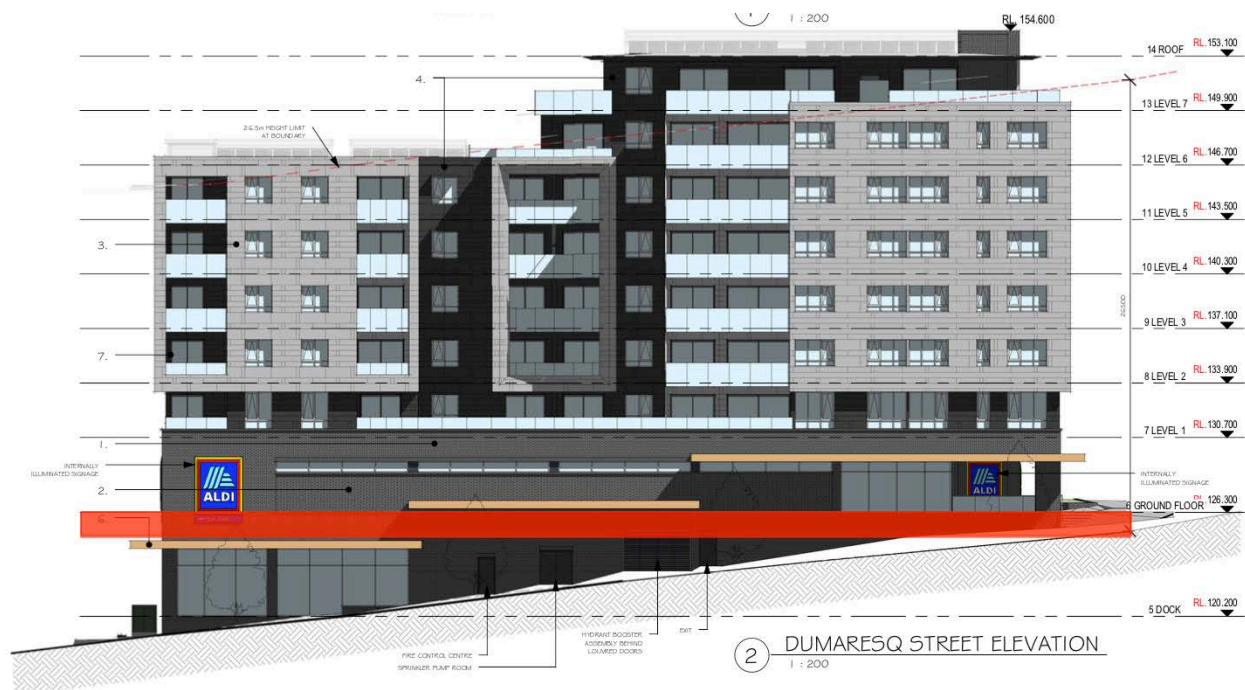
FSR calculation diagram for Dock level [DA20E] showing most of the loading level is not included in the calculation of GFA but adds to the height and bulk of the building.

The minimum height required for such a dock is 4.5 metres, therefore the overall height exceedance of the building is significantly impacted by the height of the dock level by approximately 1.6 metres.



**Figure 3**

Radford Place elevation [DA14E] showing the ceiling level of loading area, most of which is excluded from the definition of GFA but adds to the height and bulk of the building.

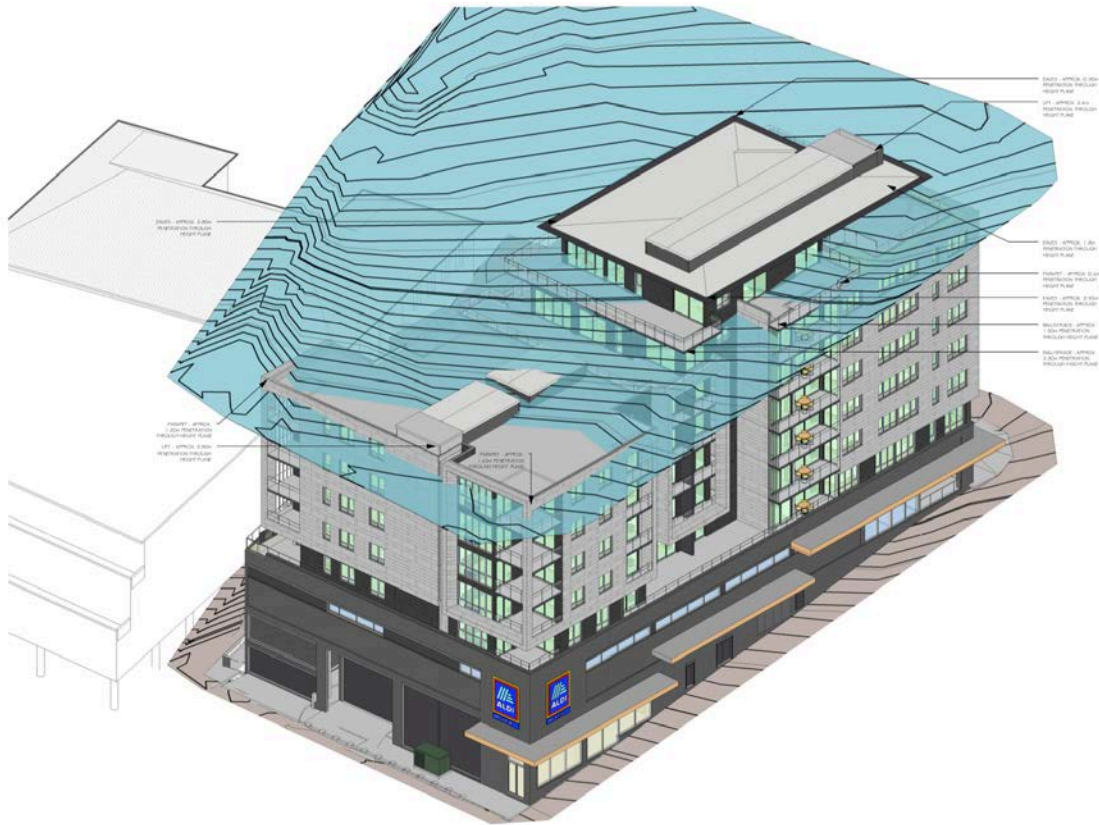


**Figure 4**

Dumaresq Street elevation [DA14E] showing the additional 1.6m height in red that the dock level contributes to the building over and above what it needs to operate.

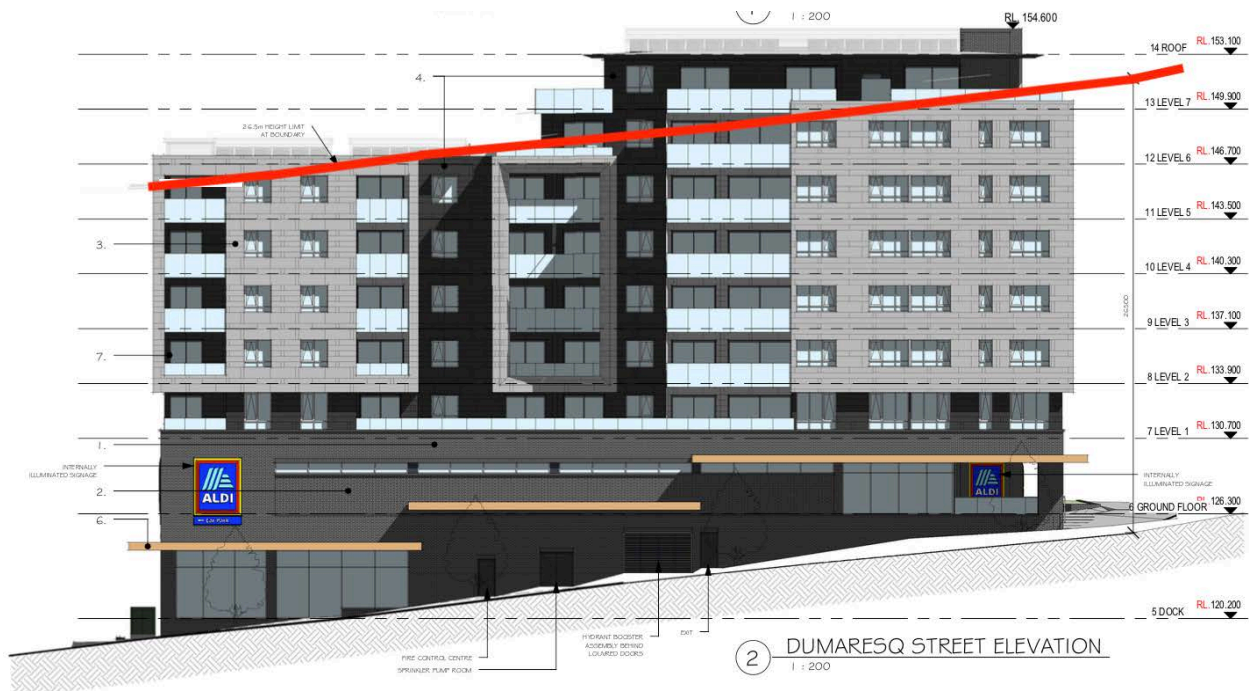
Secondly, the extent of variation to the maximum building height cannot be considered 'minimal'. The extent of variation at 5.11m as described by the Clause 4.6 variation request, or at 4.6 metres as assessed by Council, results in an exceedance of the maximum building height of either 19% or 17%, respectively. Both of these figures are almost double the 10% threshold commonly regarded as 'minor', the type associated with small built form encroachments such as lift overruns and plants in the centre of the building and roof eaves at the perimeter. In this instance, the exceedance means that much of the habitable volume of both penthouse units at Level 7, the entire topmost roof form and all lift overruns and plant rooms above this are above the maximum height plane.

Given the extent of the overrun at almost two full residential storeys in height, it is considered that the topmost floor should be removed. This would leave only more minor encroachments of the height plane such as those that occur at level 5. Alternatively, a planning proposal could be submitted to vary the LEP maximum building height for the site.



### Figure 5

Height plane study [DA22E] showing most of the volume of the top floor breaking through the height plane. Note that downwards view reduces apparent exceedance.



### Figure 6

Dumaresq Street elevation [DA14E] with height plane highlighted showing most of the volume of level 7 above the height plane. Note that other elevational views appear to show the height plane at the boundary rather than at the face of the building and are therefore not accurate indications of height breach.

Thirdly, it cannot be said that the breach of the height plane ‘enables’ the building to respond to the topography ‘appropriately’. This might be said of small encroachments to the height plane, however

in this instance where there are large encroachments of the height plane of greater than an entire residential floor-to-floor height, the appropriate, or 'reasonable', way to respond to the steep slope of the site is to remove the topmost floor of the building (Level 7).

Fourthly, it is considered that no tangible benefit flows to the adjacent heritage listed Council Chambers from the exceedance in height, as key heritage and landscape objectives to see the Council building 'in the round' (see Reason for Refusal 4) and with a 'landscaped forecourt' (see Reason for Refusal 7) are still not met. As such, it cannot be said that the design of the proposed development, as a whole, will not result in any detrimental impacts on sensitive land uses such as the adjacent heritage item, particularly important views to the item.

For these reasons, the proposal is considered to only achieve better outcomes for the development, but not from the development with the exceedance of maximum building height. Because of this, the proposal is representative of over-development. The breach of height is a design choice. The choice to set back more than required from the north boundary to the heritage item and less than required from the east boundary with the Pacific Highway has resulted in a constrained footprint that creates non-compliances that do not achieve the envisaged desired future character without delivering measurable improvements to the design outcome. A more appropriate, or reasonable, design under the current controls would reduce the gross floor area to the permissible floor space ratio, lower the dock level ceiling height to only that required, redistribute the building volume laterally rather than vertically to have proper regard for key heritage and landscape objectives and step upper levels more with the topography so as to not break the height plane with an entire additional floor of residential.

As such, it is not considered that the applicant's clause 4.6 variation request has established that breaching the control is necessary or reasonable in the circumstances of this site or that there are sufficient environmental planning grounds to justify the variation sought.

In the absence of a well-founded argument for the breach, it is not in the public interest to vary the control to the extent sought as such variations may lead to the abandonment of the control.

Without a well-founded clause 4.6 variation request, the Panel does not have the power to approve the application.

For the above reasons, this reason for refusal remains valid.

### **Reason for Refusal 3**

*The development application should be refused as the proposed setback and design are inconsistent with Control 7vii of Part 14D.9 Precinct G3: Civic Hub of Ku-ring-gai Development Control Plan (Local Centres) which requires a 15m setback to the Pacific Highway to provide for a landscaped forecourt and view corridors to the heritage item at 818 Pacific Highway. The proposed lack of setback, provision of accessible pedestrian ramp and elevated northern podium and associated fences result in an inadequate landscaped forecourt and interrupt public views to the heritage item.*

In response to this reason for refusal, the applicant raised the floor level of the supermarket by 600mm and deleted the ramp to the supermarket. An accessible path of travel to the supermarket is now proposed from the north of the site to the entry undercroft at the corner of Pacific Highway and Dumaresq Street. This aspect is supported.

However, the applicant has maintained the significant breach of the 15 metres front setback control and does so on the basis that the communal open space affords improved opportunities to view the heritage item. Taken from the existing eastern boundary, the proposal reduces the front setback to 7 metres at ground level to accommodate customer lifts and a lift lobby in close proximity to the



Architectural floor plan of the Aldi store at 2357 SQM. The plan shows the layout of the store, including the main shopping area, service counter, and various rooms. A red shaded area indicates the proposed extension. The plan includes labels for various rooms and areas, such as 'ALDI STORE ROOM 260.56', 'ALDI 1199.61', 'CUSTOMER LIFT 1', 'CUSTOMER LIFT 2', and 'LIFT LOBBY'. It also shows the 'EXTENT OF PROPOSED' and 'EXTENT OF EXISTING' areas. The plan is dated 1 DAT1 and 2 DAT1.

Ground floor plan [DA05F] with 15m setback indicated by red line and amount of building encroaching within the setback coloured red.





**Figure 8**

Level 1 plan [DA06F] with 15m setback indicated by red line, amount of building encroaching within the setback coloured red and 2-3m tall courtyard wall indicated by black line.



**Figure 9**

Pacific Highway Elevation [DA14E] showing 2-3m tall courtyard wall coloured red with extent indicated by black line. 1.8m tall pedestrian shown in white.

All of these encroachments combine to significantly reduce opportunities to view to the heritage item from the public domain rather than increase them. Whilst some perspectives (such as DA19E or DA27D) indicate that the heritage item will be visible, these views are well above eye-level and do not show the view from a realistic pedestrian angle. These views are also taken from the centre, or opposite side, of the Pacific Highway and do not deal with the view most influenced by the 15 metres set back control, that being the view from the footpath on the same side of the Pacific Highway. The view provided in Photomontage 4 (DA30D) (**Figure 10**) taken from the south corner of Pacific Highway and Dumaresq Street however is useful in demonstrating the issue. The existing building on site is set back approximately 15 metres at its closest point and can be used as a guide to what would be visible with a 15 metres setback. By overlaying the before and after photos, the reduction in view to the heritage item from the key vantage point is shown.



**Figure 10**

Photomontage 4 overlaid on 'before' photo [DA30D] with reduction in view to the heritage item coloured red.

A setback which reflected the 15 metres control would expose the heritage item to a greater extent from this vantage point, revealing the full ridge of the front portion of the Council Building as well as all four windows of its south facing wall. Moving further north along the footpath, the original entry to the Council Chambers meeting rooms would also become visible. However, the proposal with reduced 7 metres setback at the ground floor, overhanging first floor with only 4.5 metres setback, and tall 2-3 metres courtyard wall with 7 metres setback, would restrict views to these key features from a pedestrian eye level. This will be further exacerbated when Pacific Highway is widened. The effect of the 4 metres acquisition for road widening results in the ground floor and courtyard wall being set back 3 metres from the future boundary and 1.5 metres for the overhanging first floor and above, narrowing of the footpath, bringing pedestrians closer to the face of the building, and limiting this view even further. The 15 metres setback control (taken from the existing boundary), therefore, provides sufficient space in which to accommodate this future road widening. It will enable resolution of the future ground plane at the new boundary, such that the site objectives of Part

14D.9 Precinct G3: Civic Hub of Ku-ring-gai Development Control Plan (Local Centres) can be achieved. Because of this, the key heritage and landscape objectives to see the Council building in 'the round' and to provide a landscaped forecourt and view corridors to the heritage item (see Reasons for Refusal 4 and 7) are not met by the proposal.

For the above reasons, this reason for refusal remains valid but should be reworded as follows:

*The development application should be refused as the proposed setback and design are inconsistent with Control 7vii of Part 14D.9 Precinct G3: Civic Hub of Ku-ring-gai Development Control Plan (Local Centres) which requires a 15 metres setback to the Pacific Highway to provide for a landscaped forecourt and view corridors to the heritage item at 818 Pacific Highway. The proposed lack of setback, ~~provision of accessible pedestrian ramp and~~ elevated northern podium and associated fences result in an inadequate landscaped forecourt and interrupt public views to the heritage item.*

#### **Reason for Refusal 4**

*The proposal does not satisfy Clause 5.10(1)(b) of Ku-ring-gai Local Environmental Plan (Local Centres) 2012 or Controls 14D.9.1(iii) and 19F.1.2 of Ku-ring-gai Development Control Plan (Local Centres) as the setting associated with the heritage item will not be conserved and the development does not protect and enhance the setting of the Council Chambers and for the building to be viewed in "the round".*

The amendments made to the plans have not adequately resolved or overcome the heritage concerns and issues, rather the change in levels associated with raising the supermarket 600mm have compounded them.

It is considered that the proposal, despite the claims of the applicant, will obstruct views of the Council chambers buildings. The setback controls of 14D.4 of the DCP seek to have development either side of the Council Chambers building well set back at 15 metres so as to ensure the prominence of the Council Chambers building is respected and maintained. This conservative setback control which applies to properties either side of the Council Chambers building (810 and 828 Pacific Highway) is complemented and supported by Control 19F.1 4 which seeks to ensure that development adjoining heritage items do not reduce or impair important views.

This position is further supported by control 14D.9(1)(iii) of the DCP which seeks to ensure that new buildings enhance the setting of heritage listed buildings and that they be viewed 'in the round'. As demonstrated by **Figure 10**, the Council's Chambers building will not be able to be viewed 'in the round' nor does it adequately site within a 'landscaped forecourt', as required by 14D.9 7(vii) of the DCP. It is also evident that the design of the building is driven by a commercial outcome, rather than the best design outcome for the site, as is required by control 8A.2 O1 of the DCP, which is - to ensure that fundamental design decisions are appropriate to the site.

For the above reasons, this reason for refusal remains valid.

#### **Reason for Refusal 5**

*The development application should be refused as the proposed finished level of the supermarket is below the footpath level of Pacific Highway, which in combination with the inadequate setback from the Highway, and poorly resolved accessibility, results in an unacceptably poor level of activation of the frontage to Pacific Highway. Further, the provision of highlight windows in the façade of the supermarket fronting Dumaresq Street (in proximity to the corner with the Pacific Highway) also reduce the activation of the frontage to an unacceptable level. Therefore, the proposal is inconsistent with the activation requirements of Clause 6.6 of Ku-ring-gai Local Environmental Plan (Local Centres) and cannot be approved. The design is also inconsistent with Objectives 1, 2, 3 and*

*4 and Controls 1, 2, 3, 4 and 7 of Part 8C.10 Ground Floor Commercial Use of Ku-ring-gai Development Control Plan (Local Centres).*

Clause 6.6 of LEP 2012 applies to land zoned B2 and requires that development consent must not be granted to development for the purposes of a commercial premises or to a mixed use development with a commercial premises component, unless the consent authority is satisfied that the ground floor of the building will not be used for the purposes of residential accommodation or a car park and *'will provide uses and building design elements that encourage interaction between the inside of the building and the external public areas adjoining the building'*. The objective of the clause is to *'ensure that active uses are provided at street level in business zones to encourage the presence and movement of people.'*

This provision does not apply to parts of the building that provide a lobby for residential or commercial components of the building, access for fire services, vehicular access or faces a service lane that does not require active street frontages. As such, the clause applies to the frontages facing Pacific Highway and Dumaresq Street.

DCP Part 14 *Urban Precincts and Sites* and Part 8 *Mixed Use Development* go to extensive lengths to set out clear objectives and controls to successfully achieve active uses at the ground floors of commercial development in the Ku-ring-gai Local Centre business zones as follows in full:

Objectives 3, 5, 7 of Part 14D.2 *Public Domain and Pedestrian Access* are *'to provide a consistently high quality and visually pleasing streetscape environment, to improve commercial activity in the local centre by promoting street level activity and to improve safety and passive surveillance of the public domain by encouraging street level activity.'*

Objectives 3, 4, 6, 8 and 9 of Part 14D.5 *Built Form* are *'to ensure building facades are well designed, articulated and address public streets and footpaths, to provide active frontages to all streets, to enhance the quality and character of the public domain in commercial precincts, to ensure that buildings are designed to interact and engage with pedestrian at street level, and to encourage design excellence in all new development'*.

Objectives 11, 12 and 13 of Part 8A.2 *Site Layout* are *'to ensure building facades address the public domain and give direct access from both the primary and secondary streets, to ensure mixed use developments contribute to the streetscapes through high quality and varied elevations, and to ensure development provide architectural merit and variation to the street elevation.'* Control 4 of Part 8A.2 requires that *'any building with a frontage to the street is to address that street.'*

Objectives 2, 3 and 4 of Part 8C.5 *Building Entries* are *'to ensure the building entry contributes positively to the streetscape and building façade design, to provide entries that relate to the street and pedestrian movement and promote pedestrian activity along building frontages, and to provide legible, safe and pleasant circulation spaces at the buildings street interface.'* Control 3 of 8C.5 Buildings requires that *'street frontages over 18 metres long must have multiple entries to activate the street frontages.'*

Objectives 2, 7, 13 of Part 8C.9 *Building Facades and Articulation* are *'to promote buildings of high architectural quality that contribute to the planned future character, to encourage pedestrian activity at street level, and to enable the building facade, entries and openings to directly relate to the street frontage'*. Control 6 of Part 8C.9 requires that *'all building facades at street level are to engage with and contribute to the activities of the street and the public domain, principally through the use of glazed shopfronts.'* Control 23 of Part 8C.9 requires that *'Corner buildings are to address both street frontages.'*

Objectives 2, 3 and 4 of Part 8C.10 *Ground Floor Commercial Use* are *'to provide direct physical and visual connection between the private and public domain, to ensure activation and surveillance*



at street level and to provide visual interest at street level.’ Control 3 of 8C.10 requires that ‘ground floor street frontages are to provide for active uses that contribute to the active street frontage.’ Control 4 of 8C.10 requires that ‘buildings on principal active street frontages provide facades that address the street and public domain with appropriate façade treatments at street level that respond to the pedestrian scale and contain well-articulated pedestrian entries at frequent intervals.’ Control 5 of 8C.10 requires ‘buildings on supporting active street frontages to minimise the extent of blank walls and provide facades that address the street.’

The DCP defines ‘active street frontage’ as ‘building street frontages at street level that provide direct and level entry and openings to allow physical and visual access that encourage interaction between the inside of a building and the external areas adjoining the building, including footpaths, road reserves or public spaces. Active street frontages support pedestrian safety and amenity and provide an interface between the public and private domain.’ It is noted that active street frontages must allow not just visual but physical access, taken to mean the ability to enter the building as well as look into it.

The extent of the Pacific Highway boundary presents a length of potential activated frontage of approximately 47 metres. The proposed Pacific Highway ground floor building façade, not including the portion that reads as the courtyard wall (which is actually the wall of the supermarket lift lobby and customer lifts), is approximately 25 metres in length (representing approximately only 53% of the total available frontage). It comprises 7 metres of solid wall (including the back of a lift core) and 18 metres of glazed shopfront of which only 2 metres is openable door. It is deeply set back (4.5 metres – 6 metres) beneath the undercroft of the residential component over and is up to 1.3 metres below the Pacific Highway footpath level at its northern end. At this end, the ground levels are resolved through the introduction of a narrow planter which prevents access to the building façade for approximately 17 metres of its 25 metres length (68%).



**Figure 11**

Pacific Highway Elevation [DA14E] with black lines showing 25m extent of elevation, 17m length of planter and 1.3m difference in levels shown in red, and openable doorway shown in yellow. 1.8m tall pedestrians shown in white (note the relationship of the pedestrian beyond the planter to the footpath).

This deeply overhung and obstructed ground floor building façade cannot be considered to provide a high quality and visually pleasing streetscape environment that enhances the quality and character of the public domain. The way that the design restricts pedestrian movement and creates corners cannot be said to improve safety and surveillance. The small single openable doorway in the façade facing the street provides the minimum physical access between the public and private domains possible and is considered insufficient to promote the desired street level activity ensuring interaction and engagement with the pedestrian at street level.

The Dumaresq Street ground floor building façade is approximately 53 metres in length and comprises approximately 29 metres of solid wall (with services doors) and 23 metres of glazed shopfront and balustrading. There are narrow horizontal windows high up on the wall more than 4.5 metres above the footpath. The central 25 metres length of the wall presents as a tall, 3.4 metres - 5.6 metres high, blank façade built hard to the footpath at ground level. No openable doors are provided to this façade to allow physical access to the building (other than for servicing).



**Figure 12**

Dumaresq Street Elevation [DA14E] with tall 3.4m-5.6m high blank façade built hard to the footpath at ground level. 1.8m tall pedestrian shown in white.

This long, tall, unarticulated, blank ground floor building façade is, for the most part, not considered to provide a high quality and visually pleasing streetscape environment that enhances the quality and character of the public domain. The failure to provide any building entries along this length whatsoever means that no physical access or engagement is provided, street activity is not promoted, and that passive surveillance will be poor. It will not provide for a pleasant circulation space at the street interface, instead feeling more like a back service façade (which is the role of Radford Place). The high windows to the supermarket are not considered to contribute positively to the appearance or visual activity being so high up on the wall, well above pedestrian eye height, and some above awnings.

Because of these factors, the treatment of the ground floor building façades on the two main street frontages of this highly prominent corner in Gordon Local Centre is considered to be of poor design and do not achieve the desired future character envisaged by the controls. These ground floor building facades do not provide uses and building elements that encourage interaction between the inside of the building and the external public areas adjoining the building, and are not considered to have provided sufficient active uses and the presence and movement of people is not encouraged.



The condition of the Pacific Highway ground floor building facade would be greatly improved were a greater setback at ground level to be provided, such as the 15 metres required by the controls (see Reason for Refusal 3). This would allow the levels to be better resolved in a more gradual and gentle slope, permitting far more pedestrian access along its length from the footpath. It would also allow the supermarket entry door to be located more centrally on the façade and away from the steepest portion of footpath at the corner of Pacific Highway and Dumaresq Street.

The treatment of the Dumaresq Street façade would be greatly improved with the inclusion of another small retail tenancy (such as that suitable for as a barber or florist) midway along street frontage. This would break down the blank wall with shop front glazing, provide the comings and goings of a building entry and deliver passive surveillance over this portion of the street. This could be achieved by reorganising and/or relocating the services that currently occupy this part of the façade exclusively. Additionally, another bay of full height windows to the supermarket under the easternmost awning would assist with the presentation of this elevation, particularly from the opposing footpath.

For the above reasons, this reason for refusal remains valid but should be reworded as follows:

*The development application should be refused as the proposed finished level of the supermarket is below the footpath level of Pacific Highway, which in combination with the inadequate setback from the Highway, and poorly resolved accessibility, results in an unacceptably poor level of activation of the frontage to Pacific Highway. Further, the provision of highlight windows in the façade of the supermarket fronting Dumaresq Street (in proximity to the corner with the Pacific Highway) also reduce the activation of the frontage to an unacceptable level. Therefore, the proposal is inconsistent with the activation requirements of Clause 6.6 of Ku-ring-gai Local Environmental Plan (Local Centres). The design is also inconsistent with Objectives 3, 5 and 7 of Part 14D.2 Public Domain and Pedestrian Access; Objectives 3, 4, 6, 8 and 9 of Part 14D.5 Built Form; Objectives 11, 12 and 13 and Control 4 of Part 8A.2 Site Layout; Objectives 2, 3 and 4 and Control 3 of Part 8C.5 Building Entries; Objectives 2, 7 and 13 and Controls 6 and 23 of Part 8C.9 Building Facades; Objectives 4, 2, 3 and 4 and Controls 1, 2, 3, 4, and 5 of Part 8C.10 Ground Floor Commercial Use of Ku-ring-gai Development Control Plan (Local Centres).*

## **Reason for Refusal 6**

*The development application should be refused as the design provides a poor level of amenity to Apartments 109, 210, 310, 410, 510 and 606 by failing to provide balconies with a minimum depth of 2m as required by Part 4E of the Apartment Design Guide and due to the unacceptable relationship of Apartment 107 with the footpath level and pedestrian access ramp to the supermarket, which would result in unacceptable privacy impacts.*

The proposal has been reassessed with regards to balcony depths and found to be acceptable and the relationship of Unit 107 to the pedestrian access ramp has been resolved through the deletion of the ramp.

However, several other concerns have been assessed as not meeting the SEPP 65 Apartment Design Guide with relation to: privacy of living rooms and balconies from the street, natural ventilation of habitable rooms adjacent to a main road, storage volume within units, provision of clothes drying areas and residential waste collection.

ADG 3F-2 3 recommends that ‘balconies and private terraces should be located in front of living rooms to increase internal privacy.’ ADG 4E-3 2 suggests ‘full width full height glass balustrades alone are generally not desirable.’ Photomontages from the Pacific Highway [DA27D and DA28C] show that the living rooms and bedrooms of units 106, 107 and 108 (and typical units over) facing the Pacific Highway are very visually exposed and that it will be possible to see deep into these apartments from a distance, particularly at the lower levels, which will impact the privacy of the

residents of these units. It is suggested that the relevant windows and balcony balustrades be made solid or at least dark opaque glass to improve privacy to these units.



**Figure 13**

Photomontage [DA27D] showing in red living room and bedroom windows and balcony balustrading that would benefit from being solid or dark opaque glass to improve privacy to units.



**Figure 14**

Photomontage [DA28C] showing in red living room and bedroom windows and balcony balustrading that would benefit from being solid or dark opaque glass to improve privacy to units.

Objective ADG 4B-1 requires that *'all habitable rooms are naturally ventilated.'* SEPP Infrastructure 102 requires that development for the purposes of residential accommodation on land adjacent to a road corridor with an annual average daily traffic volume of more than 20,000 vehicles must not be granted consent unless it is satisfied that certain acoustic levels are met (Pacific Highway is

>40,000 AADT). The proposal does not provide any indication of how it will achieve acoustic requirements, whilst still delivering natural ventilation to habitable rooms as required by the ADG. It is suggested that acoustic plenums be investigated as a potential solution. Solutions should be shown on the plans.

ADG 4G-1 1 provides minimum volumes of storage to be provided within units of different numbers of bedrooms. Many unit types do not provide adequate storage to meet these minimum volumes (for example Units 101, 102, 103 and typical units over). It is suggested that unit layouts be reworked to include at least the minimum storage.

ADG 4U-1 2 recommends that *'well located, screened outdoor areas should be provided for clothes drying.'* No clothes drying facilities appear to have been provided within the communal open space or within private open spaces. It is suggested that clothes drying facilities be shown on the plans. If they are to be located in private open spaces, the portion of the balcony they are located in should be screened as the majority of balcony balustrades are transparent glass.

ADG 4W-1 1 prompts consideration of the waste collection arrangements for the residential portion of the building. Garbage rooms are shown in the southwest corner of Car Park Level 3 [DA01E] and Car Park Level 2 [DA02E], however no indication of the method of collection appears to be provided. This arrangement should be clarified. 4ADG W-4 4 suggests that *'temporary storage should be provided for large bulk items such as mattresses'*. This type of space does not appear to have been provided. It is suggested that a bulky waste area be shown on the plans.

For the above reasons, this reason for refusal remains valid but should be reworded as follows:

~~*The proposed development application should be refused as the design provides a poor level of amenity to Apartments 109, 210, 310, 410, 510 and 606 by failing to provide balconies with a minimum depth of 2m as required by Part 4E of the Apartment Design Guide and due to the unacceptable relationship of Apartment 107 with the footpath level and pedestrian access ramp to the supermarket, which would result in unacceptable privacy impacts.*~~

*The development application should be refused as the design does not provide adequate privacy to living rooms and bedrooms of apartments; there is no indication of how the development will achieve acoustic requirements adjacent to a main road whilst maintaining natural ventilation to habitable rooms; inadequate storage provision; lack of clothes drying facilities; and inadequate waste collection arrangements.*

## **Reason for Refusal 7**

*The development application should be refused as the design provides an unacceptable landscaped setting for the development and for the adjoining heritage item. The RLs provided with the application will result in inadequate soil depth on parts of the northern podium to allow adequate landscaping. The main wall along the eastern side of the podium facing the Pacific Highway will be 2 to 3 metres higher than the footpath, with 1.2 metres high fencing above the retaining wall. The accessible pedestrian ramp to the supermarket forward and the wall will result in a hard, unrelieved edge to the eastern side of the podium area facing the Pacific Highway and an inappropriate landscaped forecourt setting for the building and the heritage item.*

The amended proposal has deleted the pedestrian ramp to the supermarket and provided a small area of additional landscaping to the supermarket forecourt. Despite the amendments, the issues related to soil depths and the adequacy of landscaping remain. The additional landscaping area in front of the supermarket is small and somewhat tokenistic and will not provide the extent of landscaping needed which provides for a landscaped forecourt that establishes a view corridor to 818 Pacific Highway as required by Control 14D.9 7(vii) of the DCP. The situation is also

representative of the commercial driven scheme which fails to properly respond to the site and its setting, which is an established principal of Objective 1 of Control 8A.1 of the DCP.

For the above reasons, this reason for refusal remains valid, however is reworded as follows:

*The development application should be refused as the design provides an unacceptable landscaped setting for the development and for the adjoining heritage item. The RLs provided with the application will result in inadequate soil depth on parts of the northern podium to allow adequate landscaping. The main wall along the eastern side of the podium facing the Pacific Highway will be 2 to 3 metres higher than the footpath, with 1.2 metre high fencing above the retaining wall. The hard, unrelieved edge to the eastern side of the podium area facing the Pacific Highway results, as does an inappropriate and unacceptable landscaped forecourt setting for the building and the heritage item and is inconsistent with the requirements of Control 7(vii) of Part 14D.9 of the DCP.*

#### **Reason for Refusal 8**

*The development application should be refused as the design of the access ramp to the supermarket is unacceptable, significantly increasing the distance required to be travelled by pedestrians (with trolley, prams or mobility issues) from the intersection of Pacific Highway and Dumaresq Street. The resolution of the pedestrian access at the intersection of Pacific Highway and Dumaresq Street is unclear and would function poorly due to the inadequate front setback in combination with the cross fall of the slope of the site at the south-east corner of the site. The proposal fails when assessed against Controls 2 and 5 of Part 22.1 Equitable Access of Ku-ring-gai Development Control Plan (Local Centres).*

The amended architectural plans provided to Council on 24 September 2018 and additional information have addressed the reason for refusal.

These plans have satisfactorily resolved Reason 8 of the refusal and it is deleted.

#### **Reason for Refusal 9**

*The development application should be refused as the concept stormwater plan is not acceptable, due to the stormwater from the public pedestrian pathway bypassing the OSD system.*

The following plans were submitted -

- Civil Response to Council Panel Assessment Report by ACOR dated 6 September 2018.
- Drawing No.c1.06, Issue D, dated 05.09.18, by ACOR
- Drawing No.c5.01, Issue A, dated 05.09.18, by ACOR

These plans have addressed Reason 9 of the refusal and it is deleted.

#### **Reason for Refusal 10**

*The development application should be refused as there are inconsistencies between the architectural and landscape plans and the BASIX Certificate.*

The applicant has not issued a new BASIX Certificate.

For the above reason, this reason for refusal remains valid.

#### **Reason for Refusal 11**

*The submitted construction traffic management plan (CTMP) is inadequate and unacceptable, failing to provide information and diagrams to show truck turning path, diagrams demonstrating how construction vehicles for all stages of development will turn into and out of the site and how the operation of surrounding and adjoining site will be maintained during all construction phases of the development.*

The applicant has not provided an updated CTMP.

For the above reason, this reason for refusal remains valid.

### **Reason for Refusal (new)**

*The development application should be refused as the gross floor area of the proposal is in breach of Clause 4.4 of Ku-ring-gai Local Environmental Plan (Local Centres) and is not supported by a written Clause 4.6 variation request.*

Clause 4.4 of the LEP 2012 sets the maximum floor space ratio at 3.0:1 on the subject site. The FSR Calculations sheet [DA20E] state that the site area is 2,357m<sup>2</sup> and that the gross floor area is 7019.59m<sup>2</sup>, with a resultant 2.98:1 floor space ratio. A further review of the proposal has identified that there are a number of areas that have not been included in the gross floor area calculation that should be according to the definition of gross floor area in the LEP.

The 'Aldi Lobby' at the Loading Dock Level [DA04F] has been excluded. This is shown with an area of 22.05m<sup>2</sup>. This space does not meet any of the exclusions in the LEP definition of gross floor area and must be included.

The table on Carpark Level P1 [DA03E] states that 70 car spaces have been provided for Aldi and commercial uses. The FSR Calculations Sheet [DA20E] states that there is 1,736.34m<sup>2</sup> of gross floor area associated with Aldi and the small commercial tenancy. Car parking rates calculated under control 11 of Part 8B.2 of the Ku-ring-gai Development Control plan (Local Centres) generates a minimum of 53 car spaces and a maximum of 67 car spaces for this gross floor area. The LEP definition of gross floor area only excludes car parking to 'meet any requirements of the consent authority'. Therefore, an excess of 3 car spaces has been provided in the proposal. A typical car space is 2.4 metres wide by 5.4 metres deep giving an area of 12.96m<sup>2</sup> each. Three car spaces adds 38.88m<sup>2</sup> to the overall floor space.

Together, the lobby and additional car spaces comprise 60.93m<sup>2</sup> which when added to the total FSR results in an exceedance of 9.52m<sup>2</sup> over the maximum floor space. Further, the walls surrounding stairs and ducts on each floor (that are not also an external walls or contiguous with external walls) have been excluded. The LEP definition of gross floor area only excludes area for 'common vertical circulation, such as lifts and stairs' and 'areas used exclusively for mechanical services or ducting.' This definition does not include the surrounding wall. Party walls between units are always counted. In the same way, the walls of stairs and ducts should also be counted. A conservative estimation of the area these walls represent over seven residential levels is 80m<sup>2</sup>. This is an appreciable amount of additional gross floor area, equivalent to that of a 2 bedroom unit.



**Figure 15**

Level 2 FSR Calculation plan [DA20E] showing in red the area of stair and duct walls excluded from FSR Calculation that should be counted. This typical floor plate has in the order of 16m<sup>2</sup> excluded.

In total, the proposal is considered to be in the order of 89.52m<sup>2</sup> over the permissible gross floor area, giving a floor space ratio of 3.04:1.

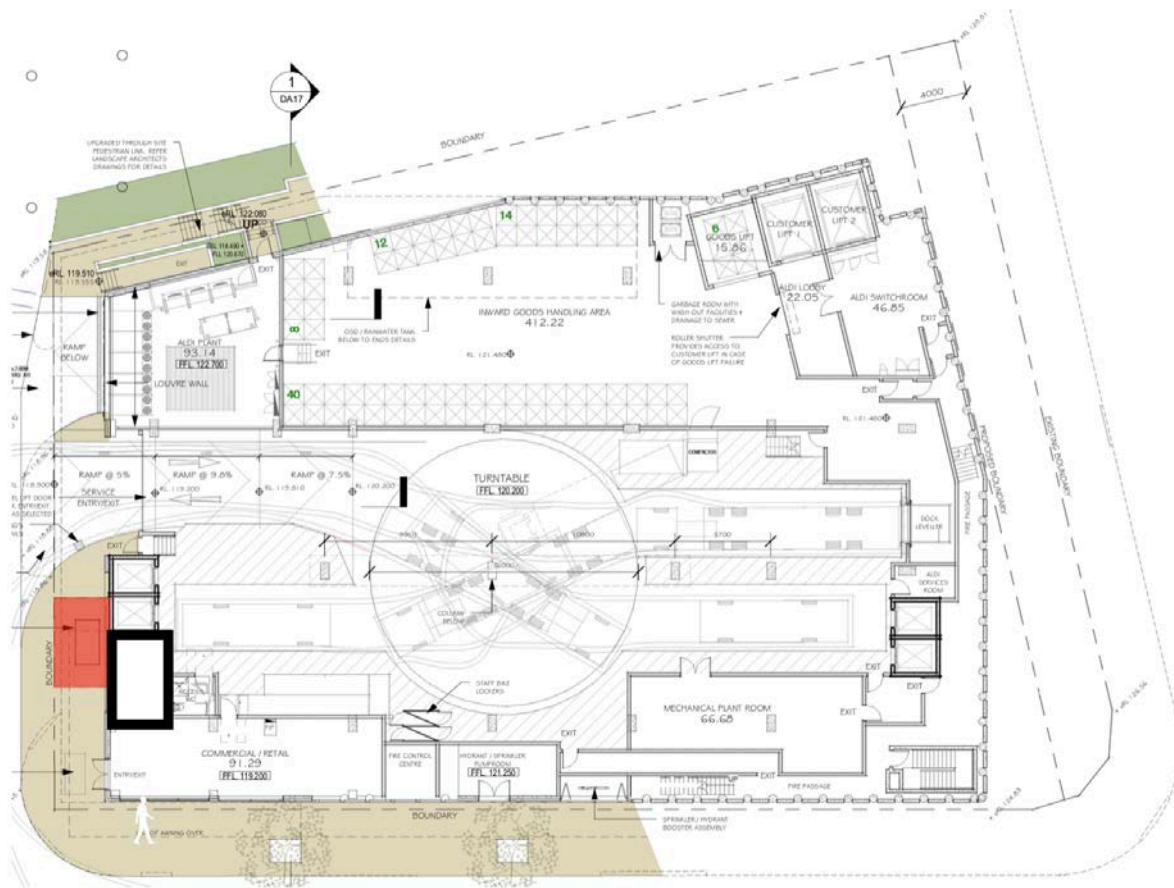
In the absence of a written Clause 4.6 variation request, as is the case, the Panel does not have the lawful authority to approve the application.

### **Reason for Refusal (new)**

*The development application should be refused as it seeks to locate a kiosk substation in the centre of the footpath on Radford Place that is to be dedicated to Council. This location will impact the usability and amenity of the footpath to the detriment of the general public.*

Whilst it is possible to locate the substation in the centre of the footpath that is to be dedicated to Council at no cost (Part 14D.9 7(vi)), it is not desirable. This location will have a negative impact on the public domain. The substation should be incorporated within the final boundary of the site. A suitable location appears to be available on the southern side of the western lift. The high floor-to-ceiling height of the dock level appears to provide adequate clearance for service of the substation and provision of adequate structure to protect from any additional blast.





**Figure 16**

Loading Dock plan [DA04F] showing proposed location of substation in red and suggested location outlined in black.

### Reason for Refusal (new)

*The development application should be refused as the proposal does not meet the Better Fit, Better for Community, Better for People and Better Look and Feel design objectives of Better Placed: An integrated design policy for the built environment of New South Wales.*

The draft of *Better Placed* was exhibited in September 2016. In July 2017, *Better Placed* was adopted as official State Government policy. *Better Placed* states that 'This policy establishes a baseline of what is expected to achieve good design, across all projects in NSW' (p46). It establishes seven distinct objectives to 'define the key considerations in the design of the built environment' (p35) and also provides a guide to 'what we don't want' in terms of design outcomes (p21).

The *GANSW Strategy for Action 2017-2018* states that *Better Placed* has 'been developed to support the inclusion of a new Design Object in the Environmental Planning and Assessment Act' (p5). Department of Planning & Environment *Planning Circular 18-001* states that '*Better Placed* provides useful guidance for communities, local councils and Government Agencies about designing and building better places that are a "Better Fit: Contextual, local and of its place".'

In March 2018, the Environmental Planning and Assessment Act was amended to include a new object of the Act 1.3(g) 'to promote good design and amenity of the built environment.' The Department of Planning and Environment's online guide to the updated Act states that '*The objects of the Act are guiding principles that need to be considered by planning authorities, such as Councils and Local Planning Panels, when making decisions under the Act. Design is already a relevant consideration that may be considered by decision makers. However, having a design objective elevates the importance of design as a part of the planning system as a whole and will*

*ensure that design is considered and balanced with other objects of the Act. Good design can be measured and assessed against standards and guidelines... Better Placed provides a set of principles and guidance to support productivity, environmental management and liveability through good design in NSW.'*

In March 2018, GANSW released a draft document entitled *Evaluating Good Design* that draws verbatim on the seven objectives of *Better Placed* to provide 'a list of requirements you can use as the criteria for evaluating a building, precinct, urban space, landscape element, public utility or item of infrastructure... any component of the built environment, at any scale, and in any setting' (p4). The Department of Planning & Environment *Planning Circular 18-006* states that the NSW State Design Review Panel (pilot) will 'evaluate all projects against the Objectives for Good Design as defined in *Better Placed*.'

Using the evaluative provisions of *Evaluating Good Design*, which are directly based on the objectives of the official policy *Better Placed*, the subject proposal cannot be said to meet the following design objectives for the previous reasons for refusal set out above.

The proposal does not meet Design Objective 1: Better Fit because it does not 'address the immediate site conditions, surrounding public realm, neighbouring buildings or sites and interfaces' (1-4) and the proposal does not 'contribute to the immediate public realm through activation, passive surveillance, visual interest and improved amenity' (1-8).

The proposal does not meet Design Objective 3: Better for Community because it does not 'ensure permeable edges to buildings by creating frontages that are legible, engaging and welcoming especially in town centres, main streets and higher-density areas' (3-7).

The proposal does not meet Design Objective 4: Better for People because it does not 'prioritise people as the most important design consideration and the foundation of design decisions' (4-1), and does not 'ensure that layout arrangements and relationships between spaces and perimeters maximise activation, visibility, clarity, activity and opportunities for passive surveillance.' (4-6).

The proposal does not meet Design Objective 7: Better Look and Feel because it does not 'create engaging and attractive environments' (7-1) and it does not 'develop active street frontages and an engaging environment for pedestrians, visually and materially, by minimising blank facades at street level to positively contribute to the public realm' (7-8).

In this regard, it is evident when the development is considered against the provisions of 'Better Placed' it is an unacceptable form of development and as currently arranged does not represent good design and amenity in the built environment and therefore inconsistent with the objects of the EP&A Act.

## **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 consent to Development Application DA 0610/17 for demolition of existing structures and construction of a mixed use development comprised of shop top housing containing 56 apartments, use of ground floor retail space as an Aldi supermarket and small retail suite, basement parking, signage, a public pedestrian access path and associated works at 810-818 Pacific Highway, Gordon for the following reasons:

1. The mitigation measures proposed by the applicant of modifying the traffic signals and road markings in Dumaresq Street have not been given concurrence by the Roads and Traffic

Authority. In the absence of the mitigation measures, the development application should be refused as the functioning of the intersection of the intersection of Dumaresq Street and Radford Place/Gordon Centre car park entrance would be detrimentally impacted as a result of the increased the queuing length of eastbound traffic on Dumaresq Street waiting to turn into Pacific Highway. Unless queuing lengths are shortened, the proposed development will result in unacceptable delays to traffic entering and exiting the Gordon Centre car park access and Radford Place.

2. The development application should be refused as the height of the proposal is excessive, in breach of Clause 4.3 of Ku-ring-gai Local Environmental Plan (Local Centres) and is not supported by a well-founded clause 4.6 variation request as there are not sufficient environmental planning grounds to justify contravening the development standard.
3. The development application should be refused as the proposed setback and design are inconsistent with Control 7vii of Part 14D.9 Precinct G3: Civic Hub of Ku-ring-gai Development Control Plan (Local Centres) which requires a 15m setback to the Pacific Highway to provide for a landscaped forecourt and view corridors to the heritage item at 818 Pacific Highway. The proposed lack of setback, elevated northern podium and associated fences result in an inadequate landscaped forecourt and interrupt public views to the heritage item.
4. The proposal does not satisfy Clause 5.10(1)(b) of Ku-ring-gai Local Environmental Plan (Local Centres) 2012 or Controls 14D.9.1(iii) and 19F.1.2 of Ku-ring-gai Development Control Plan (Local Centres) as the setting associated with the heritage item will not be conserved and the development does not protect and enhance the setting of the Council Chambers and for the building to be viewed in "the round".
5. The development application should be refused as the proposed finished level of the supermarket is below the footpath level of Pacific Highway, which in combination with the inadequate setback from the Highway, and poorly resolved accessibility, results in an unacceptably poor level of activation of the frontage to Pacific Highway. Further, the provision of highlight windows in the façade of the supermarket fronting Dumaresq Street (in proximity to the corner with the Pacific Highway) also reduce the activation of the frontage to an unacceptable level. Therefore, the proposal is inconsistent with the activation requirements of Clause 6.6 of Ku-ring-gai Local Environmental Plan (Local Centres) and cannot be approved. The design is also inconsistent with Objectives 3, 5 and 7 of Part 14D.2 Public Domain and Pedestrian Access; Objectives 3, 4, 6, 8 and 9 of Part 14D.5 Built Form; Objectives 11, 12 and 13 and Control 4 of Part 8A.2 Site Layout; Objectives 2, 3 and 4 and Control 3 of Part 8C.5 Building Entries; Objectives 2, 7 and 13 and Controls 6 and 23 of Part 8C.9 Building Facades, Objectives 2, 3 and 4 and Controls, 3, 4, and 5 of Part 8C.10 Ground Floor Commercial Use of Ku-ring-gai Development Control Plan (Local Centres).
6. The development application should be refused as the residential component of the design does not satisfy the design objectives of the Apartment Design Guideline (ADG), required by SEPP 65. The development fails to provide adequate privacy to living rooms and bedrooms of apartments, as required by Objective 4E-3; there is no indication of how the development will achieve acoustic requirements adjacent to a main road whilst maintaining natural ventilation to habitable rooms, as required by Objective 4B-1 and 4U-3; inadequate storage provision, as required by Objective 4G-1 and 4G-2; lack of clothes drying facilities as required by Objective 4U-1; and inadequate waste collection arrangements as required by Objectives 4W-1 and 4W2 of the (ADG).

7. The development application should be refused as the design provides an unacceptable landscaped setting for the development and for the adjoining heritage item. The RLs provided with the application will result in inadequate soil depth on parts of the northern podium to allow adequate landscaping. The main wall along the eastern side of the podium facing the Pacific Highway will be 2 to 3 metres higher than the footpath, with 1.2 metre high fencing above the retaining wall. The hard, unrelieved edge to the eastern side of the podium area facing the Pacific Highway results, as does an inappropriate and unacceptable landscaped forecourt setting for the building and the heritage item and is inconsistent with the requirements of Control 7(vii) of Part 14D.9 of the DCP.
8. The development application should be refused as there are inconsistencies between the architectural and landscape plans and the BASIX Certificate.
9. The submitted construction traffic management plan (CTMP) is inadequate and unacceptable, failing to provide information and diagrams to show truck turning path, diagrams demonstrating how construction vehicles for all stages of development will turn into and out of the site and how the operation of surrounding and adjoining site will be maintained during all construction phases of the development.
10. The development application should be refused as the gross floor area of the proposal is in breach of Clause 4.4 of Ku-ring-gai Local Environmental Plan (Local Centres) and is not supported by a written Clause 4.6 variation request.
11. The development application should be refused as it seeks to locate a kiosk substation in the centre of the footpath on Radford Place that is to be dedicated to Council. This location will impact the usability and amenity of the footpath to the detriment of the general public. There are other, more suitable options available.
12. The development application should be refused as the proposal does not meet the Better Fit, Better for Community, Better for People and Better Look and Feel design objectives of Better Placed: An integrated design policy for the built environment of New South Wales. The development therefore fails to provide for or promote good design and amenity of the built environment. It fails to meet objective (g) of Clause 1.3 (objects of Act) of the Environmental Planning and Assessment Act, 1979. Accordingly it is within the public interest to refuse the proposed development.

**Signed**

**Kerry Gordon – Planning Consultant**

**Michael Zanardo – Architectural and Design  
Consultant**

**Kerry Hunter – Urban Design Consultant**

**Report Dated:**

Annexure A – original assessment report and supporting documentation

Annexure B – response from applicant to the original assessment report

Annexure C – unsolicited architectural and landscape plans

Annexure D – applicant's response to initial draft with prejudice conditions

Annexure E – response from the RMS