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Ground Floor, Suite 01, 20 Chandos St
St Leonards NSW 2065
PO Box 21
St Leonards NSW 1590

Daniel Cavallo
A/Director Government Land and Social Projects
Department of Planning
23-33 Bridge Street
Sydney NSW 2000

T +61 2 9493 9500
F +61 2 9493 9599
E info@emgamm.com
www.emgamm.com

Re: Submission on MP09_0197 and MP09_0220 applications

Attn: Ben Eveleigh

Introduction

Dear Sir,

EMGA Mitchell McLennan Pty Ltd, on behalf of Healthscope Pty Ltd (Healthscope), has prepared this submission on the Part 3A applications for 'Corner Parker Street and the Great Western Highway, Kingswood – Concept Plan (MP09_0197) and Stage 1 Project Application (MP09_0220) ('the project') submitted by Aesthete No.3 Pty Ltd ('the proponent'). The NSW Department of Planning granted Healthscope an extension to the exhibition period to provide a submission as requested in its letter dated 9 February 2011.

Healthscope is the owner and operator of the Nepean Private Hospital (NPH) located at 1-9 Barber Avenue Kingswood. The subject Part 3A applications relate to a mixed use development on land adjacent to the west and north of the NPH. Healthscope has strong objections to the project for a number of reasons which are detailed below.

Healthscope have made no reportable political donations of \$1,000 or more in the previous two years.

The Director General's Requirements (DGRs) for the project were issued on March 1 2010. The project is required to address the DGRs under section 75F of the NSW Environmental Planning and Assessment Act 1979 (EP&A Act).

1 Non-compliance with relevant planning provisions

1.1 EP&A Act

It is considered that the project is inconsistent with the following objects of the EP&A Act.

"(ii) the promotion and co-ordination of the orderly and economic use and development of land,

...

(vii) ecologically sustainable development, and

(viii) the provision and maintenance of affordable housing, and"

The reasons for the inconsistency are based on the information provided in this and the following sections.

1.2 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65)

The Environmental Assessment (EA) for the project incorrectly states that SEPP 65 only applies to Stage 2 of the development and does not apply to Stage 1. Section 4 of SEPP 65 states that the policy applies to development being *"the erection of a new residential flat building"*. A 'residential flat building' is defined in SEPP 65 as:

“a building that comprises or includes:

- (a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- (b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops)”.*

A ‘serviced apartment’ is defined under the Penrith Local Environmental Plan (Urban Land) 1998 as:

“a self-contained dwelling (in a building containing three or more self-contained dwellings) which is cleaned or serviced by the owner or manager of the building (or the agent of the owner or manager), and which provides short-term accommodation for persons who have their principal place of residence elsewhere, but does not include a backpackers’ hostel, guesthouse or motel.”

As Stage 1 – Building B of the project contains four or more self-contained dwellings (serviced apartments) and is three or more storeys it can then be considered the “erection of a new residential flat building” to which SEPP 65 applies. Compliance with the provisions of SEPP 65 and the *Residential Flat Design Code* (Department of Infrastructure, Planning and Natural Resources 2002) therefore needs to be considered by the proponent.

1.3 Sydney Metropolitan Strategy ‘City of Cities’

The EA implies the project complies with the City of Cities strategy by contributing to the housing targets provided for the Penrith local Government Area (LGA). However, the EA makes no mention that the strategy identifies the Penrith Education & Health Centre as a future Specialised Centre. The strategy states the following in relation to the Centre:

“Specialised Centres are areas containing major airports, ports, hospitals, universities, research and/ or business activities that perform vital economic and employment roles across the metropolitan area. They are characterised by complex interaction with the rest of the city; growth and change in and around them must therefore be carefully planned.

Specialised Centres typically have a stronger employment or economic function than other centres, with a reduced focus for housing.

The establishment of the Penrith Education & Health precinct as a Potential Specialised Centre would build on employment and education opportunities around Penrith including Nepean Hospital at Kingswood and the University of Western Sydney and TAFE campuses at Kingswood and Werrington.

The NSW Government has supported the growth of the precinct in its response to the Western Sydney Jobs Summit in May 2010. The Government has supported the development and implementation of a strategy to attract related industry professionals and businesses, and identify essential infrastructure and regulatory requirements to facilitate development of the precinct. The Penrith Business Alliance has adopted a goal for the precinct: ‘To become one of Australia’s premier destinations for health, education, industry and medical research over the next 10 years’.” (Metropolitan Plan for Sydney 2036 - Strategic Direction B, pg. 67)

The strategy itself identifies that *“growth and change in and around [Specialised Centres] must therefore be carefully planned”*. The EA therefore needs to justify whether the project is appropriate development considering it is to be located in a Specialised Centre which is a health and education precinct and where residential development is not an aim.

Further an aim of the strategy is to locate 80% of all new housing within the ‘walking catchment of city centres. Since this development is not within reasonable walking distance to the Penrith City Centre it is not considered to be in accordance with the aims of the strategy. Additionally the strategy aims:

“to ensure new housing is located in the most appropriate places to avoid planning residential development adjacent to busy roads and freight routes (refer to Actions G7.2 and G8.1 in Tackling Climate Change & Protecting Sydney’s Natural Environment and strategic freight transport Action B2.4 in Transport for a Connected

City and Action E6.4 in Growing Sydney's Economy)". (Metropolitan Plan for Sydney 2036 - Strategic Direction D, pg. 107)

As the project is to be located on the corner of two busy roads (Great Western Highway and Parker Street) it is not considered an appropriate location under the strategy and is directly against this aim.

1.4 Draft North West Subregional Strategy

The project does not achieve the aims of the Draft North West Subregional Strategy to locate residential development away from busy roads and to improve housing affordability.

The strategy states that roads with high volumes of traffic (more than 20,000 AADT) *"are not generally recommended for new housing development due to the health risks and low amenity associated with traffic noise and vehicle emissions."*(B. Centres and Corridors, pg. 57). The Transport Management Accessibility Plan study included with the EA states that the Great Western Highway has 32,000 AADT and Parker Street has 40,000 AADT which would therefore classify them as roads with high volumes of traffic not recommended for new residential development under the strategy.

The EA claims to provide affordable housing without any indication of the average unit prices for the project.

1.5 NSW State Plan

The EA also claims that the project achieves the priority targets of the NSW State Plan– to improve housing affordability and to increase the supply of affordable housing for low and moderate income households – with no basis for this claim. Again the EA gives no indication of pricing of apartments or a commitment to providing affordable housing.

1.6 Penrith Local Environmental Plan 1998 (Urban Land) (LEP)

Within zone No 2(d) Residential (Medium Density) multi-unit housing is permissible. However, the other aspects of the project including mixed use developments, commercial premises, shops, and serviced apartments are not permissible uses.

The EA claims the project is generally consistent with the land use requirements of the LEP. However, the objectives of zone No 2(d) include *"(iv) to expand housing choices by allowing multi-unit housing up to a two storey appearance"*. The project is clearly against the intent of the zone to maintain medium density no more than two storeys in height. Further, Table 4 of the LEP provides the following development standards for the zone:

LEP Zone	Building envelope specified height at side boundary	Maximum external wall height	Minimum landscaped area
2 (d)	1.8 m	6.5 m	40%

The project achieves none of these prescribed development standards. Variations to these controls can be allowed where it is considered necessary to improve the design, external appearance, or utility of the building. The EA argues that the variation is necessary to improve the 'utility' of the building and realise the "vision of a health precinct". The variation from the standards could be minimised by the removal or reduction of the residential components of the development which are not essential to realising the "vision of a health precinct". The inclusion of an IGA is not ancillary to medical uses which would rely on already prepared meals from take away or small food outlets rather than a large supermarket that sells only food staples and household products.

1.7 Penrith Development Control Plan 2006 (DCP)

The EA argues that the DCP does not contemplate development types proposed by the project and is therefore not relevant. The assertion that the DCP does not apply is incorrect but is further evidence that the development is not a suitable development type for the site and surrounding area.

The project does not comply with the DCP parking requirements. Further there are inconsistencies in its application with 1.85 spaces per residential apartments proposed rather than the 1 space per apartment recommended by the DCP, which is an over supply likely to increase traffic generation, and only 1 space per every 2 serviced apartments proposed rather than the 1 space per apartment recommended by the DCP, which is an undersupply putting pressure on the site and the broader health precinct's parking capacity.

If the project's intended market for the serviced apartments is realised and visiting staff or patient visitors are staying overnight it would be reasonable to assume they would bring a vehicle. Visitors would be unfamiliar with the local public transport and would also not want to carry luggage on buses or trains particularly when walking the 850m from Kingswood Railway Station. The parking provision for the site is considered inadequate not only when assessed against the DCP parking requirements but also for the locality generally and is discussed further below.

2 Land use

The timing of stages of the development is not provided as required under the DGRs.

The project is inconsistent in terms of height with surrounding developments. The EA references a nine-storey (RL 79.80) residential/commercial development recently approved by Penrith City Council at 182-190 Great Western Highway (DA 08/1333) as justification for the proposed building height. This development is located in a commercial zone and located approximately 600m east of the project site. The comparison between the developments is not legitimate given the large distance between the sites and the different zonings. Therefore, this comparison does not justify the proposed height of the project (maximum RL 97.00) which would be 17.2m higher than the Great Western Highway development and in a more sensitive location. Further, the EA argues that the eight-storey component of the building (Stage 1 - Building A) is consistent with the Great Western Highway Development despite there being a 9.4m difference in their maximum building heights.

It is important to note that the proponent for the Great Western Highway development is also the proponent for the project (i.e. Aesthete No.3 Pty Ltd). The proponent recently lodged a modification of DA 08/1333.2 to reduce the number of one-bedroom apartments proposed. The justification for the reduction was that there was not sufficient market within Penrith for one bedroom apartments (Penrith Press 16/11/10). It raises the question of why the proponent believes that this project, which contains a number of one-bedroom apartments, is justified when they have modified another similar development due to lack of demand.

Figure 10 of the EA claims to convey surrounding development heights to the project. This figure is misleading as the surrounding 'white blocks' which appear to represent surrounding building heights that are currently neither approved nor the subject of any development applications. The actual building height of these white blocks is between one and two-storeys.

The EA also uses the expansion of the Nepean District Hospital as justification for the building height. A number of development applications have recently been lodged to expand or redevelop parts of the campus. However, these developments have only involved the construction of buildings no more than three-storeys in height. Apart from the Great Western Highway Development there are no other building heights in the locality above four storeys. These developments cannot therefore be used to justify the proposed 12-storey building.

To put the height of the project in context the maximum building height of the project is Stage 2 in the north-west corner of the site where the building height is 41.5m above ground level. The maximum building height permissible for the zone is 6.5m. Lots directly opposite the project site on the northern side of the Great

Western Highway have a maximum permissible building height of 12m under the Penrith Local Environmental Plan 2010 (LEP 2010). The only area in Penrith LGA where a building height of over 41.5m is permissible is in the City Centre on Belmore Street within the zone B3 – Commercial Core as detailed in the Penrith City Centre Local Environmental Plan 2008.

3 Built form

As argued above the proposed height of the buildings is inappropriate in the context of surrounding developments and the land zonings. It is also inappropriate to locate the residential building in Stage 2 on the corner of two busy roads Parker Avenue and the Great Western Highway. Location of the apartments more towards the centre of site would reduce amenity impacts to residents from traffic noise and vehicle emissions.

The EA states that Stage 2 of the project achieves a two hour solar access standard. However a minimum three hour solar access for at least 70% of apartments is required under the Residential Flat Design Code. The Code specifies that two hour of access may only be acceptable in dense urban areas. Further, the EA does not provide details on solar access for Stage 1 though SEPP 65 and the three hour solar access standards apply.

The EA does not include an analysis of alternative designs (e.g. with alternate layouts or less storeys). It is considered that the current form of the project is unacceptable and an analysis of alternatives should be undertaken.

Though required under the DGRs, photomontages, a materials/finishes sample board and detailed elevations confirming the application of materials and finishes for the Stage 1 development are not provided with the application.

The shadow diagrams included with the application show that the NPH would be overshadowed to most of the north and all of the western sides between 9am and 3pm in both summer and winter. The EA does not consider impacts on overshadowing of the NPH which has a number of patient recovery wards and suites on the northern and western side. Shadow diagrams for the equinox (March 21 and September 21) are not provided as required by the DGRs.

The DGRs require a demonstration of how the Stage 1 development is consistent with the development controls proposed for the Concept Plan. The EA does not specify what these controls are or whether Stage 1 is consistent with them.

4 Social and economic

The Economic Impact Assessment for the project incorrectly states that NPH has expressed interest in up to 5,000m² of commercial space. Healthscope have never expressed such an interest to the proponent. This assertion needs to be removed from the assessment and the findings revised.

The EA is limited in that it only assesses economic impacts and does not assess social impacts on nearby residences and the surrounding community.

5 Transport and Accessibility

A Transport Management Accessibility Plan (TMAP) was produced for the project. The project is to be constructed on land that currently contains the church car park containing 102 spaces. This area currently provides car parking for church visitors as well as for staff of the NPH. The TMAP does not consider the loss of these 102 car park spaces in the parking requirements for the project. The TMAP also only considers a 22.5% reduction of parking below the Road and Traffic Authority's (RTA) requirements (provision of 761 spaces) when the EA states in Table 5 that there is a 28% reduction of parking below the RTA requirements (provision of 711 spaces). The gross floor areas (GFAs) used in Table 2 of the TMAP for traffic generation also appear inconsistent with the GFAs presented for the project in Table 1 of the EA.

The TMAP states that the 22.5% reduction is very significant but suggests that this is acceptable considering the *“special nature of the proposed uses, most of which have a close affinity with the private hospital.”* The NPH does not agree with this statement and there is no evidence of any *“affinity”* between the NPH and the proposed uses. The TMAP states that the NPH has expressed interest in up to 5,000m² of commercial space as a basis for this; however, this is not the case and has never been communicated by Healthscope to the proponent. The acceptability of the level of reduction should therefore be reconsidered. Further, when considering the loss of the 102 spaces in the church car park the project actually provides a 35% parking deficit which is well above the *“typical target reduction of 10-15% in this location”* as specified in the TMAP. The TMAP has not considered whether the existing public transport system can cope with an actual parking deficit of 35%.

The TMAP assumes that public transport would be readily used by residents, workers and customers of the retail uses as *“the site is very accessible to public transport.”* This is inconsistent with the current transport methods of the Nepean Health Precinct which are highly car dependant. Car parking areas on the site are currently at or just below capacity even with 2hr free parking limits applied by Council to reduce car use. This has meant that many cars have begun parking on surrounding local roads. Recently a development application (DA 10/1146 was approved for the expansion of the Oral Health Facility at the Nepean District Hospital on 35-65 Derby Street Kingswood. The assessment report by Penrith City Council to the Sydney West Region Joint Planning Panel on DA 10/1146 stated the following in relation to the Nepean Health Precinct:

“...observations of the operation of the Nepean Hospital site indicate that the existing parking situation is strained, both in terms of the availability of off-street parking and the current restricted parking scheme that has been put in place by Council. This is in part due to the lack of adequate alternative transport methods to the hospital and also due to the more systemic lack of alternative transportation methods within the region.” Penrith City Council 24 February 2011.

Council has clearly stated that the site in fact has a *“lack of adequate alternative transport methods”* (ibid.) to vehicles which is contrary to the assumptions of the EA and TMAP. Given this, the heavy dependence of the project on public transport should be reconsidered and the reduced provision of parking revised.

The TMAP has not considered the impact of traffic travelling along nearby residential roads - Derby Street, Somerset Street and Bringelly Rd. Traffic travelling to the east and from the south will need to travel along these residential roads to access the site. The TMAP should therefore consider the impacts of the project on the Somerset and Great Western Highway intersection (from traffic entering the site from the south and also leaving to the north) and the Bringelly Road/GWH intersection (traffic travelling east from the site).

The TMAP assumes that traffic travelling north would not turn right at the Parker Street/ Great Western Highway intersection and would use other local roads to travel north. If this were the case traffic travelling north would have to take a 2km detour through Penrith City Centre which is highly unlikely not to mention would result in more traffic travelling through the city centre. It is more likely that traffic travelling north would either exit the site onto Parker Street and then turn left onto the Great Western Highway from Derby Street or attempt to access the heavily congested right turning lane at the Great Western Highway/Parker Street intersection creating dangerous traffic situations. The impact on the Great Western Highway/Derby Street intersection should also be assessed for potential traffic travelling north.

The TMAP states that the maintenance of the vehicular access from the site to the Great Western Highway is *“essential to the development to achieve a reasonable distribution of traffic and avoid the need for significant traffic diversions”*. It is important to note that when the church was constructed in 1983 (DA 00/0154) a condition of consent was that a physical barrier be erected on the site to prevent both vehicular and pedestrian access to the Great Western Highway other than the point of access to the existing manse on the site which was a private residence (Condition 26). The church car park can only be accessed from Barber Avenue. The statement that the site currently enjoys vehicular access to the Great Western Highway is therefore misleading as there is actually no vehicular access to any parking facilities within the Nepean Health Precinct onto the Great Western Highway. Additionally when the NPH was constructed in 1997 (DA 960338) a condition of consent was that no vehicular access was to be provided to or from the Great Western Highway. The original design for the NPH

included vehicular access to the Great Western Highway from NPH's northern carpark but was removed by Council "due to its proximity to the [Great Western Highway/Parker Street] intersection" (Penrith City Council 1997). The proposed Great Western Highway access under the project would be approximately 10m closer than what was originally proposed for the NPH and, therefore, should similarly not be allowed due to its proximity to the intersection. Penrith Council has evidently been against providing vehicular access to the highway from the site since 1983 and the provision of it for the project is inconsistent with the long term aims of Council.

The TMAP does not consider vehicular access options for adjoining sites although it is required under the DGRs. The only vehicular access to the NPH is from Barber Avenue which is a narrow road with parking along the entire length of its southern side. The additional vehicles on this road from the project would significantly impact on staff, patients and visitors accessing the site as well as to other areas of the Nepean Health Precinct. The turning paths of vehicles leaving the project site has not been provided particularly when there is car parking provided directly opposite the proposed exit points on Barber Avenue.

The proponent should also assess whether the parking provided in Stage 1 is sufficient to accommodate the proposed components of this stage.

6 Noise and vibration

The acoustic and vibration assessment in the EA is considered to be significantly inadequate and the proponent should be required to undertake further monitoring and assessment against the relevant criteria. The areas of inadequacies are detailed below:

- No assessment has been conducted against the NSW Department of Environment, Climate Change and Water's (DECCW) Interim Construction Noise Guidelines and no construction noise level goals for the project have been provided. This is a significant omission.
- Table 2 in the Acoustic Assessment has attended short term noise monitoring results for Parker Street and Great Western Highway without commentary description about the noise sources and does not define the measurement sample period used to calculate L_{eq9hr} and L_{eq15hr} noise levels.
- Unattended noise monitoring on the Great Western Highway side of the site is provided without reference to adverse wind or rainfall data as required by the DECCW's Industrial Noise Policy and hence it is unclear if this data is valid based on weather exclusion rules. Notwithstanding this critical omission, the data at this relatively noisy location is used to establish noise criteria for residences located in relatively quieter locations on Parker Street. These criteria are not representative of conditions in Parker Street. Additional monitoring must be undertaken, otherwise impacts will be significantly underestimated.
- A full set of unattended noise monitoring results are not included. Only results for Barber Avenue are included in Appendix 1, which was not identified as a noise monitoring location.
- No predicted noise levels have been included from the development and no assessment against criteria for residences or the NPH which is a sensitive location. Hence, there is no information to support the conclusions that this project will not have an impact on its neighbours. This is a significant omission.
- A full set of vibration monitoring results are not included. Only a limited summary of calculated vibration values is provided in Table 6.

Considering the considerable inadequacies of the Acoustic Assessment it is considered that a preferred project report should be prepared by the proponent. The report would include an amended assessment and should be exhibited for public comment.

7 Consultation

It is Healthscope's belief that the proponent did not adequately consult them about the project as required under the DGRs.

The only correspondence between Healthscope and the proponent about the project was in April - May 2010. At this time the proponent informed Healthscope of the intent to develop the land though no plans or detail were provided. It was communicated to Healthscope by email that the proponent was considering incorporating land on which part of the NPH carpark is located within the project. Healthscope informed the proponent by email on 18 May 2010 that they would in principle give consent for the use of part of their land subject to the successful conclusion of a number of matters including the provision of car parking to compensate for the loss of the church car parking and part of the NPH carpark. The proponent informed Healthscope by email on 19 May 2010 that they intended to progress the application without inclusion of NPH land.

No further formal consultation was made between 19 May 2010 and the receipt of the project exhibition notification sent by the Department of Planning on 19 January 2011.

Table 3: Consultation Outcomes in Chapter 4 of the Environmental Assessments for MP09_0197 and MP_0220 states that the following comments were provided from the NPH:

"Strong demand for commercial and medical suites; Supportive of provision complementary land uses that will provide amenity to hospital patrons and staff."

Healthscope maintain that these comments were not provided in relation to the project nor do they represent NPH's actual views. Further, Healthscope do not support the assertion that the project constitutes the *"provision [of] complementary land uses that will provide amenity to hospital patrons and staff"*. Given the issues discussed in this submission Healthscope believe that the project would in fact result in the opposite effect.

The Economic Impact Assessment and TMAP also base a number of their findings on the assumption that the NPH has expressed interest in up to 5,000m² of commercial space. This has never been expressed by Healthscope to the proponent and should be excluded from these assessments and their findings.

Conclusion

Thank you for taking the time to consider this submission. In summary Healthscope is opposed to the project for a number of reasons including traffic and parking impacts, overshadowing, inappropriateness of development height, inadequate noise and vibration impact assessment and lack of adequate consultation by the proponent. Based on these reasons it is considered that the project does not constitute the orderly and economic use and development of land, is not ecologically sustainable development, and does not provide evidence of the provision affordable housing and is therefore in conflict with the objects of the EP&A Act.

Yours sincerely



Rachael Russell
Environmental Planner
rrussell@emgamm.com



Paul Mitchell
Director
pmitchell@emgamm.com