

14 November 2013

**Determination of modification application for a mixed use development
at 23-37 Lindfield Avenue and 11 Havilah Lane, Lindfield (MP08_0244 Mod 1)**

1. DELEGATION TO THE COMMISSION

The above modification application lodged by Anka Property Group (the Proponent) has been referred to the Planning Assessment Commission (the Commission) for determination under Ministerial delegation dated 14 September 2011. The delegation is authorised because Ku-ring-gai Council (the Council) objected to the proposal and more than 25 submissions in the nature of objections were received by the Department of Planning and Infrastructure (the Department).

The Commission constituted to determine the application consists of Ms Abigail Goldberg (chair) and Ms Gabrielle Kibble AO.

2. APPROVAL SOUGHT TO BE MODIFIED

On 27 January 2012, the Commission approved the project application which allowed for the construction of a mixed use retail and residential development at the site. The approval includes two residential towers, Building A (7 storeys) and Building B (6 storeys).

3. THE SUBJECT MODIFICATION APPLICATION (MOD 1)

This modification seeks approval to:

- Increase the height of both towers by one storey each. Building A will consist of 8 storeys with a height of 30.64m and Building B will consist of 7 storeys with a height of 27.86m;
- Increase the FSR from 3.84:1 to 3.88:1
- Reduce the retail GFA from 4,231m² to 2,379m²;
- Increase the number of residential apartments by 21 (from 91 to 112 units);
- Change the apartment mix;
- Reduce the total car spaces from 196 to 184 car spaces;
- Increase the communal open space from 620m² to 699.5m²;
- Reconfigure the ground floor levels;
- Revise the finishes and signage; and
- Reconfigure the basement car park and car park layout.

Figure 1 illustrates the approved building envelope, height controls in Ku-ring-gai Local Environment Plan 2012 (LEP2012) and the proposed amendments in this application.

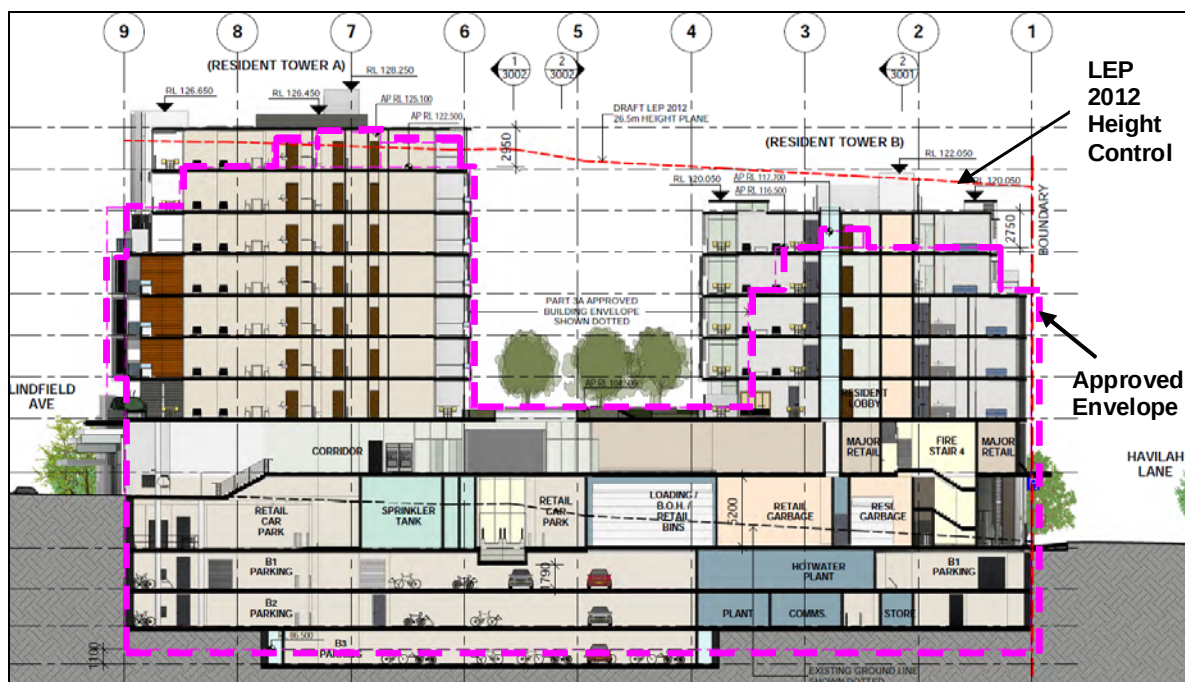


Figure 1: East-West section through the proposal showing comparison to approved envelope and the height control in Ku-ring-gai LEP 2012.

4. THE ASSESSMENT REPORT

The Department's assessment report provided an in-depth analysis of the following key issues: building form and design, parking and access, reduction in retail floor space, residential amenity and streetscape presentation to Lindfield Avenue and Havilah Lane. The Department concluded that it was satisfied with the additional building height in the urban context. The report found the proposed modification acceptable subject to conditions of approval.

5. SITE VISIT

Commission members visited the site and its neighbourhood prior to the public meeting.

6. MEETINGS

On 24 October 2013, the Commission met separately with Ku-ring-gai Council and the Proponent to hear their respective views on the assessment report and its recommendation. The Commission also held a public meeting on 7 November 2013 to facilitate public input on the assessment report and recommendations.

6.1 Ku-ring-gai Council

At its meeting with the Commission, Council commented that the proposed design modification is aesthetically an improvement on the approved development. However, Council raised the following matters of concern:

1. Building height – the proposed modification will increase the building height by 1 storey;
2. Additional height may result in overshadowing of the proposed Lindfield Town Square;
3. Issues concerning shared boundaries need to be resolved in relation to windows and balconies;
4. Poor compliance with the *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development* (SEPP 65) guidelines, including with regard to building separation, depth of kitchens, private open space and solar access;

5. Impact on development potential for neighbouring sites. Council noted that they own the adjoining property at 9 Havilah Lane, currently used as a car park, which will be auctioned for development shortly.

6.2 Proponent

The Proponent raised the following issues at their meeting with the Commission:

1. Residential car parking spaces recommended by the Department (105 residential car spaces recommended) are not considered adequate. The proponent requested that 118 spaces (1 car space per unit) be approved;
2. Signage has been revised in accordance with Council's DCP and should be approved as part of the modification rather than requiring a separate application to Council as recommended by the Department; and
3. Compliance with SEPP 65 guidelines has been addressed within site constraints and by providing an internal communal courtyard as well as ensuring that each apartment has a private balcony. Facades have been activated with windows in the absence of known plans for adjoining properties.

6.3 Public Meeting

On Thursday 7 November the Commission held a public meeting at the Lindfield Community Centre to hear community comments on the assessment and recommended conditions. Eight people spoke at the meeting (see attachment 1).

Key issues raised at the public meeting included:

- Acceptability of increased building height;
- Loss of retail and medical facilities;
- Reduced on-site parking;
- Impacts to right of way;
- Overshadowing of the proposed town square;
- Reduced future development potential due to the poor relationship with shared boundaries;
- Residential amenity and non compliance with SEPP65;
- Privacy of adjacent buildings;
- Scale and size and of the development is not acceptable for the area and demographic; and
- Safety and traffic impacts.

Issues raised at the public meeting are further detailed in attachment 2. These issues were congruent with those raised previously in written submissions to the Department.

7. COMMISSION'S CONSIDERATION

The Commission has carefully considered the Department's Assessment Report, documents provided, written submissions and views expressed at the public meeting and in meetings with the Proponent and Council, as well as knowledge gained from the site visit. Key considerations for the Commission were considered to be:

- Built form;
- Residential amenity;
- Rights of way affecting neighbouring properties;

- Impact on the proposed Lindfield Town Square;
- Loss of retail space; and
- Parking provision.

These issues are discussed in further detail below.

Built Form

The Commission in its previous determination indicated that a building height between 7 and 9 storeys is generally acceptable for the Lindfield town centre. The approved development was for two buildings of 6 and 7 storeys respectively. The proposed amendment is to increase the height of these two buildings to 7 and 8 storeys, one storey higher than that approved.

The Commission notes that the proposed building height for Building A (fronting Lindfield Avenue) deviates only marginally from the Ku-ring-gai LEP 2012 whilst Building B, after the increase, is below the height control limit. Considering the town centre context of the site, proximity to the railway station, existing building height controls and the local built environment, the Commission considers the proposed building height increase is minor and the Department's recommendation is reasonable.

Council and members of the public raised concern regarding the inclusion of windows on the walls of the boundaries of 2 Kochia Lane, 9 Havilah Lane and 39 Lindfield Avenue as these were perceived to impact on the development potential of these sites. The Commission notes that the Department's assessment report recommended a restrictive covenant which removes solar access rights on windows of affected apartments, and is aware that such covenants are applied in other town centre locations including North Sydney. As such, the Commission accepts the Department's recommendation as reasonable.

The Commission and Council are in agreement that the design of the building, particularly the frontage along Lindfield Avenue, is an improvement on the approved design and better suited to the local context and neighbouring heritage buildings.

Residential Amenity

Compliance with SEPP 65 guidelines such as solar access, building separation and other residential amenity criteria was raised in the Council and public submissions. The Proponent has confirmed that the solar access requirements can be achieved. The Commission has considered carefully the issues of building separation and design, and future residential amenity. On balance, the Commission is satisfied that incoming residents will have adequate amenity with access to both private and communal open space, pleasant outlook, easy access to public transport and local facilities, which would also benefit from this additional population. The Commission considers that these issues have been adequately addressed in the assessment report, and the recommended conditions are appropriate.

Right of Way

Right of way easements exist through a private treaty arrangement for Nos. 39 and 41 Lindfield Avenue for access across the site to Havilah Lane. The proposal makes provision for access to these sites through the construction period, and during operation of the project that is reinforced through conditions of approval recommended by the Department. The Commission is satisfied that the recommended conditions and controls are appropriate.

Impacts on the Proposed Lindfield Town Centre

Council raised concern regarding potential overshadowing of the proposed Lindfield town centre. The Commission considers that the additional storey proposed will not significantly impact on the proposed Lindfield town centre, which will also benefit from an increased local population.

Loss of Retail Space

The community raised concern with the loss of floor space for possible retail uses and a medical centre. The modification seeks to reduce the retail floor space from 4,231 m² to 2,379m² by replacing the approved second storey of retail/commercial use with apartments. The Commission notes that the retail floor space proposed as part of the modification is greater than the existing retail floor space at the site, and that second storeys of retail/commercial use are frequently hard to activate and retain occupancy. The Commission also notes the presence of a relatively new commercial building to the southeast of the subject site that accommodates various medical facilities, and the availability of other sites in the area that can accommodate retail and medical facilities. In this context, the Commission finds that the proposed reduction in retail floor space is acceptable.

Other Issues

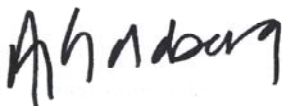
The Commission also considered other issues including access arrangements, streetscape, drainage and dilapidation reports and believe these issues have been adequately addressed in the Department's Assessment Report. Discussion with Council has confirmed that the proposed signage in the preferred project report (Drawing No: 6500B) complies with Council's DCP. The Commission has therefore included signage within the approval. With regard to rail noise and vibration, the Commission has requested updating of acoustic reports in Condition C8 to take account of the current design.

The Commission is otherwise satisfied that residual impacts and issues can be managed by the implementation of the recommended conditions.

COMMISSION'S DETERMINATION

The Commission has carefully considered the information available including the assessment report, Council and public submissions, views expressed by residents at the public meeting and the Commission's visit to the site. The Commission generally agrees with the Department's conclusions and recommendation subject to minor modifications outlined above.

Accordingly the Commission has determined that approval be granted to the modified project application as contained in the attached '*Instrument of Approval*'.



Abigail Goldberg
Member of the Commission



Gabrielle Kibble AO
Member of the Commission

Planning Assessment Commission Public Meeting
23-37 Lindfield Avenue and 11 Havilah Lane, Lindfield Modification
(MP08_0244 Mod 1)

Date & Time: Thursday, 7 November 2013, 4pm

Place: Lindfield Community Centre

1. Ku-ring-gai Council – Mr Anthony Fabbro and Mr Michael Zanardo
2. Mrs Kathy Cowley – Friend of Lindfield
3. Mr Chris Coote – Chairman Strata Plan 19388 2 Kochia Lane, Lindfield
4. Mr Jim Donovan
5. Mr Ivo Porfiri
6. Ms Judy Butlin
7. Mrs Kathy Cowley spoke on behalf of Ms Ursula Bonzol
8. Mr Jonathon O’Dea – Member for Davidson

On 7 November 2013, the Commission held a public meeting at the Lindfield Community Centre. The issues raised at the meeting are outlined below:

Built Form

- Council supportive of mixed use development in the area;
- The Council car park at 9 Havilah Lane is proposed to be developed;
- The modified building height does not comply with the Ku-ring-gai LEP 2013;
- Reduced future development potential due to the poor relationship of the development to the shared boundaries;
- Non-compliance (building separation, depth of kitchen, natural ventilation, private open space and solar access) with the *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development* (SEPP 65);
- Size and scale of the development is not appropriate for the Lindfield town centre;
- Increase in dwelling yield is not supported;
- The change in apartment mix is not appropriate for the Lindfield area and demographic; and
- Privacy impacts to adjacent residents.

Traffic, Car Parking and Right of Way

- Impacts to the right of way for 39 and 41 Lindfield Avenue;
- Private certifier to approve right of way is not acceptable;
- Traffic safety impacts; and
- Reduction in car spaces and inadequate information provided.

Other Issues

- Part 3A process is unreasonable;
- The site should have been developed as a whole;
- Impacts to adjacent heritage buildings;
- Overshadowing of the Lindfield Town Square;
- Loss of retail, medical facilities and public benefit; and
- Appropriate infrastructure is not available to manage a growing population.