

8 February 2013
GMA Ref: 275/2008

NSW Department of Planning & Infrastructure
GPO Box 39
SYDNEY 2001

Attention: Helen Mulcahy

Dear Helen

**SUBMISSION IN RESPECT OF PROPOSED MODIFICATION OF STATE
SIGNIFICANT DEVELOPMENT
23-37 LINDFIELD AVENUE & 11 HAVILAH LANE, LINDFIELD
MP08_0244 – MOD 1**

I refer to the subject application and on behalf of the adjoining property owners of land at 43 Lindfield Avenue, WZRM P/L, we hereby wish to make a formal objection to the modification application as proposed.

In summary it is advised that our objections relate to:

1. Location of Windows & Balconies in close proximity to the north western side boundaries of the site and the impacts of such an arrangement.
2. Non-compliance with applicable Building Height Controls.
3. Excessive FSR and the associated impacts upon the adjoining properties.
4. Compliance with applicable Car Parking Controls.
5. Conflict between pedestrians and vehicles associated with the use and operation of the Lower Ground Floor.

The following detailed explanation is provided in relation to the above matters:

1. Location of Windows & Balconies in close proximity to the north western side boundaries of the site and the impacts of such an arrangement

The amended proposal provides for development located in close proximity to the north western side boundary of the development site and which interfaces with the following adjoining properties:

- (i) 39 Lindfield Avenue
- (ii) 41 Lindfield Avenue
- (iii) 43 Lindfield Avenue, and
- (iv) 9 Havilah Lane.

The relationship of the amended proposal to this boundary includes:

- Windows to habitable rooms with a zero setback from the common boundary.
- Balconies with a zero setback to the common boundary
- Windows and balconies with setbacks of less than 3m from the common boundary and certainly less than 6m from the common boundary.

In respect of these modifications it is noted that:

- (i) The Environmental Assessment Report prepared by JBA Urban Planning Consultants P/L and dated December 2012 makes no reference to this aspect of the modification and the potential impacts arising from such a change.
- (ii) The proposal has failed to properly consider the recommendations of the BCA Capability Report prepared by Vic Lilli & Partners. It is not considered appropriate to deal with such matters at Construction Certificate stage given that compliance with the controls could affect the ability for the proposal to comply with the natural light and ventilation requirements of the Building Code of Australia.
- (iii) Were the modifications to be approved the proposed building configuration would significantly limit the development potential of the adjoining properties and would not provide for the equitable development of those lands. In effect development upon the adjoining lands would be required to wholly accommodate all required building setbacks (required in order to satisfy both the Building Code of Australia & SEPP No.65) upon their lands. In some circumstances this could require a 12m setback be provided upon the adjoining sites which could in effect prevent the reasonable development of those lands.

It is therefore submitted that the relationship of the proposed development to the north-western common boundary with the subject properties will result in unreasonable impacts upon the future development of those lands and should not be supported.

To this end it is requested that the applicant be required to demonstrate how the adjoining sites can be developed to their maximum potential having regard to the constraints and imposition caused by the inadequate and inappropriate setbacks which are proposed.

2. Non-compliance with applicable Building Height Controls

It is noted that the proposal provides for an increase in building heights of 4.28m in the case of Building A and 4.52m in the case of Building B.

In both cases the increase in the proposed building heights will provide for non-compliances with the Height Controls contained within the now adopted Ku-ring-gai Local Environmental Plan (Local Centres) 2012.

Were the proposed building heights not amended in the manner proposed then the proposal would remain compliant with the height control.

It would appear that the additional height of the proposal is solely required in order to achieve both greater residential FSR and overall FSR.

It is submitted that the proposal should be required to achieve compliance with the height controls required to be complied with by the adjoining sites.

Compliance will also ensure that there is consistency in the height of the buildings which comprise the Lindfield Local Centre.

3. Excessive FSR and the associated impacts upon the adjoining properties

As detailed above, the proposal seeks to increase both the residential and overall FSR for the site (significantly in the case of the residential component).

In order to achieve such an outcome the proposal seeks to breach the applicable height controls as well as to provide non-compliant and unreasonable side boundary setbacks both of which have been discussed above.

It is submitted that both of these matters are clear indicators that the proposal seeks to provide excessive floor space upon the site and as such it is submitted emphasise why the proposed modifications should not be approved.

It is further submitted that any development upon the site should be contained within a compliant building envelope and which has regard to the design principles and requirements of SEPP No.65, the Residential Flat Design Code and the Building Code of Australia.

4. Compliance with applicable Car Parking Controls

It is requested that the proposal be required to strictly comply with the requirements of the Council for the provision of carparking.

In this regard it is noted from page 41 of the Environmental Assessment Report prepared by JBA Urban Planning Consultants P/L that whilst the overall number of car spaces proposed by the application are compliant with the minimum requirements of the Council that the proposed distribution of those spaces between the various uses and in particular the provision of retail and residential visitor spaces will be deficient.

It is submitted that given the site's proximity to the railway station that it is important that the development be provided with compliant car parking (including the distribution of spaces) so as to ensure that the development does not place a burden on existing commuter and retail parking.

5. Conflict between pedestrians and vehicles associated with the use and operation of the Lower Ground Floor

It is submitted that the Lower Ground Floor level of the proposal is poorly designed given the significant potential that exists between vehicles utilising that level including those vehicles accessing No.39 & 41 Lindfield Avenue via the right of carriageway and pedestrians entering the site from either Havilah Lane or Lindfield Avenue.

It is submitted that given that this area will be utilised by delivery vehicles and the like that there should be separate pedestrian pathways and not a shared zone as is proposed.

Summary

In summary it is submitted that the proposed modifications will primarily result in unreasonable impacts upon the adjoining properties to the north-west as a result of insufficient setbacks being provided to the buildings from the common boundary. It is submitted that the provision of an inadequate setback will unreasonably limit the development potential of the adjoining properties to the point where by their value will be significantly impacted upon.

It is apparent that the proposal does not represent a considered design and has been primarily focussed on achieving the highest possible residential FSR without having appropriate regard to the applicable height controls and relationship with the adjoining properties.

It is therefore requested that you take these matters into your consideration as part of your assessment of the subject application.

It is advised that should you have any enquiries regarding this submission that you do not hesitate to contact me to discuss.

Yours Sincerely

A handwritten signature in black ink, appearing to be 'A. Minto', with a stylized flourish.

Andrew Minto
DIRECTOR