

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

URBAN ASSESSMENTS

Action required: for determination: Development Application

File No:	S03/03564 pt
Application Number:	DA 506-12-2003
Date of lodgement:	11 December 2003
On land comprising:	2-12 Avon Road & 3 and 5A Pymble Avenue, Pymble
Application made by:	Avon Road Pymble Pty Ltd Level 4, 1 Kent Street, Sydney NSW 2000
Application made to:	Minister for Infrastructure and Planning
Local government area:	Ku-ring-gai
State electorate:	Ku-ring-gai, Barry O'Farrell The views of the Member are not known.
Notification:	Advertised in North Shore Times on 19 December 2003. Re-advertised in North Shore Times on 25 June 2004
Public Exhibition	Start: 19 December 2003. End: 6 December 2004. Re-exhibited Start: 25 June 2004 End: 12 July 2004
For the carrying out of:	Demolition of 6 existing houses; construction of 103 apartments in four buildings with basement car parking and associated works; landscaping, land subdivision and strata title subdivision.
Estimated cost of works:	\$28,000,000
FTE Jobs created:	300 full time equivalent jobs
Type of development:	Local Development, Integrated Development.
Was a public inquiry held?	An inquiry under s.119 of the Act was not held.
Integrated approval bodies:	Ku-ring-gai Council
Main Issues:	Refer to attached page.
Compliance with the Act	The application has been considered with regard to the matters raised in section 79C of the Act. The application was notified in accordance with the Regulations and all submissions received in the period have been considered. On balance, it is considered that the proposed development is acceptable and that development consent be granted.
Applicant views on draft conditions:	Applicant expressed general support for proposed draft conditions.

Recommendation

It is recommended that the Minister Assisting the Minister for Infrastructure and Planning pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and Clause 25 of State Environmental Planning Policy No. 53:

- (A) grant **consent** to the application subject to conditions (Tagged "A"), and
- (B) authorise the Department to carry out post-determination notification.

Approved:

Sam Haddad
Deputy Director General
Sustainable Development
Assessments
and Approvals

Jennifer Westacott
Director General
Department of Infrastructure,
Planning and Natural Resources

Diane Beamer
Minister Assisting the Minister for
Infrastructure and Planning (Planning
Administration)

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

URBAN ASSESSMENTS

Supplementary Information

Proposed Development in detail

The proposed development seeks consent for:

- 1-4 basement levels providing a total 202 car spaces (including 21 visitor and 20 disabled spaces), bicycle and motorcycle parking, separate residential storage enclosures, garbage storage facilities and plant rooms;
- 103 dwelling units (5 x 1 bedroom, 55 x 2 bedroom, 43 x 3 bedroom) in four buildings ranging in height from 4-7 storeys;
- Landscaping comprising landscaped deck and garden and landscaped perimeter zones to all buildings;
- Recreational facilities including a lap pool and gymnasium;
- Demolition of the existing dwellings at 2, 4, 8, 10 and 12 Avon Road and 5A Pymble Avenue;
- Tree removal;
- The construction of the western end of New Street, with a temporary connection partly along the existing battleaxe driveway to 5A Pymble Avenue between 3 and 5 Pymble Avenue.
- Land subdivision of the site to form 3 separate lots;
- Strata title subdivision of the completed development to form two strata schemes.

Summary of Significant Issues

1.1.1 Non-compliance with SEPP 53

<i>Issue:</i>	There are a number of non-compliances with the control drawings under SEPP 53 that require a SEPP 1 objection.
<i>Raised by:</i>	DIPNR, adjoining landowners, Council.
<i>Consideration:</i>	A full assessment of each of the non-compliances with the SEPP 53 control drawings and the objectives of SEPP 53 is contained in the S79C Assessment tagged 'J'.
<i>Resolution:</i>	It is considered that in each instance, the SEPP 1 objections are justified and reasonable and are therefore supported. The majority of SEPP 1 objections arise due to the topography of the site, orientation of the site and scale of the development when detailed design resolution of the development occurred. This resulted in non-compliances in order to promote cross-through apartments, more appropriate internal apartment spaces and articulation of the buildings.

1.1.2 Impact on Building Envelope E and F

<i>Issue:</i>	That the proposed development will not compromise the ability to develop the remainder of buildings on the site (ie. Buildings E and F)
<i>Raised by:</i>	DIPNR
<i>Consideration:</i>	SEPP 53 states that the consent authority must not grant development consent to the development application if the consent authority is of the opinion that the approval of the development proposal would be reasonably likely to have a significantly adverse effect on the ability to develop the remainder of the site in the manner described in the Ku-ring-gai Reference Plan or the Ku-ring-gai Sites Report.
<i>Resolution:</i>	The proposal has been assessed and it is considered that while the proposal will have an impact on the remaining dwellings within Site 1, the proposed development will not affect the ability of the remainder of the building envelopes on the site to be developed. A number of matters outside the scope of this sub-clause have, however, been identified as issues that arise when partial site development occurs. These are addressed in the remainder of this planning report.

It is important to note that the final design detail of New Street 01 will have an effect on Building E, in a similar manner to the effect that it has had on Building D. This will not however have a significantly adverse affect on the ability to develop the remainder of the site and will be a matter for consideration when Building E is developed.

1.1.3 SEPP 65

<i>Issue:</i>	Non-compliance with SEPP 65
<i>Raised by:</i>	Adjoining Residents; Council; DIPNR
<i>Consideration:</i>	An assessment of the proposal against SEPP 65 is contained in the Section 79C report tagged 'J'. Concerns were raised that the proposal does not meet the design objectives of SEPP 65 and in particular that the scale and bulk of the development is out of context with the surrounding development. Furthermore, there is considered to be an adverse impact on the remaining dwellings within the SEPP 53 boundary as a result of the partial site development, that does not comply with SEPP 65.
<i>Resolution:</i>	SEPP 53 is the principle instrument that applies to the land, therefore, in the event of any inconsistency, it is considered that SEPP 53 should be the key document for consideration. It is agreed that the proposed development will be out of scale with surrounding development, however, this must be assessed in relation to the desired future character of the locality as demonstrated in all of the environmental planning instruments that apply, including SEPP 53 and the Ku-ring-gai Planning Scheme Ordinance. SEPP 53 establishes a number of building envelopes for the site to encourage multi unit housing in close proximity to public transport. These building envelopes have been considered against SEPP 65. While it is considered that there are some inconsistencies between the planning principles in SEPP 65 and the permitted envelopes under SEPP 53, SEPP 53 is the principle instrument applying to the land and establishes the desired future character of the area and therefore, this instrument prevails over SEPP 65 in this respect. It is also considered that while there may be some inconsistencies with SEPP 65, the proposed buildings demonstrate a high degree of design resolution and will provide modern apartment style accommodation that is not readily available in the locality.



Planning Assessment Report Application to Modify Development Consent

Development Application DA 506-12-2003

2 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 506-12-2003.

The application seeks consent for demolition of 6 existing houses; construction of 103 apartments in four buildings ranging in height from 4-7 storeys with basement car parking and associated works; landscaping, land subdivision and strata title subdivision.

The Minister for Infrastructure and Planning is consent authority pursuant to Clause 25 of State Environmental Planning Policy No. 53.

It is recommended that the development application be **granted consent**. The proposed determination and conditions are tagged 'A'.

3 BACKGROUND

3.1 Site Context

The site is located at 2-12 Avon Road and 3 and 5A Pymble Avenue, Pymble in the Ku-ring-gai local government area. A location plan is tagged 'B' and provided on the inside cover of this file.

The development application was lodged with the Department on 11 December 2003 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The subject site is located on the corner of Avon Road and Pymble Avenue, Pymble on the southern side of the Pacific Highway opposite an underpass that links directly to Pymble Railway Station. The site adjoins Pymble town centre which is located on the northern side of the Pacific Highway.

Pymble Ladies College (PLC) defines the north-western boundary of the site. The site is bound partly to the south-east and to the south-west by existing residential properties of one to two storeys.

The site is known as part of Site 1 under the provisions of State Environmental Planning Policy No. 53. No 1, 1A and 5 Pymble Avenue, which also form part of the SEPP 53 site have not been included in the application, therefore, the applicant is proposing partial site development. It is understood that the applicant recently purchased 5 Pymble Avenue, however, this is not included within the subject development.

Four buildings, known as A, B, C and D are proposed on the site. A site plan of the proposed buildings is tagged 'C'. The site slopes away steeply from Avon Road at an average grade of 1:20.

Vehicular access to the existing dwellings is currently available from Avon Road and Pymble Avenue. Vehicular access in the Ku-ring-gai Sites Report (KSR) or the

Development Controls and Design Guidelines (DCDG), tagged 'D', is shown from the roundabout on the corner of Avon Road and Pymble Avenue and New Street 01 to be developed along the south west boundary of the property through 5 and 5A Pymble Avenue.

Building A is located on Avon Road and contains 35 units in a six storey building over basement car parking that is three storeys high when viewed from the internal courtyard, giving a total height of 9 storeys. The main vehicular entry from the Avon Road/Pymble Avenue roundabout into the car park is beneath Building A.

Building B is located on Avon Road to the north of Building A and contains 32 units in a seven storey building over a three level basement carpark that connects the building to Building A. Again, the basement carpark is highly visible from the internal courtyard of the development.

Building C is located adjoining the north-western boundary adjoining PLC and connects to Building B via a basement carpark. Building C contains 24 units in a 7 storey building over a basement carpark. The basement carpark has four levels at its northern end, decreasing to a single level at the southern end and connecting to a basement carpark under Building D.

Building D is located along the south-western boundary adjoining 7 Pymble Avenue, Pymble. 7 Pymble Avenue is listed as a local heritage item in the Ku-ring-gai Planning Scheme Ordinance (KPSO). Building D contains 12 units in a 5 storey building over a single basement carpark that connects to Building C and a temporary construction access that follows the alignment of the existing access handle for 5A Pymble Avenue. It is proposed that this temporary construction access handle remain open until such time that New Street 01 can be completed through 5 Pymble Avenue to provide access for these residents. It is anticipated that when the development of 3 and 5 Pymble Avenue occurs, that New Street 01 will be completed.

The total development site is 8,150.38 square metres. The site is steeply sloping, falling between 18-25 metres from Avon Road to the boundary of 5A Pymble Avenue with 7 Pymble Avenue.

A site visit was conducted of the site on 13 January 2004 and 29 January 2004.

4 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for:

- 1-4 basement levels providing a total 202 car spaces (including 21 visitor and 20 disabled spaces), bicycle and motorcycle parking, separate residential storage enclosures, garbage storage facilities and plant rooms;
- 103 dwelling units (5 x 1 bedroom, 55 x 2 bedroom, 43 x 3 bedroom) in four buildings;
- Landscaping comprising landscaped deck and garden and landscaped perimeter zones to all buildings;
- Recreational facilities including a lap pool and gymnasium;
- Demolition of the existing dwellings at 2, 4, 8, 10 and 12 Avon Road and 5A Pymble Avenue;
- Tree removal;

- The construction of the western end of New Street, with a temporary connection partly along the existing battleaxe driveway to 5A Pymble Avenue between 3 and 5 Pymble Avenue.
- Land subdivision of the site to form 3 separate lots;
- Strata title subdivision of the completed development to form two strata schemes.

Photo montages, a coloured elevation and the landscape plan of the proposal is tagged 'E'.

4.1 Amended Plans

On 18 June 2004 the applicant submitted amended plans incorporating:

- A reduction in the number of proposed dwellings from 108 to 103;
- A temporary construction access generally along the former alignment of the access handle for 5A Pymble Avenue, to provide direct access to Building D;
- A new basement car park under Building D and reconfiguration of the basement car park under Buildings C and D;
- Partial construction of New Street 01
- A reduction in the number of car parking spaces from 206 to 202;
- Relocation of the swimming pool and gymnasium to the basement of Buildings A and B;
- Redesign of the façade and use of different construction materials;
- Redesign of the on-site water detention and retention facilities to allow for toilet flushing and irrigation of landscaped areas from stormwater;
- Strata subdivision of the completed development; and
- Amended construction and site management plan to address pedestrian safety.

These amendments were accepted as a replacement application in accordance with clauses 55 and 90 of the *Environmental Planning & Assessment Regulation 2000* (the Regulations). In accordance with clause 90 of the Regulations further notification of the application was undertaken for a period of 14 days and the applicant was advised of the acceptance of the amended plans on 22 June 2004.

On 1 March 2005, the applicant submitted amended plans incorporating:

- Further land subdivision to create three lots. The remainder of 3 Pymble Avenue, does not change in accordance with the plans as previously submitted, however the proposed lot that affected the main proportion of the site has been split into two lots, in accordance with the development layout ie. Buildings A and B and associated facilities and open space fall under one lot and Buildings C and D fall under the second lot.
- Strata title subdivision to reflect the land subdivision and form two strata corporation lots. The main difference between the application as submitted and the revised application is the formation of two strata corporations over the site, rather than one.
- Submission of a statement reflecting how the two strata corporations will work operationally from an access and services perspective.

These amendments were accepted as a replacement application in accordance with clauses 55 and 90 of the *Environmental Planning & Assessment Regulation 2000* (the Regulations). In accordance with clause 90 of the Regulations further notification of the application was not undertaken as the amendments were considered to have a minor environmental impact and did not affect the remainder of the site, only the internal operations of the proposed development. The applicant was advised of the acceptance of the amended plans on 2 March 2005.

5 STATUTORY FRAMEWORK

5.1 Statement of permissibility

The proposed development is local development pursuant to Section 79 of the Act and SEPP 53.

Part 4 of State Environmental Planning Policy No. 53 – Metropolitan Residential Development (SEPP 53) establishes the permissibility of multi-unit housing on sites identified within Schedule 4 of SEPP 53. The subject site is identified as Site 1 in Schedule 4 of SEPP 53 and therefore, multi-unit housing is permissible on the site, subject to development consent. The Minister is the consent authority for multi-unit housing developments on the site.

Ku-ring-gai Council is the consent authority for all road improvement works as the SEPP 53 boundary extends only to the property boundary. Therefore, any works external to the site boundary, including road improvement works, requires the consent of Ku-ring-gai Council, as the nominated roads authority for Avon Road and Pymble Avenue under the *Roads Act 1993*.

5.2 Instrument of consent and other relevant planning instruments

SEPP 53 is the primary instrument of consent for the proposed development. SEPP 53 establishes a number of deemed development standards and planning guidance that need to be taken into account in the assessment of the application. The relationship between each of the planning instruments and guidelines that apply to the site is identified in Section 4.3 below.

The environmental planning instruments, draft environmental planning instruments, development control plans, design guidelines, and regulations applicable to the land to which the development application relate are as follows:

- State Environmental Planning Policy No. 53 – Metropolitan Residential Development (SEPP 53) which includes:
 - o Ku-ring-gai Reference Plan (KRP);
 - o Ku-ring-gai Sites Report (KSR) including its Development Controls and Design Guidelines (DCDG).
- State Environmental Planning Policy No. 1 – Development Standards (SEPP1);
- State Environmental Planning Policy No. 11 – Traffic Generating Development (SEPP 11);
- State Environmental Planning Policy No. 65 – Design of Residential Flat Buildings (SEPP 65);
- State Environmental Planning Policy No. 14 – Koala Habitat Protection (SEPP 14);

- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55);
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- Ku-ring-gai Planning Scheme Ordinance (KPSO) and associated LEPs;
- Draft State Environmental Planning Policy No. 66 – Integration of land use and transport (SEPP 66)
- Draft State Environmental Planning Policy (Application of Development Standards) 2004;
- Development Control Plan No. 31 – Access (DCP 31);
- Development Control Plan No. 40 and Policy for Construction and Demolition Waste Management (DCP 40);
- Development Control Plan No. 43 – Car Parking (DCP 43);
- Development Control Plan No. 47 – Water Management (DCP 47);
- Development Control Plan No. 48 – Medium Density Residential Development (DCP 48);
- Ku-ring-gai Council Section 94 Contributions Plan.

5.3 Legislative context

Part 4, Clause 22 of SEPP 53 states that the objective of Part 4 of SEPP 53 is to provide an opportunity to stimulate development of specific sites if the local environmental planning controls do not satisfactorily deal with the redevelopment of suitable sites for multi-unit housing. These objectives relate to increasing housing supply and choice in localities that are close to transport, employment and services. Clause 23 of SEPP 53 identifies the land that is subject to Part 4 of SEPP 53, as land described in Schedule 4 of SEPP 53.

Schedule 4 of SEPP 53 permits multi-unit housing on each of the six identified sites contained within the Ku-ring-gai Reference Plan (KRP) and makes the Minister the consent authority for multi-unit housing.

In accordance with clause 5 and 6 of Schedule 4 of SEPP 53, the Minister must consider the Ku-ring-gai Sites Report (KSR) and must not consent to a development application if it does not generally conform to the deemed development standards in the KRP, which generally include provisions for height, envelope, setback, building separation distances and in some instances the private/public separation line. Clause 1, sub-clause 9 of Schedule 4 of SEPP 53 allows the use of SEPP 1 to vary the deemed development standards contained within the KRP. A copy of the KRP maps in relation to the subject site are tagged 'D'.

Under Clause 26 of SEPP 53, the deemed development standards in the KRP apply to the six sites despite any development standard in the Ku-ring-gai Planning Scheme Ordinance (KPSO). However, a number of development standards in the KPSO remain a relevant consideration under section 79C of the Act as they are not inconsistent with the deemed development standards within the SEPP 53 documents. This is primarily relevant in relation to car parking standards and again, SEPP 1 may be used to vary a relevant development standard within the KPSO.

The Development Controls and Design Criteria (DCDG) for each of the six sites contains a number of development controls and design guidelines in addition to those

contained within the KRP. Any non-compliance with the DCDG needs to be justified, but a SEPP 1 objection is not required to vary it, unless it is a control that duplicates the deemed development standards.

SEPP 65 and SEPP 53 both state that where there is an inconsistency with another environmental planning instrument, the provisions of both SEPPs prevail over any inconsistency. It is considered that if there is an inconsistency between these two SEPPs, the greater weight should be given to SEPP 53 because it is site specific.

The DCDG and Council's DCPs both apply to the site and provide further design controls to those contained in their respective EPI's (being SEPP 53 for the DCDG and the KPSO for the DCPs). Where there is an inconsistency between any of the Council's DCPs and the DCDG, the provisions of the DCDG would override the provisions of the DCP in accordance with clause 1, sub-clause 5 of Schedule 4 of SEPP 53.

6 CONSULTATION

6.1 Public consultation

The application was notified, in accordance with the Regulations and with consideration of the Ku-ring-gai Notification Policy, including:

Notifications – landowners/occupiers	585 residents and adjoining owners were notified of the development by letter. 84 community groups within the Ku-ring-gai LGA were also notified by letter of the proposal
Newspaper advertisements	Advertised in North Shore Times on 18 December 2003
Site notices	Two displayed on site for length of exhibition period.
Exhibition dates	Start: 18 December 2003. End: 6 February 2004. Late submissions were accepted.
Exhibition venues	▪ DIPNR Planning Information Centre, 20 Lee Street, Sydney ▪ Ku-ring-gai Council, 818 Pacific Highway, Gordon. ▪ Turramurra Library, 5 Ray Street, Turramurra.

305 submissions were received regarding the Application. A summary of submissions is tagged 'F'. A significant proportion of the submissions were in the form a pro-forma, or raised similar issues. Issues are considered in Section 7.2 of this report.

The proposal was re-exhibited as a result of amendments made to the application. The proposal was re-exhibited in accordance with Council's Notification Policy, which requires a 14 day re-exhibition period. The details of the re-exhibition were as follows:

Notifications – landowners/occupiers	All landowners originally notified of the application, plus any additional members of the community who made submissions on the original application. A total of 720 landowners were notified of the re-exhibition. All community groups (84) were also re-notified.
Newspaper advertisements	Advertised in the North Shore Times on 25 June 2004
Internet	Details of the proposal were placed on the DIPNR and Ku-ring-gai

	Council websites.
Site notices	Two site notices were placed on site on 23 June 2004.
Exhibition dates	Start: 25 June 2004 End: 12 July 2004.
Exhibition venues	▪ DIPNR Planning Information Centre, 20 Lee Street, Sydney ▪ Ku-ring-gai Council, 818 Pacific Highway, Gordon.

14 submissions were received regarding the Application. Submitters were not required to resubmit their original submissions unless they wanted to raise new issues associated with the revised application. A summary of submissions is tagged 'G'. Issues are considered in Section 7.2 of this report.

6.2 Referrals

6.2.1 Integrated Approval Bodies

The application was integrated under Section 100B of the Rural Fires Act 1997 and the Rural Fire Service has provided written advice that there are no objections to the development and as a result, the Rural Fire Service gives consent to the application with no general terms of approval imposed.

The application is also integrated under Section 138 of the Roads Act 1993 and Ku-ring-gai Council has issued general terms of approval for the development.

6.2.2 Council

The application was referred to Ku-ring-gai Council on 18 December 2003. Council responded on 25 February 2004. Issues raised by Council are discussed in detail in Section 7.2 of this report. Council's full submission is tagged 'H'.

The amended application was referred to Ku-ring-gai Council on 23 June 2004. Council responded on 27 July 2004. Issues raised by Council are discussed in detail in Section 6.2 of this report. Council's full submission is tagged 'I'.

6.2.3 Other Agencies

In accordance with the provisions of SEPP 11, the application was referred to the RTA for comment on 16 December 2003 and again on 29 June 2004. The RTA provided comments for consideration.

It is considered that all of the comments raised by the RTA have been addressed, or are proposed to be incorporated as conditions on any consent issued.

6.3 Internal consultations

The Regional Office has been consulted regarding the application and has raised no objections.

The Sydney Landscape Unit provided advice that the Construction Management plan does not refer to the Managing Urban Stormwater: Soil and Construction Handbook (1998) prepared by the Department of Housing. A condition of consent has been incorporated to comply with an updated version of this document produced by Landcom, in accordance with a recommendation from Ku-ring-gai Council. It is considered that appropriate conditions have been imposed to manage construction and reduce pollution and sedimentation.

7 CONSIDERATION

7.1 The Environmental Planning & Assessment Act

7.1.1 Section 79C

The application and the likely impacts of the proposed development have been considered in accordance with s.79C of the Act. Significant issues are discussed below in Section 7.2. A detailed assessment of the proposal against the provisions of s.79C is tagged 'J'.

The subject site is considered suitable for the proposed development. Submissions have been considered and major issues raised in submissions are discussed in Section 7.2. On balance, the proposed development is considered to be in the public interest. Appropriate conditions are proposed to be incorporated into the consent to mitigate adverse impacts of the development.

7.2 Major Issues

Major issues that have been raised by Council, local residents, and DIPNR during the course of the assessment are identified below. All remaining issues have been addressed in the Section 79C consideration and the summary of submissions that accompany this report. Where appropriate, conditions have been incorporated into the consent to address the matters identified below. It is not considered that any of the major issues warrant refusal of the application.

7.2.1 Non-compliance with SEPP 53

<i>Issue:</i>	There are a number of non-compliances with the control drawings under SEPP 53 that require a SEPP 1 objection.
<i>Raised by:</i>	DIPNR, adjoining landowners, Council.
<i>Consideration:</i>	A full assessment of each of the non-compliances with the SEPP 53 control drawings and the objectives of SEPP 53 is contained in the S79C Assessment tagged 'J'.
<i>Resolution:</i>	It is considered that in each instance, the SEPP 1 objections are justified and reasonable and are therefore supported. The majority of SEPP 1 objections arise due to the topography of the site, orientation of the site and scale of the development when detailed design resolution of the development occurred. This resulted in non-compliances in order to promote cross-through apartments, more appropriate internal apartment spaces and articulation of the buildings.

7.2.2 Impact on Building Envelope E and F

<i>Issue:</i>	That the proposed development will not compromise the ability to develop the remainder of buildings on the site (ie. Buildings E and F)
<i>Raised by:</i>	DIPNR
<i>Consideration:</i>	SEPP 53 states that partial site development is not permissible unless the consent authority is satisfied that the partial development of the site will not have a significantly adverse effect on the ability to develop the remainder of the site in the manner described in the Ku-ring-gai Reference Plan or the Ku-ring-gai Sites Report.
<i>Resolution:</i>	The proposal has been assessed and it is considered that while the proposal will have an impact on the remaining dwellings within Site 1, the proposed development will not affect the ability of the remainder of the building envelopes on the site to be developed. A number of matters outside the scope of this sub-clause have, however, been identified as issues that arise when partial site development occurs. These are addressed in the remainder of this planning report. It is important to note that the final design detail of New Street 01 will have an

effect on Building E, in a similar manner to the effect that it has had on Building D. This will not however have a significantly adverse affect on the ability to develop the remainder of the site and will be a matter for consideration when Building E is developed.

7.2.3 SEPP 65

- Issue:* Non-compliance with SEPP 65
- Raised by:* Adjoining Residents; Council; DIPNR
- Consideration:* An assessment of the proposal against SEPP 65 is contained in the Section 79C report tagged 'J'. Concerns were raised that the proposal does not meet the design objectives of SEPP 65 and in particular that the scale and bulk of the development is out of context with the surrounding development. Furthermore, there is considered to be an adverse impact on the remaining dwellings within the SEPP 53 boundary as a result of the partial site development, that does not comply with SEPP 65.
- Resolution:* SEPP 53 is the principle instrument that applies to the land, therefore, in the event of any inconsistency, it is considered that SEPP 53 should be the key document for consideration. It is agreed that the proposed development will be out of scale with surrounding development, however, this must be assessed in relation to the desired future character of the locality as demonstrated in all of the environmental planning instruments that apply, including SEPP 53 and the Ku-ring-gai Planning Scheme Ordinance. SEPP 53 establishes a number of building envelopes for the site to encourage multi unit housing in close proximity to public transport. These building envelopes have been considered against SEPP 65. While it is considered that there are some inconsistencies between the planning principles in SEPP 65 and the permitted envelopes under SEPP 53, SEPP 53 is the principle instrument applying to the land and establishes the desired future character of the area and therefore, this instrument prevails over SEPP 65 in this respect. It is also considered that while there may be some inconsistencies with SEPP 65, the proposed buildings demonstrate a high degree of design resolution and will provide modern apartment style accommodation that is not readily available in the locality.

7.2.4 Subdivision of site & staging of development – Current DA

- Issue:* The application has been amended so that the subject development will fall under two separate land titles and two separate strata schemes.
- Raised by:* DIPNR
- Consideration:* The DA as originally submitted proposed torrens title subdivision to create two lots. One lot would largely consist of the land currently known as 3 Pymble Avenue and the second lot would consist of one large consolidated lot for the remainder of the properties that form the subject of the DA. This is generally shown on the site plan.
- The DA was then amended to include strata title subdivision of the completed development. This did not affect the torrens title subdivision of the land and 3 Pymble Avenue was not affected. It only proposed strata title subdivision of Buildings A, B, C and D. The strata subdivision was notified and exhibited as part of the re-exhibition of the DA in June 2004.
- The most recent amendments to the subdivision application affect both the torrens title and strata title subdivision. Again, it does not affect 3 Pymble Avenue, only the remainder of the development site.
- The torrens title allotment that was proposed for Buildings A, B, C and D has been split to form two torrens title allotments, and therefore, two corresponding strata title allotments and strata schemes, as shown on the plan tagged 'O'. The torrens title subdivision is split so that Buildings A and B sit on one title, and Buildings C and D sit on another title.
- This splitting of the title arrangements does not constitute a "staged

development” under Section 80(4) of the Act, rather it enables the developer to manage the construction processes associated with the development and is a preferred option for the developer in so far as establishing two strata corporations on the site.

The impact of the creation of two torrens title and two strata schemes is that appropriate conditions of consent are required to be imposed to ensure the proper management and integration of the site.

Resolution:

The applicant has provided a statement demonstrating how the two strata schemes will work together to ensure the appropriate management of the common open spaces within the development, in particular, having regard to the management of communal open space, access to shared recreational facilities and car park access. It is considered that the information submitted by the applicant provides an “in principle” methodology for how these two strata schemes will work together and is acceptable. A condition of consent has been imposed relating a strata management statement, if required, incorporating full details regarding the management of all common areas within the strata schemes, to be submitted to the Director for approval prior to the issue of the Strata Subdivision Certificate.

Further details regarding the management of the communal open space is discussed below.

It is considered that the torrens title and proposed strata title subdivision of the completed development will not compromise the ability to develop the site in accordance with SEPP 53, subject to the imposition of appropriate conditions of consent to ensure the integration and appropriate management of common areas within the development.

7.2.5 Partial Development of the Site – Communal Open Space

Issue: Partial site development will compromise the amount of communal open space available to residents.

Raised by: DIPNR

Consideration: SEPP 53 allows partial site development, however, in carrying out partial site development, the amount of communal open space available to residents is reduced as a significant amount of the deep soil zone for the proposed development will remain in private ownership until the remainder of the site is developed.

Concern was raised that the existing site boundaries between the current DA and future DA's will remain and therefore the central courtyard area within SEPP 53 will not be achieved as they will remain in separate ownership, with dividing fences. For example, 1 and 1A Pymble Avenue would exist on a separate title of land over the long term and therefore, there would be no connectivity between the proposed development and any future development, therefore reducing the amenity for residents of the site.

This is considered an undesirable outcome as the SEPP 53 site is clearly intended to work as a “whole” rather than two or three separate developments.

Resolution: The development of the remainder of the site will occur as and when the existing landowners choose to develop their site. There is no requirement within SEPP 53 or Council's planning documents regarding the amount of communal open space that should be made available to residents of the proposed development and therefore, this is not a basis for refusing the development. However, it is considered that there should be mechanisms put in place to ensure that in the long term, the communal open space is developed in accordance with SEPP 53 and appropriate areas of communal open space are made available to residents.

This is proposed to be carried out through a series of conditions that will be placed on the consent to manage the integration of the communal open space

over time. This is largely dependant on the imposition of appropriate conditions within this consent, and then the reciprocation of these conditions on any consents issued for the remainder of the development on the site when it occurs in accordance with SEPP 53. It is essential that this occur, otherwise, the integration of the communal open space over time will not eventuate.

In particular, the proposed consent contains a number of conditions that must be imposed in accordance with the Conveyancing Act to enable the objectives of SEPP 53 to be achieved over time. These include the following conditions:

- The requirement to develop an Integrated Landscape Plan detailing the proposed care, control and maintenance of the common landscaped areas within the plan of subdivision. The common landscaped areas for the subject development are generally shown on the plan tagged 'O', however, will be subject to further detailing as required by the condition. The landscape plan is to apply initially to the common landscaped areas and subsequently be expanded to include additional owners corporations created upon completion of the development of the remaining parcels of land within the SEPP 53 site. The common landscape plan is also to give an indication of how the remainder of the site can be designed to form an integrated landscaped area. The plan should also include an indication of the scope of maintenance works and preliminary costings associated with the maintenance of the common landscape areas;
- The creation of easements to enable full and free rights of access between all strata corporations on site to the communal open space;
- The creation of maintenance public positive covenants to ensure that the communal open space are maintained by the strata corporations in a fair and equitable manner, ie. The larger strata corporations contribute more to maintenance than the smaller strata corporations;
- Conditions of consent requiring the approved strata schemes to accept the burden of adjoining strata schemes being able to access their communal open space, and similarly, to accept the benefit of accessing the communal open space of adjoining strata schemes;
- Conditions of consent requiring the approved strata schemes to accept the burden of a maintenance public covenant to contribute to the upkeep and maintenance of adjoining strata schemes as they are developed, and similarly, to accept the benefit of a maintenance positive covenant so that the adjoining strata schemes shares the maintenance of the communal open space, at such time as they are developed and in proportion to the registered Net Strata Area of each scheme.
- Appropriate strata corporation by-laws to ensure that existing strata corporations cannot deny the creation of any of the above easements or maintenance positive covenants, that fences are removed along common future boundaries, and not deny landowners consent for works being undertaken on the common boundary;

It is considered that the imposition of these conditions is an appropriate response to the difficulties associated with partial site development. The above mechanisms aim to ensure that over time, the full intention of SEPP 53, in terms of site integration, can be achieved. This issue addresses the technical aspects of how SEPP 53 can be implemented, other issues associated with the partial development of the site are addressed in further sections of this planning report.

It is imperative to the success of the holistic development of the site that when development applications for the remainder of the site are assessed, that suitable conditions similar to those proposed within the

current consent are reciprocated in subsequent consents. In particular, in carrying out an assessment of future development applications, the holistic development of the site in accordance with SEPP 53 should be a consideration, as should the integration of the common landscaped areas. Therefore, a reasonable conclusion to be made as part of this DA is that it would be fair and equitable to impose such conditions on future DA's. These conditions should benefit the current development with the right to access any future common landscaped areas on adjoining sites, and similarly, the common landscaped areas on adjoining sites should be granted the right and benefit to access the common landscaped areas within the development that is the subject of the current DA. If these conditions are not imposed, then the common landscaped areas will not become integrated. While this is not an ideal situation, given that SEPP 53 allows partial site development without significant consideration for the integration of common landscaped areas, it is considered that the above is the best possible outcome at this point in time.

Furthermore, an advisory note has been imposed in the consent that at the time that subsequent development applications are lodged with the relevant consent authority for an adjoining site within the SEPP 53 boundary, the strata corporation must alert the consent authority of the above requirements, as an addition assurance that the above matters will be reciprocated in future consents and to provide addition confidence that the above conditions will be reciprocated in future consents.

In addition, a condition of consent requires the applicant to establish a sinking fund for the strata schemes approved under this development application to provide funds to enable the strata corporations established within the development to employ an appropriate person or person(s) to carry out whatever work is necessary, as required by the consent, to implement the conditions of consent when the remainder of the SEPP 53 site is developed.

7.2.6 New Street 01

- Issue:* Partial site development will result in only half of New Street 01 being constructed.
- Raised by:* DIPNR; Council
- Consideration:* The application as originally submitted did not include construction of New Street 01, or even partial construction for the part of the road that falls within the site boundary. This raised a number of issues, particularly relating to access to Buildings C and D. It is considered that construction of New Street 01 is a critical element of the proposal in order to provide a street address for Buildings C and D and associated parking for the residents.
- Resolution:* In order to address this issue, the applicant has proposed a temporary construction access into the basement level of Building D that follows the alignment of the existing access handle into what is currently known as 5A Pymble Avenue. This access handle has been shown to be able to comply with Australian Standards. The access handle feeds into Building D and the carpark connection with Building C and also onto New Street 01. This is a temporary access arrangement until the remainder of New Street 01 can be constructed and is considered to satisfy the requirement to provide access to Buildings C and D. A condition of consent has been imposed requiring this temporary access to remain open and available to residents until such time that the whole of New Street 01 can be constructed and direct access is provided to Pymble Avenue.
- When New Street 01 is constructed, it is anticipated that depending on the stage of construction, Building D will either be required to be modified, through a Section 96 application, or a new DA lodged for the amending works to

remove the temporary access handle. The applicant has demonstrated in principle that the existing layout of the basement and design of the façade can accommodate this change in the future, subject to a full assessment when amending plans are lodged. At the time of writing this report, the applicant for the current development application had recently purchased 5 Pymble Avenue, therefore, it is possible that the applicant will choose to modify this application at an appropriate time, should the Minister grant consent to the current application. In the meantime, it is considered that the temporary access arrangements are appropriate.

One of the issues with the partial construction of the road is the future maintenance of this road. Council has not expressed an interest in road dedication, however, once it is fully constructed, it is considered appropriate that the landowner should approach the Council and use their “best endeavours” to have Council accept dedication of the road. This is proposed as a condition of consent.

Should Council not wish to have the road dedicated in their favour, appropriate conditions of consent have also been imposed to ensure that the road is maintained by the strata corporation of Buildings C and D. A further condition of consent requires that as and when the adjoining building within the site fronting New Street 01 (Building E) that is not part of this DA is developed, that the maintenance of the road be shared with this additional strata corporation, under the terms of a maintenance positive covenant. This is considered appropriate and will ensure the equitable long term maintenance of this road over time. **It does, however, require that when a DA for Building E is lodged and if considered appropriate for approval, that conditions be imposed on Building E to require the strata corporation of Building E to allow full public access to the road that falls within their property and to share maintenance costs for the road with Buildings C and D, in direct proportion to their registered net strata area.**

7.2.7 Impact on Adjoining Residences

Issue: Partial site development has an adverse impact on remaining residences within the SEPP 53 boundary, including overlooking; overshadowing and privacy.

Raised by: Adjoining residents, local residents, Council, DIPNR.

Consideration: The remaining properties within the SEPP 53 boundary that will be most affected by the development are 1 and 1A Pymble Avenue. It is understood that 3 and 5 Pymble Avenue are in the ownership of the developer and that the redevelopment of these sites is more likely to occur in the short term. Therefore, the impact on 1 and 1A Pymble Avenue is the key item for consideration with regard to the impact of the proposed development.

The building envelopes within SEPP 53 were established to provide a holistic development that would respond to the site's topography. However, SEPP 53 also permitted partial site development, therefore allowing the development to occur over time.

The proposed development will have an impact on 1 and 1A Pymble Avenue due to the height of the proposal and the proximity of the buildings, particularly to 1A Pymble Avenue, which immediately adjoins proposed Building A.

Shadow diagrams attached to the Ku-ring-gai Sites Report aim to demonstrate that the proposed building envelopes will not adversely compromise the solar access of both the proposed building envelopes and also the existing adjacent buildings.

The shadow diagrams of the site as it currently exists that accompanies the development application show that 1 and 1A Pymble Avenue receive a reduced amount of sunlight in winter due to the topography of the land. Existing buildings along Avon Road further reduce the amount of solar access

available to these properties.

The shadow diagrams showing the impact on 1 and 1A Pymble Avenue as a result of the development demonstrate that these properties will receive reduced solar access, however, they will still receive some solar access in mid winter. It is noted that the impact of overshadowing was improved as a result of the amended application, which increased the amount of solar access available to these properties in mid winter. The applicant was requested to provide shadow diagrams demonstrating the shadowing effect of Buildings A and B if they were one storey lower than proposed. The results demonstrate that due to the orientation of the land, the solar access to these properties is not greatly improved as a result of reducing the height of the buildings (refer tag 'K')

Therefore, while there is an overshadowing impact as a result of the development, the existing buildings and the topography of the land currently result in reduced solar access to 1 and 1A Pymble Avenue in mid winter. Given SEPP 53 allows partial site development, it is considered that while this impact is not ideal, it is acceptable and a reduction in the height of the buildings is not considered warranted in the circumstances.

With regard to overlooking and privacy to these residences, it is noted that 1A Pymble Avenue will be most affected by the proposed development. However, the main outlook for 1A Pymble Avenue is to the west and the façade closest to Building A is the secondary outlook for this property. The main living areas of this dwelling do not therefore, directly adjoin the development. The photographs tagged 'L' demonstrate this elevation. It is therefore considered that Building A should not be set back to improve the relationship with 1A Pymble Avenue as it will compromise the principles of SEPP 53 and the building footprints established within this document.

It is, however, proposed to incorporate a condition of consent to require all balconies within Building A to be appropriately treated with screening devices and a louvre system around the perimeter to restrict immediate overlooking of 1 and 1A Pymble Avenue that will encourage residents to look out to the views to the west, rather than down upon the backyards of the adjoining private residences. This is considered appropriate.

Resolution: SEPP 53 allows partial site development and the impact on 1 and 1A Pymble Avenue is a direct result of this partial site development occurring. The impact on 1 and 1A Pymble Avenue, while not insubstantial, are not considered significant enough to warrant refusal of the application based on the principles within SEPP 53.

7.2.8 Treatment of Setback between the adjoining school and the proposed development

Issue: Concern was raised that the setback between the school and the proposed development would be a public area.

Raised by: Local residents, Pymble Ladies College

Consideration: This area is designed to provide pedestrian access for residents and visitors. It is not considered to be a place that members of the public will utilise, unless they have a specific reason to be there, as it does not lead anywhere, apart from the apartment buildings. The area is overlooked by residents of the proposed buildings, so there is greater opportunity for monitoring of this area against anti-social behaviour.

Resolution: Conditions of consent have been imposed regarding this area of land. A revised landscape plan is required to be submitted that demonstrates the type of fencing proposed along this boundary, the extent of dense landscaping and also requires the deletion of the viewing platform unless the applicant can demonstrate that the proposed planting will prevent overlooking of the school

grounds from this platform. Furthermore, the conditions require that this area of land not be treated as a “public area”, but rather an alternate access for residents and visitors to the development. These matters have been required to be addressed in a revised landscape plan, which is to be approved by the Director. This is considered an appropriate response to this issue.

7.2.9 School Safety and Security

Issue: Concern was raised that residents of the new development would utilise the adjoining school grounds due to a lack of open space within the development.

Raised by: Local residents, Pymble Ladies College

Consideration: Pymble Ladies College raised concern that since the whole of the site is not being developed, the residents of the proposal will not have sufficient open space and will therefore utilise the school grounds for recreational activities.

Resolution: The site has been zoned for multi-unit housing and therefore, has been considered an appropriate location for this type of housing in the context of surrounding land uses. In addition, partial site development is made permissible by SEPP 53. Therefore, while this issue is recognised, it is not considered to warrant refusal of the application. Appropriate conditions of consent have been imposed regarding security and perimeter fencing for the development, and in particular, to provide dense screen planting between the proposed development and the school. There is no evidence to suggest that residents will utilise the school grounds for recreational purposes.

7.2.10 Streetscape – Impact on Character of Locality

Issue: Concern was raised that the proposal is out of character with the remainder of development in the locality.

Raised by: Council, local residents, DIPNR.

Consideration: The site planning was undertaken during the rezoning of the site and is embedded within the Ku-ring-gai Reference Plan (KRP). The proposed development will clearly be a dominant feature of the landscape, given the number of storeys proposed. However, the building heights generally comply with the KRP, and therefore, have been deemed acceptable. The site layout within the KRP was designed to step buildings down the slope and therefore reduce the scale of development from a maximum on Avon Road, to a lesser scale and height along the Pymble Avenue elevation. Given the proposal consists of a partial site development, this gradual stepping down of building height is not shown within the proposed development and therefore the scale of Building A, when compared to the adjoining residences on Pymble Avenue, creates a streetscape that is not desirable in the long term. It is noted, however, that the redevelopment of these remaining residences in accordance with SEPP 53 would not be inhibited through the approval of the proposed DA and therefore, if and when the remainder of the site is developed, a streetscape scale in accordance with SEPP 53 will be created. Therefore, this is considered acceptable.

The proposed use of materials are considered appropriate and the treatment of the façade, with the provision of pitched roofs and elements of face brick work, is considered to be appropriate for the locality.

Resolution: While there will be an impact on the streetscape of the surrounding locality, the site has been targeted for multi-unit housing under SEPP 53 in order to increase housing densities and housing choice. The proposal is therefore acceptable having regard to the principles of SEPP 53.

7.2.11 Traffic Generation

Issue: There is already an existing traffic problem in the immediate vicinity of the site and the proposed development will exacerbate this issue.

Raised by: Local residents, Pymble Ladies College, Council

Consideration: The traffic report submitted by the applicant in support of the application was reviewed by an independent consultant on behalf of the Department. With regard to traffic conditions, the independent consultant found that, *"Surveys undertaken at the Avon Road/Pymble Avenue roundabout indicates the intersection is operating well within capacity. The addition of an estimated 25 vehicles in the peak hour is not considered to reduce the operation of the intersection significantly. However, safety implications are expected to be an issue due to the location of the roundabout and poor sightlines."* Therefore, it is considered that the existing intersections in the locality can accommodate the traffic expected to be generated by the proposal. The RTA have also stated that they do not consider that the proposed development will have a significant impact on the major road network.

With regard to the issue of sightlines at the roundabout for vehicles exiting the development, the independent consultant considered that the proposal did not comply with AS 2890.1:2004. The traffic consultant acting on behalf of the applicant did not agree with this summary and believes that AS 2890.1:2004 does not apply to this particular situation as the roundabout creates conditions where cars will be required to reduce speed and therefore an appropriate sight distance for vehicles exiting the site will be provided.

Council requested that consideration be given to widening Avon Road at the bend immediately adjoining the development and adjacent to Building A and the train station pedestrian tunnel as a result of traffic generated by the development.

There is land available for road widening purposes in this location. It is however, not considered that the subject development creates the need for these works on its own. Council states that there is an existing traffic problem as a result of the operation of the adjoining school. The traffic report submitted with the application states that there will be an increase of 25 vehicles per hour as a result of the development. Given the above, it is considered that there is no immediate nexus created between the proposed development and the need for road widening in this location. It is the Council's responsibility to identify roadworks that are required in the locality and incorporate these into the Section 94 Plan. Given that there is not a 100% nexus created between the proposed development and the need for road widening, it is not considered appropriate for the developer to carry out these works. The developer is, however, reconstructing the footpath in this location, as a result of the development, which is considered appropriate.

Resolution: A condition of consent has been imposed to require the development to comply with AS 2890.1:2004 with regard to the vehicular car park and access. It is considered that the traffic generated by the development will not significantly decrease the level of service available at existing intersections.

7.2.12 Cumulative Traffic Impact with Site 2

Issue: No assessment of the cumulative impact of this development, with the nearby SEPP 53 Site 2 was undertaken.

Raised by: Local Residents; Council

Consideration: When traffic studies were undertaken as part of the amendments to SEPP 53, it was identified that as a result of the combined impact of the development of Site 1 and the nearby Site 2 within SEPP 53, that a new road linking Avon Road and Beechworth Road should be constructed to provide a more direct access to the Pacific Highway to alleviate any localised traffic problems in the locality, particularly those associated with the operation of the school. This

road was therefore incorporated into the Ku-ring-gai Sites Report for Site 2. There was also a suggestion that any developer of Site 1 contribute to the construction costs of this new road through Site 2.

Resolution: Given that no costings are available for the construction of this new road through Site 2, and no timing is available on when Site 2 may be developed, it is not considered appropriate to levy the developer of Site 1 for works that are located within private property. It is considered that the construction of the new street through Site 2 should be constructed when the development of Site 2 occurs and this should be carried out by the developer of Site 2 at the time this occurs.

7.2.13 Pedestrian Safety during construction

Issue: During construction, commuters and students would be put at risk from increased traffic and construction works.

Raised by: Local residents, Pymble Ladies College, Council

Consideration: The applicant has amended their proposal as a result of concerns raised. It is proposed to maintain safe pedestrian access through the provision of a concrete barrier with a mesh panel up to 1.8 metres high along the north eastern footpath of Avon Road. This will maintain pedestrian access, as well as provide safety for pedestrians, particularly school children. The relocated pedestrian crossing to the north of the site, will ensure the school children are not tempted to cross Avon Road.

Resolution: The principles of the construction management plan submitted with the revised application are considered acceptable. Further conditions of consent have been imposed to ensure that pedestrian safety is maintained during construction. This includes the requirement to produce a Traffic Management Plan for the construction phase of the development that will address, amongst other things, pedestrian safety during construction.

7.2.14 Pedestrian Safety post construction

Issue: Post construction, commuters and students would be put at risk as a result of the high volumes of traffic in the locality and the narrow footpaths available.

Raised by: Local residents; Council; Pymble Ladies College

Consideration: There will be no change to the north-east footpath along Avon Road as a result of the development once construction is completed. The south-west footpath along Avon Road will be reconstructed and redesigned as a result of the development. It is considered that this will result in an improved pedestrian amenity zone along Avon Road.

Resolution: It is considered that there will be adequate pathways in close proximity to the development that will provide safe access to both Pymble Station and the adjoining school, the two main pedestrian focal points in the locality. Pedestrian crossings currently allow pedestrians to cross Avon Road in the vicinity of the site. It is not considered that the proposed development will alter this scenario to the extent that the application should be refused on these grounds.

7.2.15 Heritage

Issue: Impact of the development on surrounding heritage buildings, in addition to the impact of the development on the historical significance of the locality through the loss of contributory houses and the proposed multi-storey development.

Raised by: NSW Heritage Office, Council, adjoining landowners.

Consideration: The site is located adjacent to a local heritage item, known as 7 Pymble Avenue, Pymble. Proposed buildings C and D will have the greatest impact on this property. A Statement of Heritage Impact was submitted with the application. The report states that, "The curtilage for No. 7 Pymble Avenue will be improved due to the demolition of No. 5A Pymble Avenue which is

presently quite close to this heritage item. The setback to the proposed blocks 'C' and 'D' is substantial and based on the SEPP 53 guidelines, a road has been incorporated into a stepped terrace. This allows for significant landscaping along the terrace, acting as a buffer zone. A more detailed landscape design is to be prepared."

The NSW Heritage Office raised concern that the heritage report did not adequately address the impact of the proposal on 7 Pymble Avenue. In particular, the Heritage Office states, *"while there is proposed to be increased separation of buildings from the heritage item, the scale contrast and setting impact will be severe."*

It is acknowledged that there will be an impact on the adjoining heritage item as a result of the development. Even though the setbacks will be increased between buildings, the scale of the development does negate some of the advantages of this separation distance. However, the scale of the development is in accordance with the principles, height and bulk of SEPP 53, and for this reason, the impact on 7 Pymble Avenue, is not considered to warrant refusal of the DA. The separation distance ensures there is a minimal impact on overshadowing of the adjoining property.

There are three other heritage listed items in the vicinity of the subject site including 14 Pymble Avenue, Pymble Police Station and the Pymble Hotel. The Heritage Report concludes the following with respect to the impact on each of the heritage items:

- "14 Pymble Avenue – negligible;
- 7 Pymble Avenue – Partly enhanced by the removal of a close neighbouring house, while the impact of the new development is minimised by the significant setback of the new residential blocks and landscaping;
- Pymble Police Station – minimal as the new development faces the rear/side of the Police Station;
- Pymble Hotel – the main view from the hotel is more directly over the grounds of PLC. While the development will be seen towards the side, south-east view from the hotel, this will be partially screened by vegetation."

The findings of the Heritage Impact Statement with respect to these other heritage items in the vicinity of the site are accepted.

A number of submissions stated that the locality forms part of a proposed urban conservation area identified by the National Trust and five properties within the site have been identified as "contributory items".

Given the buildings within the site are not listed as Heritage Items, and SEPP 53 permits the development of multi-unit housing on the site, and allows the Minister to approve the demolition of a heritage item, in order to achieve the development of multi unit housing on the site, this issue is not considered to warrant refusal of the DA.

Resolution:

A condition of consent has been imposed regarding the submission of detailed landscape plans demonstrating how the impact on 7 Pymble Avenue will be reduced through the provision of dense landscaping. The applicant is also required to submit details of the materials and design of the proposed retaining wall along this boundary for the approval of the Director. This is considered appropriate.

7.2.16 Section 94 Contributions

- Issue:* Section 94 Contributions to be levied on the developer.
- Raised by:* DIPNR; Council
- Consideration:* It is considered appropriate that Section 94 Contributions be levied on the developer. In July 2004, Council adopted a new Section 94 Contributions Plan, however, this contained a provision that development applications lodged before this time should be levied in accordance with the previous Section 94 Plan, which was adopted in 2000. Therefore it is proposed to levy the application in accordance with the previous Contributions Plan. This issue, having particular regard to the appropriateness of the contributions plan, has been fully addressed in the S79C consideration tagged 'J'.
- Resolution:* It is considered that the levying of Section 94 Contributions for this development is appropriate, however, Net Strata Areas have been used to calculate the size of the dwellings in accordance with Council's Section 94 Plan (2000).
Allowances have been made for the existing 2 small, 2 medium and 5 very large dwellings on the site that are to be demolished. The proposed development has been calculated as containing the following dwelling numbers and sizes after taking these allowances into account:
- 1 small dwelling (under 75m²);
 - 55 medium dwellings (75m² – under 110m²);
 - 32 large dwellings (110m²-150m²);
 - 6 very large dwellings (greater than 150m²).
- The total contribution for this development is currently \$735, 123.48.
A condition of consent has therefore been imposed requiring the payment of this contribution.

7.2.17 Trunk Drainage

- Issue:* Location of the trunk drainage through the site.
- Raised by:* Council
- Consideration:* Ku-ring-gai Council objected to the location of the trunk drainage through the site as it is proposed to be located under Building D. This was considered inappropriate by Council as it would be compromise the Council's ability to maintain this trunk drainage line.
- Resolution:* Following discussions with the applicant and Council, the applicant has agreed that there is an alternative design solution for the trunk drainage that enables Council to have full access to the trunk drainage line without any building impediments. Therefore, conditions of consent have been imposed that require the relocation of the trunk drainage around the perimeter of the buildings, coupled with the requirement to create an access easement along the trunk drainage line to allow full and free right of access to Council engineers. Furthermore, the location and final design of the trunk drainage is to be approved by Council and constructed by the applicant at no cost to Council. This is considered an appropriate resolution of this issue.

7.2.18 Construction Impacts

- Issue:* Concern was raised regarding the impact of construction including noise, increased traffic and geotechnical issues.
- Raised by:* Council; Adjoining Residents; Pymble Ladies College
- Consideration:* A number of submissions raised concern regarding the long time frame for construction and the impacts associated with this. The issue of pedestrian safety during construction has been addressed above, however, there are other impacts, that may have an impact on adjoining owners.
A number of landowners expressed concern that the site was unsuitable for development from a geotechnical perspective and were worried about landslip, particularly during construction. Appropriate conditions have been imposed to ensure that the applicant carries out a geotechnical assessment of

the property and that the construction methodology is suitable for the site.

Resolution: The applicant has submitted a Construction Management Plan to address pedestrian safety, however, further conditions of consent have been imposed to further control and mitigate the impacts of the construction works on surrounding properties. The applicant is required to submit a Construction Management Plan; Traffic and Pedestrian Management Plan; Crane Management Plan; Noise and Vibration Management Plan and Construction Waste Management Plan, to address all aspects of the construction process and ensure that wherever possible, the impact of the construction works is minimised. In addition, the applicant is required to work only within the approved hours and where rock breaking or piling is occurring, these hours of work are further restricted by a condition of consent. Dust control measures have also been included as conditions of consent. There are also construction noise objectives established for construction periods greater than 28 weeks.

It is considered that the above requirements will ensure that the impact of the construction works is minimised, while allowing the development to take place in accordance with SEPP 53.

7.2.19 Amount of Car parking

Issue: Concern was raised regarding the amount of car parking provided on site.

Raised by: Local residents

Consideration: A number of submissions received commented that the amount of carparking to be provided was excessive and would further exacerbate traffic problems in the locality. Other submissions received expressed concern that the amount of carparking was not sufficient and in particular, a lack of visitor parking would result in residents and visitors utilising the on-street carparking and therefore reduce the availability of commuter parking in the locality.

Resolution: The level of carparking provided is compliant with the development controls contained within the KSR. The maximum level of resident and visitor parking has been provided within the site. As this complies, no objections are raised to the level of carparking provided on site.

The traffic report provided by the applicant, which was reviewed by independent traffic consultants acting on behalf of the Department, has been considered and the traffic generation figures are consistent with RTA policy for medium density dwellings. This issue was considered as part of the rezoning of the site. It is considered that there is an existing localised traffic problem in the immediate vicinity of the site, largely caused by the operation of the adjoining school. The traffic report demonstrates that the level of traffic generation caused by the development will have little impact on the existing levels of operation of the intersections in the locality and therefore the amount of carparking provided is appropriate. Further, the close proximity of public transport was a critical factor in determining the appropriateness of this site for multi-unit housing.

7.2.20 Capacity of Public Transport System to accommodate development

Issue: Concern was raised that the public transport system, particularly the trains, would not be able to accommodate the additional passengers.

Raised by: Local residents

Consideration: The site has excellent access to Pymble train station, which is frequently serviced by heavy rail.

Resolution: There is no evidence to suggest that the proposed development will not be able to accommodate additional passengers that may be generated by the proposal. One of the primary reasons this site was targeted for multi-unit housing was its proximity to public transport. It is not considered that this issue warrants refusal or amendment of the application.

7.2.21 Resident access/egress to development; safety in event of fire; Internal access

- Issue:* Concern was raised that the proposed access to the development was not convenient or safe and that the series of paths and stairs within the development was not appropriate, particularly for people with disabilities. In addition, emergency vehicles would not be able to access Buildings C and D.
- Raised by:* Local residents; Council
- Consideration:* Safety of residents for building egress and ingress is a matter that is addressed under the Building Code of Australia.
The applicant has subsequently amended their application so that vehicular access to buildings C and D is available.
The revised application has been supported by a "Strategy for Provision of Access for People with Disabilities" prepared by the Independent Living Centre NSW.
- Resolution:* All buildings are required to comply with the Building Code of Australia, including matters relating to fire safety.
The Access Report prepared by the applicant is considered appropriate. A condition of consent requires that the recommendations of this Access Report be implemented. This report addresses disabled access and ensures that all internal pathways comply with relevant Australian Standards. In addition, it addresses the provision of Adaptable and Visitable Units. This is considered appropriate.

7.2.22 Landscaping

- Issue:* The appropriateness of landscaping within the site.
- Raised by:* Adjoining landowners, Council, DIPNR
- Consideration:* The landscaping plans submitted are concept plans only and do not provide a detailed description of proposed plantings. It is also considered that following the exhibition of the application and an assessment of the landscaping plan, that in principle, it is acceptable, subject to design modifications and further details being submitted.
- Resolution:* A condition of consent has been imposed requiring the submission of a revised and final landscape plan for the consideration of the Director. The landscape plan is to address perimeter planting, the preservation of trees on the site and additional planting of trees to maintain a significant tree canopy on the site. In addition, it requires further details to be submitted, particular regarding the relationship between New Street 01 and the adjoining residence at 7 Pymble Avenue. It is considered that this is an appropriate response to the issues raised regarding the proposed landscaping of the site. It is further considered that the landscaping of the site is an integral component of ensuring that the development does not have an adverse impact on the adjoining properties.

8 CONCLUSION

The Minister for Infrastructure and Planning is the consent authority.

The application has been considered with regard to the matters raised in section 79C of the Act and by the Rural Fire Service and Ku-ring-gai Council who were consulted and provided general terms of approval under the Integrated Development Provisions within the Act.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

On balance, it is considered that the proposed development is acceptable and should be approved.

9 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 4 February 2005 and 21 February 2005. The applicant responded on 11 February 2004 and 2 March 2005. The applicant suggested a number of changes to the operation of the consent, particularly with regard to the staging of construction certificates, and the wording of the conditions relating to the requirement to create easements and other matters under the Conveyancing Act that have been required to be imposed to ensure the partial development of the site occurs in an orderly manner. These changes have been incorporated in the attached conditions.

Recommendation

It is recommended that the Minister for Infrastructure and Planning pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and Clause 25 of State Environmental Planning Policy No. 53:

- (a) grant **consent** to the application subject to conditions (Tagged “A”), and
- (b) authorise the Department to carry out post-determination notification

Prepared by

Endorsed:

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