

Mr McKee  
General Manager  
Ku-ring-gai Council  
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Attention: Team Leader- Development Assessment

15 May 2022

Dear Mr McKee

RE: DA0005/22 – Torrens Title subdivision of one lot into two, and construction of a new dwelling house and swimming pool- Heritage Item in a Heritage Conservation Area – 35 Water Street Wahroonga 2076

We are writing to strongly object to DA0005/22 for subdivision of Lot 1 and construction of a new dwelling and ancillaries at Lot 4, 35 Water Street, Wahroonga.

We have reviewed the plans and documents provided and have put together the following summary of our concerns:

- *The proposed subdivision and the construction of a new dwelling will substantially impact on the heritage significance of the site by diminishing the integrity of the site.*
- *The proposed subdivision and construction will result in irreversible changes essential to retaining the heritage significance of the site.*
- *The proposed development will not fit within the established heritage character of the Heritage Conservation Area.*
- *The proposed development results in a substantial impact on biodiversity on the site and impacts on connectivity to adjacent bushland.*

## HERITAGE

The Heritage Impact Statement (HIS) by Weir Phillips Heritage & Planning was prepared with reference to the NSW Heritage Manual update Statements of Heritage Impact (2002) and with reference to Council planning controls and information from the proponent. General reference was made to 'Rippon Grange' 35 Water Street, Wahroonga Conservation Management Plan 2017, HeriCon Consulting 2017.

The CMP contains a comprehensive account of the history and development of the site as well as an assessment of the cultural significance of the place and identifies its important heritage qualities and fabric. It also contains a list of recommended constraints upon any future redevelopment of the site plus a series of conservation policy statements aimed at maintaining and maximising the heritage attributes of the building as part of new uses.

- The findings of the proponent's HIS by Weir Phillips Heritage & Planning are questionable.

A visit to the site was not carried out by the authors due to Covid restrictions. Physical information was based on photos provided by its client.

- The CMP2017 Statement of Significance for the subject site acknowledges the house and its grounds as being significant and should be conserved. The HIS downplays the outstanding contribution of the grounds and its important role complementing the highly significant Rippon Grange building. The landscaped garden setting is intimately related to "Rippon Grange" and a crucial part of the heritage significance of the place. The gardens should not be dissociated by subdivision from the main house.

The CMP Page 54, 4.3.3 Croquet Lawn states:

*One of the most significant features and grand landscape statements on the site is the croquet lawn, sited on a level platform created by the construction of substantial retaining walls on its eastern and southern side.*

- The CMP 2017 also includes a table that grades the component elements of the place against the criteria for the site's significance. The HIS Report acknowledges that elements of moderate and high significance are recommended for restoration and conservation. The CMP recommendation is that the croquet lawn should be repaired, conserved and maintained.

**It is therefore unacceptable that the croquet lawn, designated as being of High significance, should be proposed as the site for construction of the new two storey house with basement car park. This will result in irreversible loss of the croquet lawn designated in the CMP for retention.**

- The sandstone block wall around the croquet lawn is designated as High significance and the retaining wall above the croquet lawn as Moderate. Although proposed for retention in the proponents DA, the significance of these structures will diminish if they cannot be read as an integral part of the croquet lawn.
- The HIS report admits the site of the proposed works on Lot 4 will be visible from Young and Waters Street. The proposed development roof top will also be visible from the Rippon Grange House. In our opinion the conclusion of the HIS that the contemporary building will have acceptable impacts on vistas and views is incorrect. There will be an impact on the Heritage Conservation Area as currently only intermittent views of bushland and grounds around Rippon Grange which are an integral and part of the site are visible from the streets and from Rippon Grange. The bulk of the new construction including a new driveway to Water Street will have a negative impact.

The importance of views are evident in the CMP page 47

*The sporting facilities, flowing grassed banks, and stone stairways and retaining walls between levels provided a generous forecourt to the house, facilitating good views of the mansion through the developing row of gum trees along Young Street (to the east). AND*

*Lawns and gardens – mostly shrubberies and rose beds – flanked the eastern and southern facades of the mansion. These would have enjoyed full eastern and northern sun and commanded good views to the extensive grounds and beyond to the south.*

## BIODIVERSITY

- The CMP 2017 Page 57, 4.3.12 Blue Gums recognises that although there has been substantial clearing of the site areas of the site consist of remnants of Blue Gum High Forest that are original or that have re-seeded. It also states:

*The planted trees along Young St. boundary had become larger, as have regenerated trees in the 'bushland' between them and the retaining wall of the croquet lawn.*

The understorey of the remnants has through neglect become degraded. This however as stated in the CMP does not diminish the significance of the trees. Management of remnant bushland including weeding of these areas would lead to regeneration of natives and from seed bank as is undertaken in other bushland areas of Ku-ring-gai.

- The CMP 2017 Table of significance identifies the remnant canopy trees as of moderate to high significance,

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| 23.....Remnant/regenerated Blue Gums in southern and eastern sectors<br>Blue Gums in these two areas are not cultural plantings but ones which have been present in the site for many decades, some well prior to 1930. The majority are probably regenerated trees from the original seed bank of the original Blue Gum High Forest which once covered the whole area. | Because little of the normal understorey of that BGHF plant community is present, the stands - as a forest entity - are somewhat degraded, although the trees themselves are still significant. |
|---|---|

The current DA threatens the remaining stands of BGHF due to the inevitable change in the water table from excavation, increased hard surfaces, redirection of water due to the construction of the two-storey home, basement garage and new swimming pool.

- Blue Gum High Forest in the Sydney Basin Bioregion is listed as a critically endangered ecological community as, in the opinion of the Scientific Committee, it is facing an extremely high risk of extinction in New South Wales in the immediate future, as determined in accordance with the following criteria as prescribed by the *Threatened Species Conservation Regulation (2002)*.

The application proposes to remove a Sydney Blue Gum and that in order to mitigate the impacts upon the local biodiversity values of the mapped BGHF on the site, that two ecosystem credits will be applied, along with a series of mitigation and management measures due to the ecological sensitivity of the site.

We do not believe these measures will be sufficient or adequate in the long term to counter the impacts of ground water disturbance from the development of the site due to the sloping site and ground water runoff from increased hard surfaces impacting the BGHF stands adjacent to the site.

As such we believe the proposed development needs to be considered as a key threatening process listed in Schedule 3 of the *Threatened Species Conservation Act 1995*. We do not believe this has been adequately considered as part of the Applicant's assessment against section 5A of the EPA Act.

- Rippon Grange was subject to a Land and Environment Court decision in 2007. In relation to the Judgement, *Murlan Consulting Pty Limited v Ku-ring-gai Council and John Williams Neighbourhood Group Inc [2007] NSWLEC 374, 26 June 200*, the Court determined in relation to the Blue Gum High Forest on Rippon Grange.

The Judgment stated:

*“84 Aside from the Final Determination under the Threatened Species Conservation Act 1995, [Note: Exhibit 2A], the loss of trees from the ‘Rippon Grange’ development site cannot and should not be offset or lessened by the fact that there are other neighbouring trees belonging to the BGHF critically endangered community since this development application relates to an application on land in a defined geographic area.*

*85 The attrition of remnant stands of BGHF has already been identified as a major threat to the long-term viability of the community in the Final Determination under the Threatened Species Conservation Act 1995 [Note: Exhibit 2A, p. 2361]. Specifically, the Final Determination identified small-scale clearing associated with residential subdivision as a significant and ongoing threat to the extent of the community. The approach submitted by Mr Galasso, SC, amounts in effect to a ‘death by a thousand cuts’ and is contrary to the concept of inter-generational equity, optimum environmental management and the protection of critically endangered species for future generations.*

*86 We conclude that the remnant bushland on ‘Rippon Grange’ as identified by Smith (2007) [Note: Exhibit 9, Vol 1], is BGHF as per the definition given in the Threatened Species Conservation Act 1995. Consequently, it needs to be afforded appropriate protection and that the assessment of impacts as detailed in the EPA Act 1979 need to be undertaken in advance of any further development application. Therefore the development application must fail.”*

We believe this development application is proposing a further “death by a thousand cuts” and is “contrary to the concept of intergenerational equity, optimum environmental management and the protection of critically endangered species for future generations”.

- The development we believe will have a significant detrimental impact on the BGHF-EEC, the development is a key threatening process and is contrary to cl. 5A(2) of the *Environmental Planning and Assessment Act 1979*.

The Land and Environment Court judgement in 2007 stated ...” *Assessment has to take into account and establish properly the effects of shading, impacts on sub and surface hydrology, root zone disturbance and other edges effects that would ensue from any excavation, underground and above ground development that may occur.”*

In addition to the impacts of excavation, construction, hard surfaces on the hydrology of the area, Shadow diagrams show significant shading by the proposed house to southern section of BGHF.

- The Court judgement warned “*adjoining patches of BGHF are also significant for the maintenance of the critically endangered ecological community as a whole, they cannot be considered in exchange for either offset or as component in any calculation for a development proposal which aims to remove or degrade the BGHF at ‘Rippon Grange’.*”

We believe the proposal will result in the demise of BGHF stands identified in the grounds of Rippon Grange. The development will result in the loss of canopy trees, loss of seed bank, changes in hydrology causing fragmentation of BGHF remnants on Rippon Grange and impacts on the bushland connectivity to adjacent bushland areas namely Turiban Reserve, Clive Evatt Reserve.

- The proponent offers a ‘Streamlined’ Biodiversity Report. It is assumed that the report is based on findings from a 2011 UBM Fauna and Ecological Study provided by the previous owners of 35 Water Street who also applied for subdivision of the estate. It should be noted that in 2011 the proposal was to retain the site at the corner of Young Street and Water Street as part of Lot 1. This results in preserving the most significant cultural and heritage items of Rippon Grange in addition to retaining the view lines from the Rippon Grange building and from the street toward the site. It also assures that core BGHF is retained within the main Lot1. <https://www.yumpu.com/en/document/read/23885994/flora-fauna-survey-ecological-assessment-pdf-5mb>

Whilst the proposal suggests that any loss of BGHF habitat should be ‘offset’ against a restoration and management plan, it is our understanding that the flaw in these programmes are that they are difficult or impossible to monitor plus they are imposed for a limited term of 5 years. The ‘precautionary principle’ should be applied and loss of the BGHF on the proposed subdivision lot, refused.

## CONCLUSION

Rippon Grange and its grounds is an outstanding item of heritage and biodiversity significance in Ku-ring-gai and the Wahroonga Heritage Conservation Area.

The house known as “Rippon Grange”, buildings associated with the house, and the grounds in which they stand, as well as the landscape features within those grounds are significant.

The CMP 2017 states that the croquet lawn and retaining walls should be retained. The cultural plantings of Blue Gum Trees along Young Street are nominated significant trees.

We believe DA 0005/22 is inconsistent with objectives of the CMP and undermines the heritage significance and biodiversity significance of Rippon Grange.

The subdivision of Rippon Grange into a new lot and construction of a two-storey home, basement garage, and swimming pool is not in the public interest and should be refused.

Yours sincerely

Kathy Cowley  
PRESIDENT  
cc Mayor and Councillors