

30 July 2013

**DETERMINATION OF
PROPOSED CONCEPT PLAN AND STAGE 1 PROJECT APPLICATION
FOR A RESIDENTIAL DEVELOPMENT
AT AVON AND BEECHWORTH ROADS, PYMBLE**

1. The Proposal

The Concept Plan and Stage 1 Project Application (as amended by the Preferred Project Report (PPR) dated November 2012 and revised PPR dated May 2013) seek approval for a residential development at the above address, including:

Concept Plan:

- Use of the site for residential apartment buildings to provide 273 units;
- Building footprints for 4 buildings ranging in height between 4 and 9 storeys with an overall FSR of 0.94:1;
- Associated basement car parking providing a total of 329 car parking spaces;
- Internal road works to support the development;
- The creation of a Conservation Area (Blue Gum Forest);
- A pedestrian link through the site from Avon Road to Beechworth Road; and
- Landscaping areas throughout the site.

Stage 1 Project Application:

- Demolition of existing buildings;
- Construction of an apartment building ranging in height between 4 and 6 storeys (max RL 154.6) to provide 44 apartments;
- Associated 2 levels of basement car parking providing a total of 61 spaces;
- Associated landscaping;
- Stormwater management infrastructure; and
- Implementation of a Vegetation Management Plan to manage and protect the conservation area.

2. Delegation to the Commission

On 12 June 2013, the Concept Plan (MP08_0207) and Stage 1 Project Application (MP10_0219) was referred to the Planning Assessment Commission (the Commission) for determination under Ministerial delegation issued 14 September 2011, as Ku-ring-gai Municipal Council objected to the proposal and the Department of Planning and Infrastructure (the Department) received more than 25 objection submissions.

For this determination, the Commission consisted of Ms Gabrielle Kibble AO (chair), Mr Garry Payne AM and Mr Richard Thorp.

3. The Assessment Report by the Department of Planning and Infrastructure

The Director-General's Assessment Report identified the following key issues:

- density;
- built form;
- residential amenity;
- traffic and access;
- natural environmental impacts; and
- heritage.

The assessment concludes that the proposal would provide a sound development outcome for the site. The proposal was found to increase housing opportunity and a range of services and facilities while enhancing and conserving an Endangered Ecological Community (the Blue Gum Forest).

Modifications to the concept plan and Building 1 were recommended by the Department to improve the development's transition to neighbouring dwellings and provide a greater level of amenity. These include:

Concept Plan:

- increase visitor car parking to 1 space per 5-7 dwellings;
- increase the setback on levels 6 and 7 of Building 3; and
- modify the basement footprint of Building 3 to increase setback to a minimum 6 metres from the boundary with Arilla Road.

Building 1 (Stage 1):

- provision of privacy screens/fixed opaque louvres to two apartments on levels 2, 3 and 4 at the north eastern corner of the building.

The Assessment Report recommends approval, and attached a set of recommended conditions for the Concept Plan and Stage 1 Project Approval including securing the recommended modifications and future assessment requirements.

4. Commission's Site Visit

After reviewing the Department's Assessment Report and public submissions, the Commission visited the site and the surrounding area in the morning of 27 June 2013. Mr Payne AM and Mr Thorp separately visited the site again on 22 July 2013 and 24 July 2013 respectively to observe the morning peak traffic movements. A staff member also visited the area on 25 July 2013 during the morning peak hours.

5. Consultation

5.1 Meeting with Ku-ring-gai Council

On 1 July 2013, the Commission met with Ku-ring-gai Council officers for a briefing of issues of concern to Council.

Council provided a brief history of the site and acknowledged the site has opportunities and constraints. Key concerns include building bulk and scale, yields, location and meeting SEPP 65 requirements. Although the proposal has been improved via the revised PPR, it is still considered an overdevelopment and inconsistent with the Ku-ring-gai LEP (Local Centres) 2012 which was approved by the Minister and gazetted in February 2013. The current zonings and controls of the site were a result of various studies carried out for the LEP.

Key concerns include:

- Traffic and parking – Avon Road is parked out most of the time and the intersections to the Highway are significantly congested during morning peak hours. Other concerns relate to adequacy of bicycle parking, footpath upgrade, provision and location of pedestrian refuge at the curve of Avon Road.
- Site fragmentation and isolation – the proposal if approved will prevent No 3 Avon Road from redevelopment.
- Impact on riparian area – the basement of Building 3 is too close to the existing creek, the riparian zone and the proposed ponds and should be setback to minimise impact on the riparian zone.
- Adequacy and suitability of accessible units;
- Built form, height, bulk, density, calculation of FSR, adequacy of private open space provision, deep soil landscaping, inconsistent with SEPP 65 requirements in relation to solar access, cross ventilation, building depth & separation,
- Impact on heritage item (6 Beechworth Road) and demolition of heritage item (1 Avon Road) have not been sufficiently justified.
- Development contributions have not been clarified in terms of how credits for existing houses are to be allocated.
- Proposed access to Buildings 3 and 4 are inconsistent with CPTED principles.
- Potential visual impact from public domain.

5.2 Meeting with the Proponent

Following the meeting with Council, the Commission met with the proponent for a briefing on the Department's assessment report and recommended conditions.

The proponent advised that the site has been identified as significant development site for over 10 years. A number of refinements to the building design and layout have been carried out since the original EA lodged in late 2010 to address issues raised in public submissions. These include building design which now reflects the character of the site, the deletion of one building, and the re-orientation of all buildings away from neighbours and setback from sensitive ecology.

Independent traffic review confirmed that the proposal would not reduce the level of service at the two key intersections (Livingstone and Beechworth Roads with the Pacific Highway). Car parking provision is consistent with Council's DCP requirements.

The conservation area has been increased from about 3600m² to over 8000m². The current conditions of the conservation area require a staged regeneration process so that it would re-establish the flora as well as provide habitats for native fauna. The proposal would fund the regeneration of the conservation area. At present, there is no active management of vegetation on site and future on-going maintenance works will be funded by future owners' corporation. The community will take ownership of the conservation area. Public access to the site will be available via a system of public pathways. Drainage line will be properly managed and improved by a system of intermittently flooded ponds.

Other public benefits include the proposed pedestrian upgrade to the railway in addition to s94 contribution. A revised design of the pedestrian crossing was provided to the Commission for its consideration.

Following the public meeting, the proponent, by letter dated 25 July 2013, provided written comments on Council's presentation to the Commission.

5.3 Public Meeting

On Thursday, 18 July 2013 the Commission held a public meeting to hear the community's views on the assessment report and recommended conditions. Thirteen (13) speakers registered to speak at the meeting. One additional attendee requested to speak during the meeting (Appendix 1). Approximately 100 people attended the meeting.

Ku-ring-gai Council was represented in the meeting. Council presented 18 reasons why the proposal should be refused. The reasons are similar to the issues discussed with the Commission in the meeting on 1 July 2013. Council concluded that the proposal is not in the public interest.

The following is a brief summary of the issues raised by the speakers that were not included in the concerns raised in Council's presentation.

Planning and Built Form

- The proposal is inconsistent with the objects of the EP&A Act as it will have a detrimental effect to the existing community with minimal benefit to Sydney. It will provide "costly housing", not "affordable housing". It is not an ecologically sustainable development. It does not protect the environment as it is questionable whether the conservation plans relating to the Blue Gum High Forest are realistic.
- The Assessment Report is flawed as it failed to take into consideration of the existing character of the area and the recently gazetted LEP. The report is also misleading in its reference to developments that are across the railway line and on the far side of the PLC school.
- Although Part 3A gives wide powers of decision to the decision maker, there is nothing in the legislation to suggest that decisions under it should deliberately be made in a vacuum and ignore the prevailing planning context.
- Any development proposal for the site should recognise that the planning regime has changed with the new LEP and the reasons for these changes.
- There should be no trade-off. There is no entitlement to any given FSR. If the site is constrained, FSR must be calculated based on the reduced site area.
- The interface between the proposed high and existing low rise buildings is inadequate; particularly 6 to 9 storey buildings next to 2 storey houses.
- The majority of developments on the Pacific Highway referred to in the Assessment Report are 4-6 storeys, not 9 storeys.

Conservation

- The scale of the development will impact on the remnant Blue Gum Forest, which is essential to the future population.
- The ecological significance of the site includes the seed bank in the original soil, and its geographic value. The removal of 3 trees is the beginning of the destruction process. Development should not be considered in isolation. The cumulative human impact on the urban forest should be considered.
- It is questionable whether future residents will be willing to meet the levies required to fund the conservation proposal.
- The removal of any Forest trees is strongly opposed.
- The protection and enhancement of the Forest should not be at the expense of the amenity of the surrounding area.
- What happens if the Body Corporate decides it will not or cannot pay for the monitoring and maintenance of the stormwater and landscaping infrastructures?

Traffic, parking, and pedestrian access

- The independent ARUP report failed to address submissions by residents in relation to the performance of the two Pacific Highway intersections.

- The two access and egress routes to the Pacific Highway (Beechworth Road and Livingstone Avenue) are already heavily congested at peak hour as they coincide with peak traffic heading to or from PLC. The intersections are further burdened by pedestrian crossings delaying traffic turning south.
- It is seriously questioned the logic of the ARUP conclusion that the estimated 109 residential car traffic will queue on site to access the local roads during morning peak.
- The two traffic reports (Gennaoui and Varga) are wrong in assuming there are more than two lanes in each direction on the Pacific Highway between the two intersections.
- The assessment failed to take into consideration the impacts arising from the “Ironbark” development, and a site yet to be developed on the corner of Pymble Ave, Everton St and Avon Road and the recent approval granted to the PLC for its extension.
- Pedestrian access is unsafe, with foot traffic having to cross the internal road to gain entry to the buildings.

Heritage

- The assessment report ignores the fact that heritage value of the area is not restricted to a handful of individual buildings. It is the combination of the area’s character, building type and scale and balance of the built to natural environment. All of which have their foundation in the Interwar period.
- Recent independent study confirmed there continues to be a high level of historic and aesthetic integrity in the area and recommended it be designated as a heritage conservation area. The findings and recommendation have been submitted to Council for consideration.
- The proposed building heights, bulk, scale are incompatible and will detract from the integrity and cohesiveness of the area’s heritage character.
- The condition of the heritage item is due to neglect and not a reason for demolition.
- The significance and value of a heritage item do not depend on whether it can be seen from a street. Not visible from a street is not a reason for demolition.

Visual Impact

- Visual representation in the Assessment Report is misleading. Buildings 3 and 4 would be visible from the surrounding streets. They rely on existing trees to provide partial screening. If any of the existing trees die, the bulk of the buildings to the public domain would be overwhelming.
- The buildings would have a significant visual and privacy impacts on adjoining residences.

Emergency Access

- Impact of fire hazard and the physical constrictions of the exit roads have not been adequately considered. Beechworth Road is the only exit for the Beechworth “peninsula”. A substantial increase in number of residents and cars would have a significant impact on the exit in an emergency evacuation situation.
- If a hazard occurs in Avon Road, how will residents get out?

Other issues

- The proposal is a threat to the community for many years and if approved, will destroy the existing amenity and environment in the area.
- Pymble is a village centre, not a town centre.
- The Assessment Report has a series of factual and analytical errors.
- The proposal externalises the problems from the site.
- The community will bear the consequence of any failure of the development.

6. Commission's Consideration and Findings

The Commission has reviewed the Department's assessment report and associated documents, including submissions from Ku-ring-gai Municipal Council, agencies and the public, and the proponent's response to submissions including the PPR and revised PPR. It has also considered the views expressed by the Council and the proponent at the meeting on 1 July, the presenters who spoke at the Commission meeting on 18 July 2013, and the written submissions received before, during and after the meetings. The Commission's comments of relevant issues are as follows.

6.1 Ku-ring-gai LEP (Local Centres) 2012

At the time of application, the applicable zoning was R4 High Density under the Ku-ring-gai LEP (Town Centres) 2010 (KRG Town Centres LEP 2010). The R4 High Density zone permitted apartment buildings. However on the 28 July 2011, the KRG Town Centres LEP 2010 was declared invalid by the Land and Environment Court.

Following the repeal of the KRG Town Centres LEP, an evidence base approach was adopted to the drafting of a new KRG Local Centres LEP. Council undertook significant and extensive planning studies to inform its draft LEP including interface study, employment lands study, heritage conservation review, riparian lands study, bushfire risk study, integrated transport strategy study and parking management.

These studies establish the future desired character of the area which included the subject site. As a result of these studies, the site was proposed to be rezoned from high density residential to medium/low density and environmental living. With the approval of the Minister for Planning, the KRG LEP (Local Centres) 2012 (hereunder referred to as the LEP2012) was gazetted and came into effect on 8 February 2013.

The Commission considers that Ku-ring-gai Council has undertaken extensive strategic precinct planning in consultation with the community and relevant public agencies. Through this strategic planning process, the site was rezoned from high to medium/low density residential and environmental living to ensure any future re-development on the site would be consistent with the future desired character of the area. The gazettal of the LEP2012 endorsed Council's strategic planning direction for the site.

Under Section 75O(3) of the EP&A Act, in deciding whether or not to give approval for the concept plan for a project, the Commission (as the Minister's delegate) may (but is not required to) take into account the provisions of any environmental planning instrument. Given the strategic planning process undertaken by the Council in preparing the LEP2012, the Commission considers it should have regard to the provisions in the LEP2012 in determining the concept plan and Stage 1 application.

The Commission notes one of the aims of the LEP2012 is to protect the character of low density residential areas, and the special aesthetic values of land in the Ku-ring-gai area. The proposed development of high density apartment buildings, up to 9 storeys, adjoining low density housing is not consistent with the aims of the LEP2012, out of character and incompatible with its immediate surrounds.

6.2 Impacts on adjoining residences

The Assessment Report carried out an in-depth analysis of the proposed building envelopes and their relationship with adjoining properties and concluded that the proposed building forms would have an acceptable impact on amenity when considering key issues of visual bulk, overshadowing and privacy impacts. The mitigation measures rely heavily on the screening provided by existing vegetation or the creating of a vegetated buffer where appropriate, and the installation of privacy screens.

One of the most affected residents disputed the conclusion and held the view that the assessment is flawed and misleading as the existing vegetation is not what is shown in the report. The building bulk and scale of Building 5 will overwhelm his family and there will be no privacy in his house.

Following careful review of the plans, drawings and the observations made during the site visit, the Commission finds the site is highly constrained by its topography and the ecological environment and is not suitable for the type and scale of development that is proposed. The proposed building heights, bulk and scale are not compatible with the existing environment and will have significant detrimental impacts on adjoining residences in terms of visual impact, privacy and overshadowing. The proposed high-rise buildings are too close to existing low-rise houses. The fragmentation of the site will result in the isolation of an adjoining site (No 3 Avon Road) preventing it from redevelopment.

6.3 Traffic, parking and access

Residents are very concerned that the additional traffic and parking requirements generated by the proposed development will exacerbate the existing traffic and parking issues in the area, particularly during the morning peak and in emergency evacuation situations.

The Commission members and staff visited the site and surrounding areas during morning peak hours on 3 different occasions to observe the traffic conditions. The Commission notes that a lot of the morning peak traffic relates to school drop-off. It is an issue typical to an area where a school is located. The current situation can be improved with an effective traffic management plan developed between the Council, the school and the community.

As to the impact of the additional traffic that would be generated by the proposed development, the Commission considers the potential impact alone would not be fatal to the proposal based on the Commission's observation of traffic conditions during its site visits, the RMS advice, the independent traffic review and the traffic studies noting the critical comments on the traffic studies/review.

6.4 Heritage

The Commission notes that there are 2 heritage items with local significance located immediately adjacent to the site, No 6 Beechworth Road and No 1 Avon Road. The former will be visually impacted by Building 5 and the latter is proposed to be demolished for the development of Building 4.

The Commission shares the Council's concern that the view loss of 26% from the central portion of the view cone to No 6 Beechworth Road is a significant impact. It also agrees with the Council and the community that additional information and assessment is required to justify the proposed demolition of No 1 Avon Road as its heritage value does not solely rely on whether it can be seen from the street.

6.5 Natural Environment

The Commission notes the Office of Environment and Heritage commented that potential indirect impacts of the proposal on native vegetation within the proposed conservation area appears yet to be carried out and the Flora and Fauna Assessment identified some indirect impacts which again are yet to be assessed.

The Commission also notes the Assessment Report's conclusion that the proposal, if approved, would act as a catalyst for the rehabilitation and ongoing conservation of the identified EEC, a clear public benefit. The report also considered the potential indirect impacts identified by OEHL can be readily managed and recommended that they be addressed and appropriate management strategies incorporated in the VMP as a

requirement of the Concept Plan prior to the commencement of any work on the site. However, the recommended condition (A8) only requires the indirect impacts “shall be addressed prior to the commencement of any work”.

It is a concern to the Commission that there is inadequate assessment of indirect impacts on an environmental sensitive area with Critically Endangered Ecological Community. The long term survival of the EEC in a high density residential area is also a concern. The Commission agrees with the community that the protection of urban forest is important in a highly urbanised environment.

7. Commission’s Findings

- 7.1 The proposal is inconsistent with the provisions (zonings and development controls in terms of building height and FSR) of the recently gazetted Ku-ring-gai LEP (Local Centres) 2012. If approved, it would have significant detrimental impacts on adjacent neighbors including overshadowing, privacy, and visual impact. The proposed buildings (up to 9 storeys) are out of character with the surrounding area and too close to existing low rise houses. The topographical, ecological and fragmented nature of the site is not suitable for the proposed development. The proposal would isolate No 3 Avon Road and prevent it from redevelopment.
- 7.2 The proposed development, if approved, may bring some benefits in terms of enhancement and improvements of the biodiversity in the Blue Gum Forest. However the long term survival of the Blue Gum Forest in a high density residential development area is questioned. Issues relate to the practicality and reliability on future body corporate levy to provide long term monitoring and management of the Forest and storm-water infrastructures. The ability to monitor compliance with the vegetation management plan is also an issue of concern.
- 7.3 Existing traffic conditions in the area could be improved by a more effective and targeted traffic management plan. The estimated increase in traffic generated by the proposed development would impact on the existing road networks but not warrant refusal on this ground.
- 7.4 Additional information and assessment is required to justify the visual impact and proposed demolition of locally listed heritage items.

On balance, the Commission does not consider the benefits of the proposed development outweigh the potential adverse impacts on the community and environment in the area.

8. Commission’s Determination

Following careful consideration of the Department’s Assessment Report and associated documents provided to the Commission, the views expressed by stakeholders at the meetings, and the findings in this report, the Commission has determined to refuse both the Concept Plan and Stage 1 Project Application. In the Commission’s view, future application(s) to develop the site should be guided by the provisions in LEP2012.

The grounds for refusal of the Concept Plan (MP08_0207) are:

1. The proposed development is inconsistent with the Ku-ring-gai Local Environmental Plan (Local Centres) 2012, and it is out of character with the surrounding area.
2. The site is highly constrained by its topography and ecological environment and not suitable for the proposed development.

3. It would have significant adverse impacts on adjoining residences including visual impact, privacy, and overshadowing. The proposed development, if approved, will isolate No 3 Avon Road and effectively prevent it from redevelopment.

The grounds for refusal of the Stage 1 Project Application (MP 10_0219) are:

1. The proposed development is inconsistent with the Ku-ring-gai Local Environmental Plan (Local Centres) 2012 and is out of character with the area.
2. It would have significant adverse impacts on adjoining residences including privacy, visual impacts, and overshadowing.
3. It does not meet the requirements of SEPP 65 and the Residential Flat Building Design Code.



Gabrielle Kibble AO
Commission Chair



Richard Thorp
Commission Member



Garry Payne AM
Commission Member

Appendix 1 List of Speakers

Planning Assessment Commission Meeting Concept Plan and Stage 1 project application For a residential development at Avon & Beechworth Roads, Pymble

Date: 4 pm, Thursday, 18 July 2013

Place: The Turramurra Masonic Centre, 1247 Pacific Highway, Turramurra

1. Ku-ring-gai Council
Mr Antony Fabbro
Mr Michael Zanardo
Ms Brodee Gregory
2. Pymble Action Group for the Environment
Mr Paul Cooper
3. Pymble Ladies College & Avondale Golf Club
Mr Ian Glendinning
4. Mr Grahame Wilkinson
5. Ms Charmain Boyakovsky
6. Mr Laurence Tang
7. Ms Elizabeth Lennep
8. Mr Allwyn D'Souza
9. Mr Howard Wolfers
10. Mr Graham Wright
11. Mr Andrew MacDonald
12. Ms Jennifer Crockart
13. Friends of Ku-ring-gai Environment
Ms Janet Harwood
14. Ms Rosani Wahab