

2 May 2011

**PROJECT APPLICATION FOR RESIDENTIAL DEVELOPMENT
AT 132 -138 KILLEATON STREET, ST IVES**

1.0 PROPOSAL

The project application seeks approval for:

- Demolition and excavation;
- Construction of 6 residential buildings of 4-6 storeys in height comprising 298 apartments;
- Adaptive reuse of the monastery building for communal facilities including pool and gymnasium;
- Basement parking for 374 cars comprising 331 residential car spaces and 43 visitor spaces; and
- Landscaping works.

2.0 DELEGATION TO THE COMMISSION

The application was submitted with a Political Donations Disclosure Statement disclosing a reportable political donation. Consequently, the project meets the terms of delegation and the Planning Assessment Commission (the Commission) may determine the Project under delegated authority. On 3 March 2011, the Director General of the Department of Planning and Infrastructure (the Department) referred the project application (MP 10_0057) to the Commission for determination under a delegation issued by the Minister for Planning on 18 November 2008.

The Commission consisted of Ms Janet Thomson (chair) and Ms Donna Campbell.

3.0 INFORMATION PROVIDED TO THE COMMISSION

The Commission was provided with the Director General's (DG) Assessment Report, Environmental Assessment (EA), Preferred Project Report (PPR) and draft conditions of approval. The Commission also visited the site and surrounding areas.

3.1 Additional Information Made Available to the Commission

On 16 March 2011, the Commission met Mr Michael Woodland and Mr Andrew Smith from the Department of Planning and Infrastructure (the Department) for a briefing. During the briefing, the Commission sought clarification from the Department on a number of issues, including non-compliances with building height, solar access, building separation, deep soil landscaping and the amount of visitor car parking.

Following the briefing with the Department and a review of the documentation, the Commission raised a number of concerns relating to building height, building separation, balcony areas, solar access, deep soil landscaping and visitor car parking. In particular, it questioned whether the development adequately satisfied the principles set out in *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development* (SEPP 65). The Commission also noted departures from requirements in the *Ku-ring-gai Local Environmental Plan (Town Centres) 2010* (the LEP) and *Ku-ring-gai Development Control Plan (Town Centres) 2010* (the DCP).

The Commission wrote to the Department (letter dated 31 March 2011) outlining the Commission's key concerns and requested the Department to determine if the Commission's concerns could be addressed by making design modifications to the project. The Department provided supplementary information to the Commission in a letter dated 11 April 2011 (referred to as the 'supplementary report').

4.0 KEY ISSUES

The Department's assessment identified the following key issues:

- Bulk, scale and residential amenity impacts;
- Deep soil landscaping;
- Visitor parking; and
- Drainage design and impacts on trees

A total of 58 submissions from the public and government agencies were received by the Department during the public exhibition period. The Department considered the issues raised in these submissions could be addressed through appropriate conditions of consent and was satisfied that potential impacts were adequately addressed by the proponent via the EA, PPR, Statement of Commitments and the Department's recommended conditions of approval.

5.0 COMMISSION'S COMMENT

The Commission members have examined the documents and plans provided by the Department, including the Department's supplementary report. In determining the project, the Commission has given particular attention to: building height, building separation, balcony areas, deep soil landscaping, solar access and visitor car parking.

5.1 Building Height

The Commission notes the site is zoned R4 High Density Residential under the *Ku-ring-gai Local Environmental Plan (Town Centres) 2010* (the LEP). The LEP prescribes principle development standards for the site, including a maximum building height of 17.5m and a floor space ratio (FSR) of 1.3:1. Part 3C.7 of the *Ku-ring-gai Development Control Plan (Town Centres) 2010* (the DCP) specifies that a maximum of 5 storeys above the basement is allowed within a maximum building height of 17.5m.

The amended proposal, as outlined in the PPR, will exceed the height control by one storey in two of the six proposed buildings, reaching a height of 19.9m in Buildings B and D. It is understood that, in addressing submissions and in order to improve the interface between the building and adjacent residences, floor space was removed from Buildings C and E (which were both reduced from five to four storeys in the PPR) and was redistributed to part of Buildings B and D.

During the briefing with the Department, the Commission discussed the height exceedances in Buildings B and D. The Department advised that the original scheme proposed in the EA, which complied with height standards, would have had a greater impact on the future character of the neighbourhood in terms of bulk and scale than that currently proposed. The Department considered the non-complying floors could be located centrally on the site and as a result would have a minimal impact on amenity and the general streetscape. The Department also considered that improved amenity benefits for residents in College Crescent, in terms of overshadowing, bulk and scale, were achieved by reducing the height of buildings along the eastern boundary (from 5 to 4 storeys) compared with a complying 5 storey scheme.

The Department also noted in their supplementary report that if a height control was applied as a development standard, a variation to the standard could be allowed by a SEPP 1 Objection. The Department also considered that given the minor 1 storey variation to the height standard and the benefits resulting from the variation (in terms of reduced impacts on residents in College Crescent), a SEPP 1 Objection in this case could be justified.

The Commission does not consider that achieving the maximum FSR for a site justifies exceedances in building heights above height controls set out in the LEP. However, the Commission has examined the Department's merit assessment and reviewed the proposed building elevations (as outlined in the PPR) to determine the overall impact of the additional

building height in Buildings B and D. The Commission is satisfied with the Department's assessment that the additional 6th storey in Buildings B and D, being located centrally on the site, poses minimal amenity impacts as viewed from Killeaton Street as well as from the adjoining eastern boundaries. Accordingly, the Commission considers the exceedances in height in Buildings B and D to be acceptable.

5.2 Building Separation

The Residential Flat Design Code (RFDC), which details the prescriptive standards for residential flat development in line with the principles of SEPP 65, requires a 12m separation between habitable rooms and/or balconies in buildings up to 4 storeys. Council's DCP requires:

- Up to 4th storey - 12m between habitable rooms/balconies, 9m between rooms/balconies in all other cases.
- From 5th to 7th storey - 18m between habitable rooms/balconies, 13m between habitable room/balcony and non-habitable room, 9m between non-habitable rooms.

The separation between Buildings E and F and Buildings D and F are non-compliant with both the RFDC and Council's DCP.

The development proposes a 5-6m setback between Buildings E and F (ground to 4th floor). The Department considers this acceptable as no windows are directly opposite each other, and no areas of private open space/balconies directly face each other between the buildings.

The development proposes a separation of 9.5m between balconies/courtyards at the eastern end of Building D and habitable rooms at the northern end of Building F at ground level. The Department considers this variation as acceptable as the ground floor courtyards are generously proportioned to allow for screening, and the actual distance between habitable rooms exceeds 12m.

The Commission considers that the site has minimal constraints and is large enough for a development to achieve the building separations required under the RFDC and Council's DCP. Despite windows and balconies not directly facing each other, it is considered a wider separation distance would still improve the amenity for residents. The Commission requires the proposal to be modified to achieve building separations required in Council's DCP. A design modification to this effect has been incorporated into the conditions of approval.

5.3 Balcony Areas

The Department's DG report indicates that the development proposes 8sqm balconies for some 1 bedroom apartments, which is less than the minimum area of 10sqm required by Council's DCP. In the Department's supplementary report to the Commission, the Department advised that they had reviewed the PPR plans and it appeared all 1 bedroom apartments complied. The Commission requires a design modification to be incorporated into the conditions of approval to ensure all balconies in 1 bedroom apartments have a minimum area of 10sqm. This will ensure adequate private open space is provided for future residents.

5.4 Solar Access to Apartments

The DG's report indicates that 62.4% of apartments in the development will receive at least 3 hours of solar access between 9.00am and 3.00pm in mid winter and 82.9% of apartments will receive at least 2 hours solar access at this time.

The RFDC recommends that living areas and private open space areas for at least 70% of apartments in a development should receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter. The RFDC also specifies that in dense urban areas a minimum of two hours may be acceptable.

The Department is of the view that the development and site should be considered as a 'dense urban area' as it is zoned 'R4 High Density Residential' under the LEP and higher densities for the area are envisaged in the future. This view was reconfirmed in the Department's supplementary report. As such, the Department has accepted a solar access standard which requires a minimum of 2 hours direct sunlight between 9am and 3pm in mid winter to be achieved for at least 70% of apartments. The development complies with this standard.

During the briefing with the Department, the Commission requested further details on the number and location of apartments (in each building) which will not achieve a minimum of 2 hours and/or 3 hours of solar access in mid winter. This additional information was provided to the Commission on 23 March 2011. The additional solar access information further highlighted that some buildings have particularly poor solar access, with only 54-58% of apartments in Buildings B and F receiving more than 3 hours of sunlight in mid winter.

The Commission is of the view that the site is currently located in a low density locality and is not presently constrained by other high rise development which could restrict solar access to the development. The Commission is also of the view that the desired future character of the surrounding locality is unlikely to become a 'dense urban area' under the new planning controls, where the R4 High Density zoning prescribes a 17.5m (5 storey) height limit under the LEP. Further, the Council's submission on the project advises that *"a 3 hour assessment has been consistently applied to all 5 storey residential flat development in Ku-ring-gai (also applied in the Land and Environment Court)"*.

Accordingly, the Commission considers the development site is relatively unconstrained and there is no justification for allowing a 2 hour solar access standard to be applied to this development when a 3 hour standard could be achieved.

The Commission requires the proposal to be modified to ensure that a minimum of 70% of apartments in the development achieve at least 3 hours of sunlight in mid winter. A design modification to this effect has been incorporated into the conditions of approval.

5.5 Solar Access to Communal Open Space

Concern was raised by the Commission on the amount of sunlight to be received in communal open space areas. The Commission notes that the DCP also contains a relevant solar access development control which requires at least 50% of communal open space to receive a minimum of 3 hours of sun between 9am and 3pm in mid winter. Based on a review of the shadow diagrams provided, the Commission did not consider the proposal was likely to achieve this standard.

The Department advised in their supplementary report that it is *"likely that the areas of communal open space on site would receive 3 hours of solar access between 9.00am and 3.00pm in mid-winter having regard to the height and envelope changes made in the PPR"*. The Department also noted that the RFDC only requires daylight access to communal open space areas to be optimised between March and September.

The Commission considers that in order to provide better amenity for future residents in the development, communal open space areas should receive an adequate amount of sunlight. In this regard, the Commission views Council's solar access development control to be an appropriate standard.

The Commission requires the proposal to be amended to demonstrate that at least 50% of communal open space areas receive a minimum of 3 hours solar access in mid winter between 9am and 3pm. A design modification to this effect has been incorporated into the conditions of approval.

5.6 Deep Soil Landscaping Area

The Commission considers that an adequate amount of deep soil landscaping area needs to be provided to ensure the future landscaping of the development is of a high quality and positively contributes to the garden character of the local area.

For this development, Council's DCP requires a minimum of 50% of the site to be used for deep soil landscaping, whereas the RFDC provides a general rule of thumb which requires a minimum of 25% of the open space area of the site to be a deep soil zone. The proposal provides 30.5% of the site area as deep soil landscaping. The Department considers this acceptable as the deep soil landscaping is provided predominantly around the perimeter of the site (varying in width between 6 – 12 metres). The proponent also amended the proposal in the PPR to provide an additional 100sqm of deep soil landscaping in the rear central courtyard (between Buildings D, E and F). In the Department's supplementary report, it was noted that 100sqm is the minimum soil area required to accommodate large trees with large canopies.

The Commission notes that the Department does not consider Council's DCP requirement for 50% of the site area for deep soil landscaping to be a relevant consideration. As outlined in their supplementary report, the Department states *"the State significant assessment process promotes a merit based assessment and DCP controls aligned with a particular LEP, such as the Town Centre LEP, should not be rigidly applied nor given primacy over State based controls such as those prescribed in SEPP 65 and the RFDC"*.

The Commission considers that Council's DCP requirement for deep soil landscaping (50% of the site area) to be a relevant consideration to ensure the development provides landscaping appropriate to the scale and context of the development and contributes to the 'garden character of the locality'. The Commission notes the RFDC is a State based control but considers the controls contained in the DCP, which apply to the local area and to development in the R4 High Density Residential zone, are particularly relevant to the development and should be complied with.

The Commission notes that Council's DCP deep soil landscaping requirement is based on the site area. For a site area of less than 1800sqm, a minimum deep soil landscaping area of 40% of the site is required. For an area greater than 1800sqm, 50% of the site area is to be used for deep soil landscaping.

The Commission considers that the main cause for the development not achieving Council's DCP requirement for deep soil landscaping is due to the basement car park being one level and extending over the majority of the site. The Commission does not consider a 20% reduction in the deep soil landscaping area required by the DCP to be justified, particularly as other future developments in the locality will be required to meet the DCP target of between 40 - 50%.

The Commission considers a greater amount of deep soil landscaping area for the site is required and has determined that a target of at least 40% of the site area is appropriate. This will be consistent with the anticipated requirements of other future developments in the locality. The Commission also requires the deep soil landscaping to be provided between Buildings A & B, B & C and E, D and F. An additional design modification has been included in the conditions of approval which requires a minimum of 40% of the site area to provide for deep soil landscaping.

5.7 Deep Soil Landscaping – Tree Replenishment

The Commission notes Council's DCP includes an additional control relating to Tree Replenishment and Planting, requiring 1 tall tree (capable of attaining a mature height of at least 13m) to be provided per 300sqm of site area. Based on the site area of 22,970sqm, a

total of 77 tall trees would be required. From the information provided in the EA and PPR, it is unclear whether the development complies with this control.

The Department in the supplementary report advised that draft recommended condition C23, which relates to landscaping, made reference to the relevant provisions of Clause 3C.4 of the Town Centres DCP and was intended to refer to mature tree planting on site. To make the condition C23 clearer, it has been amended to include a requirement that amended landscape plans are to incorporate mature tree planting consistent with the provisions of Clause 3C.4(7) to (11) of the *Ku-ring-gai Development Control Plan (Town Centres) 2010*. These plans are to be submitted to the Department demonstrating compliance prior to the issue of a Construction Certificate for above ground works.

5.8 Visitor Car parking

The Commission notes that both submissions from the public and Council raised concern with the amount of visitor car parking being provided.

In order to provide adequate car parking for residents and visitors for new residential flat building developments, the DCP includes requirements for car parking spaces based on apartment sizes (e.g. studio, one bedroom etc) and the number of apartments. For this project, the DCP requires 286 to 388 resident parking spaces and a minimum of 74 visitor parking spaces (based on a ratio of 1 visitor parking space per 4 apartments).

The development proposes to provide 331 resident spaces and 43 visitor spaces (at a ratio of 1 visitor parking space per 7 apartments) - a total of 374 spaces. Whilst the cumulative total complies with the DCP, the number of visitor parking spaces does not comply.

To achieve full compliance with the minimum requirements of the DCP, the proposal would need to reallocate the spaces to provide 300 resident spaces and 74 visitor spaces. As outlined in the DG Report and supplementary report, the Department considers the allocation of car parking spaces between residents and visitors as proposed in the PPR to be acceptable.

The proponent in the PPR has argued that the reduced number of visitor spaces is acceptable. In supporting the argument, the proponent referenced an RTA document titled '*Traffic Generation- Surveys and Analysis – High Density Residential*' (undated) which included a comparative analysis of visitor parking demand at a number of comparable high density residential developments in Sydney. The analysis indicated that the demand for visitor spaces was, on average, 1 space per 11.92 apartments. The Commission notes that the RTA *Guidelines for traffic generating developments* (dated October 2002) is the current policy document on parking requirements and recommends visitor parking to be provided at a rate of 1 space per 5 units. This correlates to the provision of 60 spaces for this development.

The Commission does not agree with the Department's conclusion that the provision of visitor parking is acceptable. The development proposes a sufficient total number of parking spaces to satisfy both the RTA and DCP requirements. However, a reallocation of resident and visitor spaces would be required to ensure visitor spaces are provided at a ratio required by the DCP (i.e. 1 space per 7 apartments). The Commission does not consider there is sufficient justification to deviate from the visitor parking requirements outlined in the DCP controls which would ordinarily apply to other developments in the locality in the R4 High Density Residential zone.

The Commission requires car parking spaces to be provided in accordance with the DCP. An additional design modification has been included in the conditions of approval which requires visitor and residential car parking to be provided in accordance with the requirements of the DCP.

6.0 COMMISSION'S DETERMINATION

The Commission members have examined the documents and plans provided by the Department. The Commission is satisfied that issues raised in submissions have generally been appropriately considered by the Department in their assessment. However, the Commission requires a number of design modifications to be incorporated into the conditions of approval relating to: building separation, balcony areas, deep soil landscaping, solar access and visitor car parking. This will ensure the development will provide for improved amenity for future residents and satisfy the principles of SEPP 65. The Commission has determined that the project application should be approved subject to the recommended conditions (as amended by the Commission).



Janet Thomson
PAC Chair



Donna Campbell
PAC Member