

JOINT REGIONAL PLANNING PANEL (Sydney West Region)

JRPP No	2013SYW034
DA Number	0053/13
Local Government Area	Ku-ring-gai Council
Proposed Development	Sydney Adventist Hospital - Demolish existing structures and construct 1 x 3 storey building and 2 x 4 storey buildings containing offices, central atrium, café and basement parking, landscaping and stormwater works and subdivision - DA0053/13 lodged pursuant to the Minister of Planning Major Project Approval No.07_0166 MOD 4, Concept Plan for Wahroonga Estate (Precinct D: Fox Valley Road East)
Street Address	172 Fox Valley Road, WAHROONGA
Applicant	Seventh-Day Adventist Church (Spd) Limited
Owner	Australasian Conference Association Limited
Number of Submissions	Fifteen for original plans; two for amended plans
Regional Development Criteria (Schedule 4A of the Act)	The development application has a capital investment value of greater than \$20 million
List of all relevant s79C(1)(a) Matters	Wahroonga Estate Concept Plan – Major Project No. 07_0166 SREP (Sydney Harbour Catchment) 2005 SEPP (Infrastructure) 2007 SEPP 55 – Remediation of Land
List of all documents submitted with this report for the panel's consideration	Attachment A - Applicant letter responding to JRPP deferral Attachment B - Ecological statement Attachment C - Amended architectural plan: ground floor Attachment D - Amended architectural plan: site plan Attachment E - Amended landscape plans Attachment F - Biodiversity Management Plan Attachment G - Flora and Fauna Assessment Attachment H - Concept Plan Determination MP07_0166 Attachment I - Concept Plan Determination MP07_0166:Mod4 Attachment J - Assessment report considered by JRPP at the meeting on 16 June 2015 Attachment K - JRPP decision (deferral) at the meeting on 16 June 2015 Attachment L - Without prejudice conditions of consent requested by the JRPP
Recommendation	Refusal
Report by	Joshua Daniel, Executive Assessment Officer

172 FOX VALLEY ROAD, WAHROONGA – SUPPLEMENTARY REPORT

EXECUTIVE SUMMARY

PURPOSE FOR REPORT:	To address the issues raised by the Sydney West Joint Regional Planning Panel (JRPP) at the 16 June 2015 meeting and for the JRPP to determine Development Application No. 0053/13 which seeks consent to demolish existing structures and construct 1 x 3 storey building and 2 x 4 storey buildings containing offices, central atrium, café and basement parking, landscaping and stormwater works and subdivision - pursuant to the Minister of Planning Major Project Approval No. 07_0166 MOD 4, Concept Plan for Wahroonga Estate (Precinct D: Fox Valley Road East), at 172 Fox Valley Road, Wahroonga.
BACKGROUND:	<p>At its meeting on 16 June 2015 the JRPP resolved to defer determining the application to allow the applicant to respond to the following issues raised by the Panel:</p> <ol style="list-style-type: none"><i>1. Provision of a revised ecological statement addressing on a precautions basis the potential loss of five trees No. 66, 65, 63, 49 and 50 prepared by an appropriately qualified party.</i><i>2. Amended plans addressing:</i><ul style="list-style-type: none"><i>• Street activation along Fox Valley Road and the corner of Comenarra Parkway to provide direct public access into the central atrium from the Fox Valley Road/Comenarra Parkway corner entry during business hours. This access is not to be via a private tenancy.</i><i>• The pedestrian path along the western side of building 2 is to be widened to 2.5 m and a single avenue of trees and associated landscape is to be accommodated within the setback zone. These amendments are to be prepared in consultation with Council's landscape officer.</i>
COMMENTS:	The adequacy of the additional information submitted by the applicant to address the issues raised has been assessed.
RECOMMENDATION:	Refusal

Legislative requirements

Zoning	B1 – Neighbourhood Centre
Permissible Under	SEPP (Major Development) 2005
Relevant legislation	Wahroonga Estate Concept Plan (Major Project No. 07_0166) SREP (Sydney Harbour Catchment) 2005 SEPP (Infrastructure) 2007 SEPP 55 – Remediation of Land
Integrated Development	Yes (Rural Fires Act 1997)

PURPOSE FOR REPORT

To address the issues raised by the Sydney West Joint Regional Planning Panel (JRPP) at the 16 June 2015 meeting and for the JRPP to determine Development Application No. 0053/13 which seeks consent to demolish existing structures and construct 1 x 3 storey building and 2 x 4 storey buildings containing offices, central atrium, café and basement parking, landscaping and stormwater works and subdivision - pursuant to the Minister of Planning Major Project Approval No. 07_0166 MOD 4, Concept Plan for Wahroonga Estate (Precinct D: Fox Valley Road East), at 172 Fox Valley Road, Wahroonga.

BACKGROUND

A development assessment report (**Attachment J**) was considered by the JRPP at its meeting of 16 June 2015 where it was resolved to defer the determination pending the submission of additional information by the applicant. The JRPP decision (**Attachment K**) reads as follows:

“The decision of the Panel is to defer determining the application to allow the applicant to respond to the following issues raised by the Panel:

1. *Provision of a revised ecological statement addressing on a precautions basis the potential loss of five trees No. 66, 65, 63, 49 and 50 prepared by an appropriately qualified party.*
2. *Amended plans addressing:*
 - *Street activation along Fox Valley Road and the corner of Comenarra Parkway to provide direct public access into the central atrium from the Fox Valley Road/Comenarra Parkway corner entry during business hours. This access is not to be via a private tenancy.*
 - *The pedestrian path along the western side of building 2 is to be widened to 2.5 m and a single avenue of trees and associated landscape is to be accommodated within the setback zone. These amendments are to be prepared in consultation with Council’s landscape officer.*

This information is to be provided to Council by 16 July 2015.

The Panel requires that a further assessment report be presented addressing the above matters. Should the assessment recommend refusal of the proposed development the Panel requires without prejudice draft conditions

of consent to be included to enable a final decision to be made in the event the Panel determine to approve the proposal”.

COMMENTS

In response to the deferral, the applicant submitted amended plans and additional information which was received on 30 July 2015. The adequacy of this information to address the issues identified by the JRPP is assessed below.

Item 1:

Provision of a revised ecological statement addressing on a precautions basis the potential loss of five trees No. 66, 65, 63, 49 and 50 prepared by an appropriately qualified party.

The applicant submitted a letter titled “*Statement relating to the loss of Tree 49, 50, 66 and potential loss of Tree 63 and 65 (172 Fox Valley Road, Wahroonga)*” prepared by Cumberland Ecology, dated 8 July 2015. Council’s Ecological Assessment Officer has reviewed the additional information as discussed below.

In summary, it is considered that the information provided is unacceptable having regard to the JRPP requirement as it fails to satisfactorily address the potential loss of Trees 63 & 65 and fails to satisfy section 5a of the Environmental Planning & Assessment Act 1979.

Accordingly, it is maintained that the proposed development is not consistent with the Concept Approval and objectives of the E2 Environmental Conservation zone by virtue of the proposed removal of Trees 49, 50 & 66 and impacts upon Trees 63 & 65 as specified in the original assessment report (***Attachment J***). The subject trees are identified as part of the Sydney Turpentine Ironbark Forest (STIF) Endangered Ecological Community.

In particular, the development has not been sited to avoid the STIF endangered ecological community and therefore fails to satisfy the requirement of Condition B1(2) of MOD 4 of the Concept Approval (***Attachment I***), which reads as follows:

Buildings are to be sited to avoid critically / endangered ecological communities, achieve balance between cut and fill, minimise earthworks, provide adequate solar access and minimise impacts on privacy and overshadowing of residential uses within and surrounding the site, in accordance with SEPP 65 (State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development) and the Residential Flat Design Code.

Given the ecological impacts, the proposal is not consistent with the objectives of the E2 Environmental Conservation Zone, which read as follows:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

It is therefore maintained that the application remains unacceptable on ecological grounds.

Item 2:

Amended plans addressing:

- ***Street activation along Fox Valley Road and the corner of Comenarra Parkway to provide direct public access into the central atrium from the Fox Valley Road/Comenarra Parkway corner entry during business hours. This access is not to be via a private tenancy.***
- ***The pedestrian path along the western side of building 2 is to be widened to 2.5 m and a single avenue of trees and associated landscape is to be accommodated within the setback zone. These amendments are to be prepared in consultation with Council's landscape officer.***

The applicant submitted amended plans in response to the above issues regarding street activation, pedestrian path width and landscaping.

Council's Urban Design Consultant, Engineering Assessment Officer and Landscape Assessment Officer have provided comments on the amended plans (see below) and the revised proposal is considered to be acceptable in relation to the above issues.

COMMUNITY CONSULTATION

The amended plans and information submitted by the applicant were not required to be notified pursuant to Council's Notification DCP and no submissions were received.

INTERNAL REFERRALS

Ecology

Council's Ecological Assessment Officer commented on the supplementary information as follows:

Inadequate impact assessment

"The submitted ecological letter does not address the JRPP deferral point 1, which requires provision of a revised ecological statement addressing on a precautions basis the potential loss of five trees No. 66, 65, 63, 49 and 50 prepared by an appropriately qualified party.

The letter discusses the loss of trees from the E2 lands and provides justification on the basis that 31.4ha of native vegetation is to be conserved. No amended impact assessment has been provided which considers the loss of Trees 63 & 65. Instead, the letter from Cumberland Ecology states:

"Cumberland Ecology prepared a Flora and Fauna Assessment for the SPD Commercial Project in October 2014 (ref: 12093RP1). The Flora and Fauna Assessment of the subject site assessed the predicted loss of 3 remnant canopy trees (Trees 49, 50, 66) from the impact zone and the potential loss of a further 2 remnant canopy trees (Trees 63 and 65) that are likely to experience major encroachment on the root zone".

*However, the above statement is not supported by the aforementioned Flora and Fauna Assessment (**Attachment G**), in which the conclusion of the impact assessment for the STIF community states:*

Though the clearing of three individuals of STIF EEC diagnostic canopy species will occur as part of the proposed development, the clearing is not considered to constitute a significant impact. Further, the longer-term decline of two additional trees is not considered likely to constitute a significant impact”.

It is clearly evident that the impact assessment (7-part test) within the Flora and Fauna Assessment only considers the loss of Trees 49, 50, 66 and not the potential loss of Trees 63 & 65 (only the ‘longer-term decline’ of these two trees). An amended impact assessment (7-part test) is required in accordance with Section 5a of the Environmental Planning & Assessment Act 1979 to address point 1 of the JRPP direction to “address on a precautions basis the potential loss” of trees 63 & 65.

Additionally, the Flora and Fauna Assessment does not show the extent of the subject site and fails to calculate an area of loss (ha) of endangered Sydney Turpentine Ironbark Forest as set out in the threatened species assessment guidelines.

Tree removal and impacts inconsistent with Concept Approval and E2 Environmental Conservation zone

Page 2 of the submitted ecological letter states the following:

“As a result of the rezoning, the 66 hectare (ha) estate now includes 31.4 ha of native vegetation that is to be conserved and managed for conservation (zoned E2 Environmental Conservation). The extent of the conservation land was determined following an independent assessment conducted by Sinclair Knight Merz during the Part 3A Concept Plan approval process”.

The removal and impacts to trees within the E2 Environmental Conservation zone is in direct conflict with the rezoning and conservation of the 31.4ha of bushland “that is to be conserved and managed for conservation (zoned E2 Environmental Conservation)”.

Planning comment

As discussed above, the ecological letter, prepared by Cumberland Ecology, and submitted in response to the JRPP decision (and the impact assessment (7-part test) referenced therein, is not considered satisfactory with regard to the terms of the JRPP deferral and Section 5a of the Environmental Planning & Assessment Act 1979 as the information fails to consider the potential loss of the Trees 63 & 65, which form part of Sydney Turpentine Ironbark Forest.

Moreover, the proposed removal of Trees 49, 50 & 66 and impacts upon Trees 63 & 65 within the E2 Conservation Zone is inconsistent with the objectives of the zone and the Wahroonga Estate Redevelopment Biodiversity Management Plan **(Attachment F)**.

The proposed development has not been sited to avoid the STIF endangered ecological community and therefore fails to satisfy the requirement of Condition B1(2) of MOD 4 of the Concept Approval as discussed above.

In summary, it is considered that the information provided does not satisfactorily address the terms of the JRPP deferral and fails to satisfy section 5a of the Environmental Planning & Assessment Act 1979.

Accordingly, the proposed development is not consistent with the Concept Approval and objectives of the E2 Environmental Conservation zone.

Engineering

Council's Development Engineer commented on the supplementary information as follows:

“Subdivision

*The application includes excision of the development site, shown as Lot 202 on the subdivision plan. The subdivision relies on the registration of the subdivision approved under DA0030/12 and Mod0130/13, which is not registered (Council is awaiting additional information prior to endorsing the Subdivision Certificate). Therefore, a deferred commencement is recommended should consent be granted, with the registration of the subdivision approved under DA0030/12 as the Schedule A condition (**without prejudice Condition 1**).*

It is noted that if the subdivision approved under DA0453/12 is registered first, the lots and areas will not be the same as shown on the current subdivision plan. In this case a modification would have to be done to whichever consent was activated last to incorporate the correct lots.

Water management

*The propose rainwater tank volume is 80 cubic metres, and re-use is to be for toilet flushing and irrigation, according to the Civil Design Report. This is satisfactory and consistent with the Hyder Report. The recommended conditions require the MUSIC model to be prepared prior to the issue of the Construction Certificate, to confirm that Council's water quality targets will be met by the proposed treatment train (**without prejudice Condition 22**).*

The proposed dispersal trench is relatively small but no ecological objections have been raised to its size or the likelihood of seepage. A drainage easement over the trench and the depression below it has been shown on the subdivision plan, as they will be located outside the development site upon registration of the subdivision.

Traffic and parking

A Work Place Travel Plan and Transport Access Guide has now been submitted. It can be listed in Condition 1. Previous assessment comments regarding parking and traffic remain relevant such that there are no outstanding issues.

*Roads and Maritime Services have provided a condition in relation to the left in/ left out movements. This is included in the conditions (**without prejudice Condition 30**).*

Waste management

Because the submitted Waste Management Plan states that Council will be collecting waste from the development, an easement for waste collection will be required to be created prior to issue of an Occupation Certificate.

Construction traffic management

*No construction traffic management plan (CTMP) has been submitted. A condition is recommended that a CTMP be submitted to and approved by Council and Roads and Maritime Services prior to commencement of works (**without prejudice Condition 11**).*

Geotechnical investigation

*The report recommends dilapidation reporting of properties to the south and west, that is, on the other side of The Comenarra Parkway and Fox Valley Road. This is included in the conditions (**without prejudice Condition 9**).*

Planning comment

The application is recommended for refusal on ecological grounds as discussed above. Notwithstanding, as required by the JRPP resolution of 16 June 2015, without prejudice conditions have been provided in the event the JRPP determine to approve the application (**Attachment L**).

Landscaping

Council's Landscape Assessment Officer commented on the supplementary information as follows:

"Response to JRPP deferral terms

1. *Provision of a revised ecological statement addressing on a precautions basis the potential loss of five trees No. 66, 65, 63, 49 and 50 prepared by an appropriately qualified party.*

Refer to comments by Council's Ecological Assessment Officer.

2. *Amended plans addressing:*

- *Street activation along Fox Valley Road and the corner of Comenarra Parkway to provide direct public access into the central atrium from the Fox Valley Road/Comenarra Parkway corner entry during business hours. This access is not to be via a private tenancy.*

Refer to comments by Council's Urban Design Consultant.

- *The pedestrian path along the western side of building 2 is to be widened to 2.5 m and a single avenue of trees and associated landscape is to be accommodated within the setback zone. These amendments are to be prepared in consultation with Council's landscape officer.*

The pedestrian path along the western side of Building 2 has been widened to approximately 3 metres from the face of the building. This is considered satisfactory. To provide viable planting setbacks for tree

*establishment, the tree planting is to be reduced to a single row of trees by condition **(without prejudice Condition 21)**".*

Urban Design

Council's Urban Design Consultant commented on the supplementary information as follows:

"Item 1 – N/A to urban design

Item 2 – Supported

The amended documentation has satisfied the JRPP urban design requirements and is acceptable.

Street activation along Fox Valley Road and the corner of The Comenarra Parkway has been achieved through the following amendments.

- 2.1 Direct public access has been provided from the Fox Valley/Comenarra Parkway corner entry that achieves the activation required under The Concept Plan MP07_0166 MOD4 Condition B1 (3).*
- 2.2 The pedestrian path at 3 metres exceeds the minimum 2.5 metres width and will promote pedestrian access from the intersection and past the ground floor 'shop fronts', also meeting Conditions B1 (3) and (4).*
- 2.3 The detailed landscape outcome is outside the scope of urban design but is expected to achieve the desired streetscape character that appears can be accommodated with the amended pathway".*

LIKELY IMPACTS

As indicated in the above assessment, the proposed development continues to have unacceptable ecological impacts and is contrary to the requirements of the Concept Approval.

SUITABILITY OF THE SITE

The site is considered to be suitable for development pursuant to the Concept Approval, however the submitted proposal is unsatisfactory on ecological grounds.

ANY SUBMISSIONS

The amended application was not required to be notified. No submissions were received for this assessment. Submissions received as part of previous notifications of the application have been considered in the original assessment report **(Attachment J)**.

Additional information provided in response to the JRPP deferral has satisfactorily resolved matters raised by the submissions, with the exception of objections relating to impacts to ecology and the E2 Environmental Conservation zone.

PUBLIC INTEREST

Approval of the application in its current form is not considered to be in the public interest.

CONCLUSION

Having regard to the provisions of section 79C of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be satisfactory. Therefore, it is recommended that the application be refused.

RECOMMENDATION

PURSUANT TO SECTION 80(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

THAT the Sydney West Joint Regional Planning Panel, as the consent authority, refuse consent to Development Application No. 0053/13, which seeks consent to demolish existing structures and construct 1 x 3 storey building and 2 x 4 storey buildings containing offices, central atrium, café and basement parking, landscaping and stormwater works and subdivision - pursuant to the Minister of Planning Major Project Approval No.07_0166 MOD 4, Concept Plan for Wahroonga Estate (Precinct D: Fox Valley Road East), at 172 Fox Valley Road, Wahroonga, for the following reasons:

REASONS FOR REFUSAL

1. Ecological impacts upon E2 lands inconsistent with Concept Approval

Particulars:

- (a) The proposed removal of Trees 49, 50 & 66 and impacts upon Trees 63 & 65 within the E2 Conservation Zone are inconsistent with the Concept Approval and zone objectives. The subject trees form part of the Sydney Turpentine Ironbark Forest (STIF) Endangered Ecological Community.
- (b) The development has not been sited to avoid the STIF endangered ecological community and therefore fails to satisfy the requirement of Condition B1(2) of MOD 4 of the Concept Approval, which reads as follows:

Buildings are to be sited to avoid critically / endangered ecological communities, achieve balance between cut and fill, minimise earthworks, provide adequate solar access and minimise impacts on privacy and overshadowing of residential uses within and surrounding the site, in accordance with SEPP 65 (State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development) and the Residential Flat Design Code.

- (c) The development is inconsistent with the Wahroonga Estate Redevelopment Biodiversity Management Plan (required by Condition B4(1) of the Concept Approval), in particular Objective 1 & 2 of Chapter 7 (Vegetation Management Plan), which read as follows:

- 1. *To conserve and rehabilitate vegetation occurring within the E2 zone and to promote local biodiversity values. Particularly STIF which conform to CEECs listed under the EPBC Act;*

2. *To ensure that redevelopment of the Wahroonga Estate does not exacerbate any Key Threatening Process;*

(d) The ecological impacts of the proposal are inconsistent with the objectives of the E2 Environmental Conservation Zone, which read as follows:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

2. Inadequate ecological impact assessment

Particulars:

- (a) The information provided fails to satisfactorily address the potential loss of Trees 63 & 65.
- (b) No amended impact assessment has been provided to address the potential loss of these trees in accordance with section 5a of the Environmental Planning & Assessment Act 1979.
- (c) The Flora and Fauna Assessment does not show the extent of the subject site and fails to calculate an area of loss (ha) of endangered Sydney Turpentine Ironbark Forest as set out in the threatened species assessment guidelines.

Joshua Daniel
Executive Assessment Officer

Richard Kinninmont
Team Leader
Development Assessment

Corrie Swanepoel
Manager Development Assessment

Michael Miocic
Director Development and Regulation

ATTACHMENTS:

Attachment	Description	TRIM No.
A	Applicant letter responding to JRPP deferral	2015/235999
B	Ecological statement	2015/235965
C	Amended architectural plan: ground floor	2015/235973
D	Amended architectural plan: site plan	2015/235976

E	Amended landscape plans	2015/235978
F	Biodiversity management plan	2012/186180
G	Flora and fauna assessment	2014/265674
H	Concept plan determination MP07_0166	2015/119633
I	Concept plan determination MP07_0166: Mod 4	2015/119742
J	Assessment report considered by JRPP at the meeting on 16 June 2015	2015/118112
K	JRPP decision (deferral) at the meeting on 16 June 2015	2015/236024
L	Without prejudice conditions of consent requested by the JRPP	2015/238739