

JOINT REGIONAL PLANNING PANEL (Sydney West)

JRPP No	2013SYW094
DA Number	DA0327/13
Local Government Area	Ku-ring-gai
Proposed Development	Demolition of three dwellings at 742, 746 and 746A Pacific Highway. Construction of a 4 storey hospital with 64 beds. Boundary adjustment between 746 and 748 Pacific Highway. Consolidation of 742, 746 and 746A Pacific Highway into a single allotment.
Street Address	742, 746, 746A and 748 Pacific Highway, Gordon
Lot & DP	Lot A DP350224, Lots 1 and 2 DP 851223 and Lot C DP337904.
Applicant	The Lawson Clinic Pty Ltd
Owner	JSNL Pty Ltd, R I A F Pty Ltd
Number of Submissions	Original proposal: 12 submissions and 1 petition Amended proposal: 4 submissions Second amended proposal: 6 submissions
Regional Development Criteria (Schedule 4A of the Act)	The proposed hospital has a CIV of over \$5 million and falls into the category of 'private infrastructure and community facility'
List of All Relevant s79C(1)(a) Matters	SEPP 55 – Remediation of Land SEPP (Sydney Harbour Catchment) 2005 SEPP (Infrastructure) 2007 Ku-ring-gai LEP (Local Centres) 2012 Ku-ring-gai LEP Local Centres DCP Development Contributions Plan 2010
List all documents submitted with this report for the panel's consideration	Attachment A – Amended clause 4.6 variation request Attachment B – Heritage Consultant comments dated 18 December 2014 Attachment C – Urban Design Consultant comments dated 20 February 2015 Attachment D – Request for exemption from Section 94 Contributions Attachment E – Planning Consultant letter responding to JRPP deferral Attachment F – architectural plans Attachment G – landscape plans Attachment H – stormwater plans Attachment I – assessment report considered by JRPP at the meeting on 11 September 2014 Attachment J – JRPP Record of Deferral
Recommendation	Refusal
Report By	Jonathan Goodwill – Executive Assessment Officer

Assessment Report and Recommendation Cover Sheet

742-746 PACIFIC HIGHWAY, GORDON – SUPPLEMENTARY REPORT

EXECUTIVE SUMMARY

PURPOSE FOR REPORT:	To address the issues raised by the Sydney West Joint Regional Planning Panel (JRPP) at the 11 September 2014 meeting and for the JRPP to determine Development Application No. 0327/13 for the demolition of existing dwellings and construction of a hospital at 742-748 Pacific Highway, Gordon.
BACKGROUND:	<p>An assessment report was considered by the JRPP on 11 September 2014 where the JRPP resolved to defer the determination pending the submission of additional information by the applicant in response to the issues raised relating to:</p> <ul style="list-style-type: none">• isolation of 744 Pacific Highway• setbacks from northern and western boundaries• massing of the western elevation• non compliant building height• excessive retaining wall height• access to open space• car parking• inconsistent plans• stormwater• response to topography• site slope
COMMENTS:	The adequacy of the additional information submitted by the applicant to address the issues raised has been assessed.
RECOMMENDATION:	Refusal

Legislative requirements

Zoning	R4 High Density Residential under Ku-ring-gai LEP (Local Centres) 2013
Permissible Under	Ku-ring-gai LEP (Local Centres) 2012
Relevant legislation	Environmental Planning and Assessment Act 1979 SEPP 55 – Remediation of land SEPP (Sydney Harbour Catchment) 2005 SEPP (Infrastructure) 2007 Ku-ring-gai LEP (Local Centres) 2012 Local Centres DCP Development Contributions Plan 2010
Integrated Development	No

PURPOSE FOR REPORT

To address the issues raised by the Sydney West Joint Regional Planning Panel (JRPP) at the 13 September 2014 meeting and for the JRPP to determine Development Application No. 0327/13 for the demolition of existing dwellings and construction of a hospital at 742-748 Pacific Highway, Gordon.

BACKGROUND

An assessment report was considered by the JRPP at its meeting of 13 September 2014 where it was resolved to defer the determination pending the submission of additional information by the applicant. The JRPP asked the applicant to address the following:

- 1. As a threshold issue, whether or not development of 244 Pacific Hwy is practical, or the site is isolated. If the former applies, concept plans are to be provided showing potential development with and without a right of way. In the case of a right of way, legal advice is to be provided demonstrating that such a right of way will remain available over the long term. If the latter case applies and the property is found to be isolated, appropriate evidence of attempts to acquire the property is to be provided. Any valuation of the property must be based on the correct zoning and permissible development.*
- 2. The need for increased setbacks at the northern and western sides of the main building are to be examined, taking into account the neighbouring heritage item to the north and the visual impact on R2 properties to the west.*
- 3. Measures to mitigate the effects of the long western elevation of the main building.*
- 4. Measures to address or otherwise comply with the excessive height at the northern and southern ends of the main building, taking into account its location at a zone interface.*
- 5. Measures to mitigate the perceived excessive height of retaining walls for driveways to the south of the main building.*

6. *Demonstration that access to the area of open space to the south is practical and safe.*
7. *Demonstration of compliance with the parking requirements of Council or RMS or proper justification for any variations thereto.*
8. *Provision of a completely consistent set of amended plans.*
9. *Address the non-complying stormwater drainage issues as per the council officer's report.*
10. *A building design that better adjusts to the significant north/south gradient of the site, that does not result in unused underbuilding void and reduces the impact on interface properties to the west, potentially by stepping the building into differing levels.*

COMMENTS

In response to the deferral, the applicant submitted amended plans and additional information on 27 November 2014. The adequacy of this information to address the issues identified by the JRPP is discussed below.

1. As a threshold issue, whether or not development of 744 Pacific Highway is practical, or the site is isolated. If the former applies, concept plans are to be provided showing potential development with and without a right of way. In the case of a right of way, legal advice is to be provided demonstrating that such a right of way will remain available over the long term. If the latter case applies and the property is found to be isolated, appropriate evidence of attempts to acquire the property is to be provided. Any valuation of the property must be based on the correct zoning and permissible development.

The applicant maintains their view that 744 Pacific Highway is not an isolated site despite the fact that the site does not comply with the minimum site area and minimum frontage development standards specified in Ku-ring-gai LEP (Local Centres) 2012. The applicant states that a right of way over part of the driveway which currently services 742 Pacific Highway can be created to facilitate future development of the site as a residential flat building and has provided legal advice to support their view that the right of way will remain available over the long term.

The applicant has also submitted a revised valuation report based on the correct zoning which values 744 Pacific Highway at \$1,200,000. Details of attempts made to purchase the site have also been provided. The new valuation of \$1,200,000 is less than the original valuation of \$1,225,000 which was based on the incorrect zoning. A concern identified in the previous assessment report was that the sale price of 742, 746 and 746A Pacific Highway had not been used to form the valuation, the new valuation advises that these sales were not included as, '*...these prices reflect a special value to the purchasing/adjoining owner and cannot be considered as market evidence*'.

One of the properties used as market evidence is 12-14 Cecil Street, Gordon. This site contains two dwelling houses, is zoned R4 High Density Residential and was sold in May 2014 for \$4,109,547 with approved plans for a 37 unit residential flat building development. This site is situated 370 metres to the south-east of the

subject site. The sale price of \$4,109,547 reflects a value of \$110,000 per unit and \$1,160 per square metre of site area. If these figures are applied to 744 Pacific Highway the value is between \$1,180,880 and \$1,320,000, accordingly the valuation of \$1,200,000 for 744 Pacific Highway is considered reasonable.

Included in the applicant's bundle of additional information was an offer to purchase 744 Pacific Highway for \$1,750,000. The applicant states that this information is provided for information only as it is their position that the purchase of 744 Pacific Highway is not required because it is not an isolated site. The owner of 744 Pacific Highway initially rejected this offer, however changed his mind several days later and decided to accept the offer. The Lawson Clinic wrote to the owner's solicitor on 15 December 2014 to discuss the terms of sale. The terms suggested by the Lawson Clinic included a 5% deposit and a 12 months settlement period. The owner rejected these terms and requested a 10% deposit and a 6 week settlement period. On 10 February 2015 the owner advised the Lawson Clinic by letter that he would accept a 10% deposit and a 3 month settlement period. On 3 March 2015 the Lawson Clinic advised Council that they had purchased 744 Pacific Highway but did not intend to incorporate the site into the development at the present time.

Other additional information submitted by the applicant included concept plans for a 3 storey residential flat building development containing 12 dual-aspect apartments with and without a right of way. The concept plans do not address the sloping topography of the site and the size of the basement is excessive, however they do demonstrate that the site can be developed for the purpose of a residential flat building thus achieving the objectives of the R4 High Density Residential zone.

The submission of the new valuation report and concept plans addresses Council's previous concerns regarding the isolation of 744 Pacific Highway.

2. The need for increased setbacks at the northern and western sides of the main building are to be examined, taking into account the neighbouring heritage item to the north and the visual impact on R2 properties to the west.

The setback from the northern boundary has been increased by 500mm to a minimum of 4.027m. The third storey of the building has also been deleted. The increased setback and deletion of the third storey addresses Council's concerns regarding the impact of the building on the heritage significance of the heritage items at 748 Pacific Highway and 750-754 Pacific Highway.

Parts of the western elevation have an increased setback from the boundary and other parts have a reduced setback. The setback of the southern end of the building which has a height of 4 storeys has been reduced from between 6m and 6.58m to 6m. The reduced setback increases the visual impact of the proposal on 3 Bushlands Avenue which is zoned R2.

3. Measures to mitigate the effects of the long western elevation of the main building

The major amendment to the western elevation is the deletion of the third storey over the northern end of the building and adjacent to the eastern side boundary of the dwelling-house at 22 St Johns Avenue. Minor changes to the setback from the western boundary have also been made. The reduction in the height of the northern end of the building significantly reduces the impact of the proposal on the adjacent dwelling-house at 22 St Johns Avenue. The reduced western side setback at the

[illegible][illegible]

4. Measures to address or otherwise comply with the excessive height at the northern and southern ends of the main building, taking into account its location at a zone interface.

An aerial photograph of a modern architectural complex. The most prominent feature is a large, vibrant red roof that flows in a wavy, undulating pattern over the building's footprint. The building itself has a contemporary design with grey and white panels and large windows. It is nestled among lush green trees and manicured lawns. In the foreground, a white, curved architectural element is visible. The sky is a clear, pale blue.

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unnecessary and does not quantify the physical impacts of the non-compliance (i.e. additional overshadowing) on the backyard of the adjacent dwelling house 3 Bushlands Avenue. The failure to adequately address the overshadowing issue is considered a significant concern as the 1.3m height variation will increase the length of the 9am shadow by approximately 3.8m (11%).

The variation request states that the non-compliance achieves a better environmental planning outcome as it minimises the amount of cut and fill. A nexus between cut and fill and the non-compliance with the building height limit cannot be reasonably established as the portion of the building that breaches the height limit is located on the top storey of the building. The Local Centres LEP does not state that a reduction in cut and fill is an objective of the building height development standard.

The site most vulnerable to impacts from the non-compliant building height is 3 Bushlands Avenue. This site is a deep allotment with a relatively narrow width of 15.24 metres. The site contains a split level dwelling and a detached granny flat. The site has not been developed to its potential, significant extensions to the house could be accommodated within the maximum floor space ratio that applies to the site. The backyard of the site is steeply sloping, the ground level of the rear patio is 7 metres lower than the ground level at the rear boundary. The existing two storey dwelling-house at 742 Pacific Highway is visible from the backyard of 3 Bushlands Avenue. The western elevation of the proposed development is approximately 3.9 metres higher than the ridge height of the existing two storey dwelling and 17.9 metres higher than the ground level of the rear patio. The non-compliant portion of the building has a four storey presentation and is located upslope of the backyard of 3 Bushlands Avenue. The non-compliant portion is not set back further from the side boundary than the portions of the building which comply with the height limit. The partial four storey presentation to 3 Bushlands Avenue will have an overbearing impact on the private open space of this dwelling and will unreasonably impact on the amenity of its private open space area. It is not considered unreasonable or unnecessary for the development to comply with the height limit in order to minimise its impact on the backyard of 3 Bushlands Avenue.

5. Measures to mitigate the perceived excessive height of retaining walls for driveways to the south of the main building.

The lower carpark at the southern end of the building is now connected to the upper level carpark by a ramp. The truck turning area which was previously a level platform has been modified by lowering the southern end by 755mm and providing a slope of 1m over a distance of 9.2m. The height of the retaining walls has been reduced and they are stepped in response to the slope. The planter bed between the eastern edge of the ramp/truck turning area and the rear boundary of the dwelling-house at 744 Pacific Highway has a width of between 750mm and 1300mm.

The Local Centres DCP requires a minimum setback of 6m and a landscaped setback of 4m for residential flat buildings. The amendment does not resolve Council's concerns regarding the inadequate landscape setback between the rear of the dwelling-house at 744 Pacific Highway and the 3 storey eastern elevation of the hospital. The proposal will have a significant adverse visual impact on the backyard of the dwelling house at 744 Pacific Highway. The visual impact cannot be adequately alleviated through planting of 3-5m high Lilly Pilly shrubs in a landscaped bed with a width of 750-1300mm.

6. Demonstration that access to the area of open space to the south is practical and safe.

The pathway in the western side setback area of the site provides access to the open space at the south of the site. The applicant states that the main outdoor open space area for the patients is at the northern side of the site between the northern elevation and the northern boundary. The outdoor open space on the northern elevation is more easily accessible than the open space in the southern part of the site.

7. Demonstration of compliance with the parking requirements of Council or RMS or proper justification for any variations thereto.

The amendments to the proposal have increased the number of car spaces from 31 to 35. Council's Team Leader Development Engineering has provided the following advice regarding the applicant's amended proposal:

The documentation does not really add anything new and does not cover some of the matters raised during the JRPP meeting. Matters not addressed which were raised at the meeting include: the mother and baby unit (daily visitors expected), the trainees and medical students associated with the role of the Lawson Clinic as a teaching hospital and the two spaces currently leased from St John's Church.

The report states that Council's DCP car parking codes do not cater for mental health facilities, however the Local Centres LEP definition of "hospital" specifically includes psychiatric care.

The example given in support of the variation is the expansion of South Pacific Private Hospital at 24 Beach Street Curl Curl. This is an existing facility with 41 beds and 10 off-street parking spaces (from the Hospital website). The expansion proposal included 12 to 13 beds and 13 parking spaces, i.e. a nominal increase of one parking space per new bed and a total provision of 23 car spaces. A significant difference between the subject site and the South Pacific Private Hospital is that on street parking is available in Beach Street at and around the frontage of the hospital. On street parking is not available on Pacific Highway.

*A letter at **Attachment A** regarding the low numbers of visitors expected is accepted, as is the statement that patients are not permitted to drive. However, patients need to be dropped off as well as picked up for their home visits later in their stay, which means that on-site parking is required for the carers rather than patients. Further, the Draft Operational Plan, which has not been amended, gives visiting hours for each day.*

Summary:

On the site, post-development, will be:

- 360m² consulting rooms (medical centre) with 11 day staff
- 64 bed hospital with 14 day staff

Parking required under Ku-ring-gai Local Centres DCP is:

*Consulting rooms – 1 space per 25m² of floor area = 14.4 spaces.
Hospital – 1 space per 3 rooms + 1 space per 2 staff = 28.3 spaces.
TOTAL = 43 spaces*

If the ambulance bay and loading bay are included as car spaces, the shortfall is 6 spaces. The provision of 6 additional car spaces would require an additional 130 square metres of basement excavation. The additional car spaces could be accommodated to the north of car spaces 23 and 24. The applicant should amend the plans to provide these additional spaces.

8. Provision of a completely consistent set of amended plans.

The amended plans contain the following inconsistencies:

- The 10,000 litres above ground rainwater tank on the stormwater plan is located in the middle of the pathway in the western side setback
- The landscape plan indicates that a fence 'to architects detail' is to be constructed over the retaining wall on the rear boundary of 744 Pacific Highway. The architectural plans do not contain any details for the fence.
- The sections (DA-04.01 & DA-04.02) do not match the location indicated on the floor plans (DA-02.01 & DA-02.02)
- The outbuilding at the rear of 3 Bushlands Avenue is described as both a garage and a temporary dwelling. The building is a granny flat and has been located on the site since the late 1980s.
- The photomontage shows a row of conifers on the southern side of the northern access handle. The landscape plan shows that planting in the 400mm wide planter bed adjacent to the driveway is a grass (Spreading Flax Lilly). The photomontage does not accurately represent the visual character of the proposed driveway.
- The landscape plan provides a top of wall RL for the fence on the boundary with 3 Bushlands Avenue of 123.35. If this RL is correct the top of the fence is 4.67m higher than the gutter of the dwelling at 3 Bushlands Avenue and approximately 7.6m higher than the floor of the patio at the rear of the house.

9. Address the non-complying stormwater drainage issues as per the council officer's report.

In the amended plans, the proposed easement has been relocated from 1A Bushlands Avenue to 738 Pacific Highway. A right angle bend in the stormwater pipe is no longer required. The owner of 738 Pacific Highway has provided a letter stating that they are willing to grant a drainage easement over the property.

The previously identified concerns regarding the proposed rainwater storage tank have not been adequately addressed. The rainwater tank is still shown on the landscape plan as a slimline tank which is not available in the 10,000 litre size proposed. The footpath on the architectural plans is located in the same position as the above ground rainwater tank. A below-ground tank could be provided under the driveway and upstream of the detention tank. This could be conditioned. The proposed detention tank protrudes beyond the southern edge of the lower carpark and conflicts with the proposed stepped batter. The detention tank could be redesigned so that it is located wholly under the carpark. This could be conditioned.

10. A building design that better adjusts to the significant north/south gradient of the site, that does not result in unused underbuilding void and reduces the impact on interface properties to the west, potentially by stepping the building into differing levels.

The void at the southern end of the building has been deleted by enclosing the space, excavating the ground under the building and using the space as a carpark. The floor level of the floor over the void space which was previously known as the basement level has been raised 150mm to RL 124.5 and is now known as the lower ground floor level. Other changes include deleting one car space in the lower carpark and reducing the setback of the lower carpark from the western side boundary from 15.6 metres to 6 metres. The height of the western elevation has not been reduced.

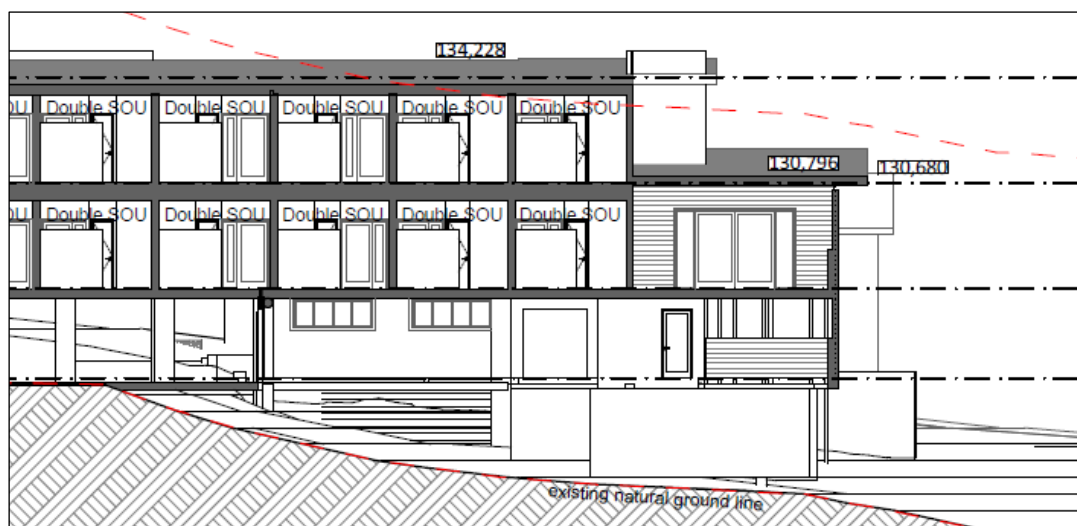


Figure 4 - original proposal

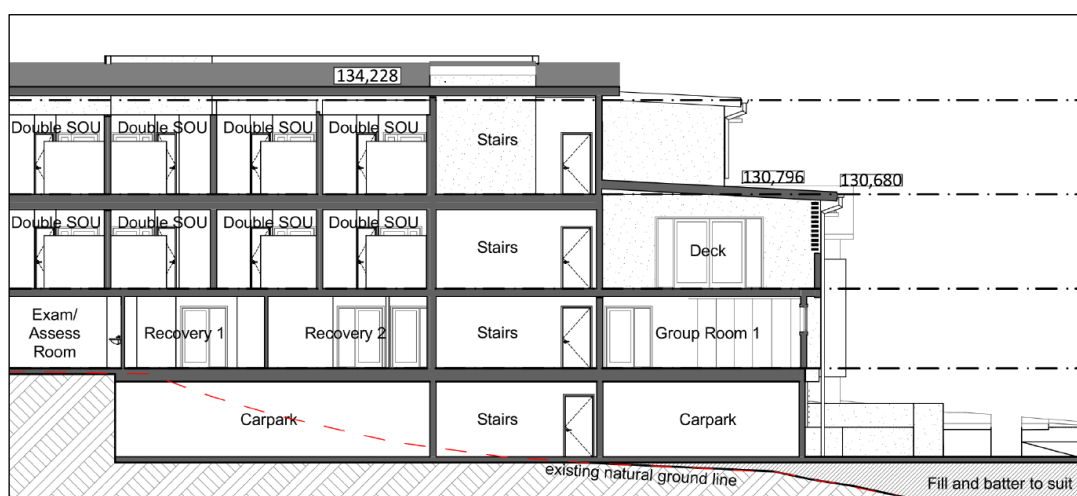


Figure 5 - amended proposal

CONSULTATION – COMMUNITY

The amended plans and information submitted by the applicant were notified to owners of neighbouring properties. Submissions from the following were received:

1. Jingchun Gao – 1 Bushlands Avenue, Gordon
2. Gerald Rousseau – 5 Bushlands Avenue, Gordon
3. In Shik Hong – 22 St Johns Avenue, Gordon
4. Chao-Hiang Wang – 3 Bushlands Avenue, Gordon
5. Michael Coates - 15 Bushlands Avenue, Gordon
6. Michael Kocsard – 744 Pacific Highway, Gordon

The following issues were raised in the submissions:

Security issues

The likelihood of hospital patients presenting a security risk to neighbours is considered to be low. The hospital is proposed to be staffed at all times and the proposed use is not a correctional facility.

Overshadowing

The previously identified concerns with the overshadowing diagrams have not been fully addressed. The outstanding concerns relate to the plans not being based on survey data and a failure to provide plans which accurately shown the different between existing and proposed shadows.

Inadequate outdoor recreation space for patients

The planning controls which apply to the development do not include an outdoor recreation space requirement for hospitals.

The fence between the development site and 3 Bushlands Avenue is inadequate

The proposal includes a new fence adjacent to the boundary with 3 Bushlands Avenue. The landscape plan provides a top of wall RL for the fence of 123.35. If this RL is correct the top of the fence is 4.67m higher than the gutter of the dwelling at 3 Bushlands Avenue and approximately 7.6m higher than the floor of the patio at the rear of the house. The height of the proposed fence is excessive.

The hospital is located on a high part of the hill, is close to neighbours and will result in traffic, noise, light and privacy issues

The topography of the site exacerbates the impacts arising from the non-compliance with the development standard for maximum building height. The height of the building does not comply with the height limit and the justification for the variation advanced by the applicant is not supported.

Increased potential for traffic or pedestrian accidents on the Pacific Highway

The application was referred to Roads and Maritime Services for comment, who advised that the proposal was acceptable in this regard, subject to conditions.

How an ambulance or fire truck would negotiate entry and exit to the facility in the intersection of Pacific Highway and St John Avenue were to be gridlocked

This concern relates to the public road network and could apply to any building located near an intersection on a busy road. The public road network is not the responsibility of the applicant and this concern is not a reason to refuse the application.

Excessive bulk

For the reasons discussed elsewhere in the report, it is considered that the design of the western elevation does not successfully break down the building mass and has

an unacceptable impact on adjacent properties which are zoned R2 Low Density Residential.

The acquisition of 744 Pacific Highway would allow for the relocation of the building further away from residential neighbours

The acquisition of 744 Pacific Highway may allow for an alternative design which provides greater boundary setbacks and reduces impacts on neighbouring properties. The applicant has indicated that they have purchased 744 Pacific Highway but at the present time they have no intention of incorporating the site into the proposed development.

The proposal is incompatible with residential zoning

The applicant's proposed development is permissible under the provisions of SEPP (Infrastructure) 2007, however it is considered that the development fails to appropriately manage the change in character and bulk/scale at the zone interface with adjacent R2 Low Density Residential zoned land.

Inadequate car parking

The number of car spaces provided for the development does not comply with the requirements of the Local Centres DCP. The variation to the parking controls has not been adequately justified and is not supported.

CONSULTATION – WITHIN COUNCIL

Heritage

Council's Heritage Consultant reviewed the amended plans and advised that the previous concerns regarding the impact of the development on the heritage significance of the adjacent church and Windsor House have been addressed. The full comments of Council's Heritage Consultant are included as **Attachment B**.

Urban Design

Council's Urban Design Consultant reviewed the amended plans and advised that the setback from the northern boundary should be increased to a minimum of 6m as this would reduce the impact of the proposal on the adjacent site 750-754 Pacific Highway which is zoned R4 High Density Residential and contains buildings that could be demolished to make way for a residential flat building development. Council staff are of the opinion that a 6m setback from the northern boundary is not required as the northern elevation of the building is two storeys in height and any future development at 750-754 Pacific Highway would need to be designed to address issues of privacy and overlooking. It is also considered that the southern elevation of a future residential flat building development at 750-754 Pacific Highway is unlikely to be the optimal location for balconies and living room windows. An increased setback of 6m would also move the building further to the south and result in greater impacts on 1 & 3 Bushlands Avenue.

Council's Urban Design Consultant is also of the opinion that the variation to the 11.5 metres height limit may be supported on urban design grounds if a setback of 6 metres is provided from the northern boundary. The reasons for this opinion include the overall design improvements, the overall reduced impact to the adjacent R2 Low Density Residential zoned properties, and that the area of non-compliance being

confined. From a town planning perspective, the variation to the building height development standard is not supported as the impacts on 3 Bushlands Avenue are unacceptable and the applicant has not demonstrated that compliance with the standard is unreasonable or unnecessary. It is also noted that a variation to a development standard must be considered in accordance with the provisions of clause 4.6 and issues such as unrelated design considerations and overall improvements to the design are not relevant considerations.

The full comments of Council's Urban Design Consultant are included in **Attachment C**.

Landscape

Council's Landscape Assessment Officer commented on the amended proposal as follows:

Deep soil landscape area (Part 7A.4 Volume A Ku-ring-gai Local Centres DCP)

The site area for the hospital is 2908m² (excluding access handles). For a residential flat building 50% of the site area (1454m²) is required to be deep soil landscaping. For the proposed hospital 35% of the site area (1038m²) has been provided as deep soil landscaping.

The proposal provides less than the amount of deep soil landscape area required under the zoning. The majority of the deep soil will be located south of 742 Pacific Highway and in the front setback of 748 Pacific Highway.

On merit, the development should provide consolidated deep soil zones through careful planning and design, to provide landscaped areas that are appropriate to the scale and context of the development (Part 7A.4 Volume A Ku-ring-gai (Local Centres)DCP). It would appear that the inclusion of 742 Pacific Highway has not translated into significantly improved deep soil areas between the heritage item, however there is an acceptable deep soil landscape provision adjacent to the neighbouring dwelling at 22 St Johns Avenue.

The building setbacks to the northern boundary provide greater deep soil zones including canopy trees proposed of a similar scale to the proposed building.

The proposal provides a vertical garden between the proposed building and the heritage item at 748 Pacific Highway. Details have not been provided, however it is assumed that the height of the green wall is approximately 3 metres as shown on the rendering (DA-05.09/DA2, Elevation).

Tree replenishment (Part 7A.4 Volume A Ku-ring-gai Local CentresDCP)

*The proposal should support a minimum number of 16 trees. The proposed of *Pyrus calleryana* 'Capital' are not canopy trees. Without these trees the proposal would not comply with the minimum canopy tree requirement. Additional canopy trees within side setbacks could be conditioned.*

Tree Impacts (Clause 5.9 KLEP(Local Centres))

An arborist report, prepared by Landscape Matrix, dated 10/07/13, has been submitted.

Trees to be removed

Tree 1/ Pittosporum undulatum (Sweet Pittosporum). This tree is located on the front boundary of 748 Pacific Highway, within the heritage item. There is no objection to the tree's removal. Tree 1 identified on the landscape plan as located on the nature reserve is a mature Melaleuca quinquinervia (Broad-leaved Paperbark) that should be retained and protected.

Tree 2/ Pittosporum undulatum (Sweet Pittosporum). This tree is located on the front boundary of 748 Pacific Highway, within the heritage item. The tree exhibits poor health and vigour with high levels of dieback. There is no objection to the tree's removal.

Tree 3/ Grevillea robusta (Silky Oak). This tree is located on the southern boundary of 748 Pacific Highway, within the heritage item. The tree exhibits poor health and vigour with high levels of dieback. There is no objection to the tree's removal.

Tree 4/ Jacaranda mimosifolia (Jacaranda). This tree is located on the southern boundary of the driveway to 746A Pacific Highway. The tree is in good health, however its form is poor due to past pruning. There is no objection to the tree's removal.

Tree 5/ Cupressus macrocarpa 'Brunniana' (Golden Cypress). This tree is located on the southern boundary at the driveway entrance to 746 Pacific Highway. The multi trunked tree is a good specimen and is visually prominent. It has been assessed in the arborist report as having high landscape significance. The tree would have to be removed for construction access. As there is no other means of entering the rear of the site, there is no objection to the tree's removal.

Tree 6/ Jacaranda mimosifolia (Jacaranda). This tree is located at the driveway entrance to 746 Pacific Highway. The tree is a poor specimen having been severely pruned in the past. There is no objection to the tree's removal.

Tree 7/ Jacaranda mimosifolia (Jacaranda.) This tree is located at the driveway entrance to 746 Pacific Highway. The tree is a poor specimen having been severely pruned in the past. There is no objection to the tree's removal.

Tree 8/ Liquidambar styraciflua (Liquidambar). This tree is located within the rear yard of the heritage item at 748 Pacific Highway, adjacent to the driveway of 746A Pacific Highway. The tree has poor form due to being suppressed by a tree that has recently been removed. There is no objection to the tree's removal.

Trees 10-15/ Jacaranda mimosifolia (Jacaranda). These trees are located along the southern boundary of 746 Pacific Highway. The trees have all been poorly pruned in the past. There is no objection to the removal of these trees.

Tree 17/ Robinia pseudoacacia "Frisia" (Black Locust). This tree is located within the rear setback of 746A Pacific Highway. The tree exhibits poor health and is a poor specimen. There is no objection to the tree's removal.

Tree 19/ Jacaranda mimosifolia (Jacaranda). This tree is located along the eastern boundary of 746A Pacific Highway. The tree has poor form due to being suppressed by a tree that has recently been removed. There is no objection to the tree's removal.

Tree 22/ Quercus robur (English Oak). This tree is located along the northern boundary of 746A Pacific Highway. The tree is a poor specimen and approval to remove the tree is not required. There is no objection to the tree's removal.

Trees 23-24/ Archontophoenix alexandrae (Alexandra Palm). This group of small palms are located at the northeast corner of 746A Pacific Highway. The trees are to be removed to accommodate the building footprint. There is no objection to the removal of these trees.

Tree 25/ Archontophoenix cunninghamiana (Bangalow Palm). This palm is not identified on the landscape plan or the arborist's tree location plan. There is no objection to the tree's removal.

Tree 26/Cupressus torulosa (Bhutan Cypress). This tree is located on the southern boundary of 742 Pacific Highway. The tree is of moderate health and poor vigour. There is no objection to the tree's removal.

Trees to be retained

Tree 9/ Syagrus romanzoffiana (Cocos Palm). This tree is located on the southern side of the existing driveway, within the adjoining property. The proposed driveway widening and retaining wall will encroach within the tree protection zone. The proposed retaining wall construction will be likely to have an adverse impact on this tree. Works to mitigate the impact on this tree could be conditioned.

Tree 20/ Magnolia x soulangiana (Magnolia). This tree is located on the western boundary of the site. The proposed path is located 1.6m from the tree. The tree is low branching and it is unlikely that it would survive the construction impacts of the proposed works. The impact is considered acceptable.

Tree 21/ Tiboucina granulosa (Purple Glory Tree). This tree is located on the northwest corner of 746A Pacific Highway. The tree provides amenity to the adjoining heritage conservation area. The proposed paved area off the staff room is 3.5m from the tree. The impact is considered acceptable.

Landscape plan

Front setback (7A.1 Volume A Ku-ring-gai Local Centres DCP)

The proposal will remove several trees and landscaping at the driveway entrance to the proposed development in order to widen the driveway from 3 metres to 6 metres. Additional trees located within the heritage item are to be removed to enable construction access to the site.

Two canopy trees and additional shrub planting are proposed to be planted within the heritage item on the northern corner of the driveway entrance.

Side setback (7A.1 Volume A Ku-ring-gai Local Centres DCP)

The ramp behind the rear boundary of 744 Pacific Highway will compromise the landscape setting and neighbouring amenity and is not supported. The proposed planter is insufficient to provide effective planting that enable the development to achieve the landscape objectives required by the zoning.

Driveway (1.2 Volume C Ku-ring-gai Local Centres DCP)

*The proposed widening of the central driveway will require removal of the existing trees and hedge planting along the driveway. The proposal includes on the southern side of the driveway a 600mm wide planting bed of groundcover planting, *Dianella revoluta* 'Little Rev' (Spreading Flax Lily) that grows to about 300mm. To provide landscape amenity, additional hedge planting that can attain approximately 1.5 to 2 metres in height should be included. This could be conditioned.*

Cut and fill (Part 1.2 Volume C Ku-ring-gai Local Centres DCP)

The proposed driveway will require up to approximately 600mm excavation by the end of the access handle this is not shown on the Excavation Plan, dwg DA-01.13/DA4. The proposed excavation within 2 metres of the northern boundary is not supported. This could be conditioned. The lower carpark will require filling to 2 metres and the soil is proposed to be retained by a planted batter. The batter is considered of excessive grade and a terraced retaining structure is preferable to ensure viable planting beds adjacent to the western boundary. This could be conditioned.

Neighbour amenity (Part 1.2 Volume C Ku-ring-gai Local Centres DCP)

The site falls away to the west providing views across the adjoining properties and distant views. Existing screen planting located along the western boundary should be retained where possible including along the northwest corner of the site. This could be conditioned.

Heritage impacts - Development in the vicinity of a heritage item (7.3 Volume B Ku-ring-gai Local Centres DCP)

Impacts on setting of the existing Lawson Clinic

The enhancement of views of the heritage item from the south-east has been considered in the landscape design.

The rear of the existing Lawson Clinic is an existing area of carpark. The proposed lot reconfiguration will reduce the area along the rear boundary of the heritage item by 95.7m². This area currently provides 1.5m landscape setback to the carpark. Despite a larger development, the proposal provides minimal area for common landscape between the rear carpark and the proposed building. A narrow planting bed is proposed in association with a pergola to which climbers are to be fixed. An area of planting proposed at the northern and southern end of the carpark, though not directly behind the heritage building, will provide a landscape buffer to the northeast and southeast corner of the proposed building.

St John's church and cemetery and the Heritage Conservation Area

The existing church buildings, cemetery and columbarium are in close proximity to the proposed development. The hall and the weatherboard building have little outlook to the site however they will be viewed with a backdrop of the proposed building. The view of the building is more prominent from the south-east corner of the cemetery and the southern end of the columbarium.

The proposed assorted planting along the northern boundary of shrubs is consistent with the horticultural style of the adjoining item. Three additional medium sized deciduous trees should be provided along this boundary. This could be conditioned.

Stormwater plan

The proposed OSD tank has been relocated to within the carpark at the southern end of the building. It would be preferable if the tank could be located entirely within the carpark pavement as opposed to encroaching within areas of deep soil and planters. The proposed easement for Hydraulic works within 742 and 738 Pacific Highway is likely to impact existing trees. An arborist report recommending thrust boring through this area has been provided. This could be conditioned.

Engineering

Council's Team Leader Engineering Assessment commented on the amended proposal as follows:

Water management

The owner of 738 Pacific Highway has provided a letter stating that they are willing to grant a drainage easement. If the application were to be approved, a deferred commencement consent would be recommended, with the registration of the easement as Schedule A.

The Siteworks and Drainage Plan Drawing DAC02 is the only drawing in the set which has been amended. A Section 1-1 is shown on plan, but there is no Section drawing. A Section drawing would address concerns about the works on the boundary with 744 Pacific Highway and the available width for the driveway. Sections were previously requested but have not been provided.

The rainwater tank is still shown on the landscape plan as a slimline tank – these are not available in 10,000 litre size. The footpath will need to be diverted around a tank with a diameter of between 2 to 3 metres. Alternatively, the rainwater tank could be located underneath the driveway and upstream of the detention tank. This could be conditioned.

There seems no reason why the detention tank has to protrude beyond the driveway. The landscape plan shows a stepped batter to the south of the carpark but the levels conflict with the tank configuration. It could be re-oriented to be completely under the driveway. This could be conditioned.

Traffic and parking

The documentation does not really add anything new and does not cover some of the matters raised during the JRPP meeting. Matters not addressed which were raised at the meeting include: the mother and baby unit (daily visitors expected), the trainees and medical students associated with the role of the Lawson Clinic as a teaching hospital and the two spaces currently leased from St John's Church.

The report states that Council's DCP car parking codes do not cater for mental health facilities, however the Local Centres LEP definition of "hospital" specifically includes psychiatric care.

The example given in support of the proposed variation is the expansion of South Pacific Private Hospital. This is an existing facility with 41 beds and 10 off-street parking spaces (from the Hospital website). The expansion proposal included 12 to 13 beds and 13 parking spaces, i.e. a nominal increase of one parking space per new bed and a total provision of 23 car spaces. A significant difference between the subject site and the South Pacific Private Hospital is that on street parking is available in Beach Street at and around the frontage of the hospital. On street parking is not available on the Pacific Highway.

*A letter at **Attachment A** regarding the low numbers of visitors expected is accepted, as is the statement that patients are not permitted to drive. However, patients need to be dropped off as well as picked up for their home visits later in their stay, which means that on-site parking is required for the carers rather than patients. Further, the Draft Operational Plan, which has not been amended, gives visiting hours for each day.*

Summary:

On the site, post-development, will be:

- 360m² consulting rooms (medical centre) with 11 day staff
- 64 bed hospital with 14 day staff

Parking required under Ku-ring-gai Local Centres DCP is:

*Consulting rooms – 1 space per 25m² of floor area = 14.4 spaces.
Hospital – 1 space per 3 rooms + 1 space per 2 staff = 28.3 spaces.
TOTAL = 43 spaces*

If the ambulance bay and loading bay are included as car spaces the shortfall is 6 spaces. The provision of 6 additional car spaces would require an additional 130 square metres of basement excavation. The additional car spaces could be accommodated to the north of car spaces 23 and 24. The applicant should amend the plans to provide these additional spaces.

LIKELY IMPACTS

The likely impacts of the development have been considered within this report and it is concluded that further amendments are required to the design before consent can be granted. To ameliorate the unacceptable impacts of the development the following amendments should be considered:

- cut back the southern end of the first floor level to ensure compliance with the 11.5m building height development standard
- increase the size of the basement carpark to allow for six additional car spaces
- retain the existing driveway in the southern access handle as a one way entrance driveway
- provide a narrower exit driveway in the northern access handle with an appropriate landscape treatment
- change the two way ramp between the southern carpark and the northern carpark to a one way ramp to allow for an increased landscape setback from the rear boundary of 744 Pacific Highway and taller and denser screening vegetation

SUITABILITY OF THE SITE

The site is zoned R4 High Density Residential and the proposed is permissible under the provisions of SEPP (Infrastructure) 2007. The development site is constrained through it sharing a boundary with R2 Low Density Residential Zoned land and heritage items on the site (748 Pacific Highway) and adjacent sites (750-754 Pacific Highway). The height of the elevation which faces the R2 Low Density Residential zoned land does not comply with the building height development standard. The proposed development has unsatisfactory impacts on the R2 Low Density Residential Zoned land and is considered unacceptable.

ANY SUBMISSIONS

The submissions have been considered in the above assessment.

PUBLIC INTEREST

The public interest is best served by the consistent application of the requirements of the relevant planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised. The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be unacceptable. On this basis, the proposal is not considered to be in the public interest.

OTHER RELEVANT MATTERS

Section 94 Contributions

The assessment report previously considered by the JRPP recommended that the applicant's request for an exemption from the payment of section 94 contributions not be granted. The applicable S94 contribution for this development would be \$451,987.86. The applicant has submitted further information regarding their request for a full exemption from the payment of any section 94 contributions (**Attachment D** pages 8-10). The information acknowledges that the hospital will operate on a for profit basis. It is now proposed to donate the use of the inpatient facility to the UNSW for teaching and research purposes.

Section 1.26 of the contributions plans provides exemptions in the following cases:

1. *Developments which provide a distinct community benefit on a not-for-profit basis including but not necessarily limited to: fire stations, police stations or police shopfronts, ambulance stations, rescue services, State Emergency Service (SES) and Rural Fire Services (RFS) operational bases and the like;*
2. *Development by or for non-profit or cooperative organisations which provide a distinct community benefit including but not limited to: the provision of childcare services (especially for under-2s and/or special needs children) including kindergartens and pre-schools; outreach services, community services or the like, on a cooperative or not-for-profit basis;*
3. *Development which involves an application solely for the internal conversion of one existing single terrace style shop-top type dwelling (typically located in the town centres along the Pacific Highway) or a freestanding single dwelling which has recently been used for commercial purposes back to residential*

- use. This potential exemption will not apply where that conversion occurs as part of a larger redevelopment which must be considered as a whole; and/or*
4. *Development where it can be demonstrated to the satisfaction of Council that in any particular category of contribution that the development, by the particular nature of its use, in the unique circumstances of the case, does not generate a demand for, or derive benefit from, some or any of the types of facilities and amenities to be provided. Note: Given that the grant of any such exemption, full or partial, may be considered to create a precedent or confer a pecuniary advantage on one developer over others, such an exemption is not likely to be granted unless there are absolute meritorious circumstances that would distinguish the case of the subject development from any other. All such arguments will be put before Council for formal determination and the full text of any such submission will be publicly available on Council's website for public scrutiny.*

The proposed use does not satisfy any of the categories for exemption under section 1.26 of the contributions plans as it is intended to operate the facility on a for profit basis and the hospital will generate a demand for and benefit from the facilities and amenities provided by the contributions plan (i.e. new roads and road upgrades). Accordingly, it is not recommended that an exemption from the payment of section 94 contributions be granted.

CONCLUSION

This application has been assessed under the heads of consideration of Section 79C of the *Environmental Planning and Assessment Act* 1979 and all relevant instruments and policies. The proposal does not achieve compliance with the requirements of the relevant instruments and policies and refusal is recommended.

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 development consent to Development Application No. 0327/13 for the following reasons:

1. Unsatisfactory impacts on land zoned R2 Low Density Residential and failure to achieve compatibility with the surrounding land uses

Particulars

- The proportion of the hospital site that is deep soil landscaping is significantly less than adjacent properties. The landscape character of the development is inconsistent and incompatible with the existing and likely future landscape character of the locality.
- The western elevation of the development is of excessive height and has an unacceptable visual impact on the adjacent R2 Low Density Residential zoned land.
- The proposed driveway between the eastern elevation of the hospital and the rear boundary of 744 Pacific Highway has an inadequate side setback of

1.5m from the rear boundary of the dwelling-house at 744 Pacific Highway. The setback of 1.5m will not provide sufficient area for landscape screening of the hospital building.

- The proposed driveway in the northern access handle occupies the entire width of the northern access handle and there is inadequate space for landscaping which would soften the built form.

2. The clause 4.6 variation to the development standard for building height is not well founded.

Particulars

- The physical impacts of the non-compliant building height have not been quantified and justified, i.e. additional overshadowing to the private open space of 3 Bushlands Avenue.
- The non-compliant building height, inadequate setbacks, inadequate landscape space and 4 storey presentation of the western elevation will have an unacceptable visual impact on the private open space of 3 Bushlands Avenue.
- It has not been demonstrated that compliance with the development standard is unreasonable or unnecessary.
- It has not been demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.
- It has not been demonstrated that the non-compliance with the development standard achieves an better environmental planning outcome.

3. Inadequate car parking

Particulars

- The number of car spaces provided for the development does not comply with the requirements of Ku-ring-gai Local Centres DCP and the RTA (now RMS) Guide to Traffic Generating Developments.
- The justification for the variation to the parking controls is not supported by the review of similar uses.
- A reduction in the number of car spaces is not consistent with the promotion of visitation described in the original application documentation and that the existing Lawson Clinic premises leases two car spaces in an adjacent site.

4. Inaccurate and inconsistent plans

Particulars

- The 10,000 litres above ground rainwater tank on the stormwater plan is located in the middle of the pathway in the western side setback. The 10,000 litre tank is specified as being of a 'slimline' design. Slimline tanks are not available in 10,000 litres size.
- The landscape plan indicates that a fence 'to architects detail' is to be constructed over the retaining wall on the rear boundary of 744 Pacific Highway. The architectural plans do not contain any details for the fence.
- The sections do not match the locations indicated on the floor plans

- The plans describe the outbuilding at the rear of 3 Bushlands Avenue as both a garage and a temporary dwelling. The building is a granny flat and has been located on the site since the late 1980s.
- The photomontage shows a row of conifers on the southern side of the northern access handle. The landscape plan shows that planting in the 400mm wide planter bed adjacent to the driveway is a grass (Spreading Flax Lilly). The photomontage does not accurately represent the visual character of the proposed driveway.
- The landscape plan provides a top of wall RL for the fence on the boundary with 3 Bushlands Avenue of 123.35. If this RL is correct the top of the fence is 4.67m higher than the gutter of the dwelling at 3 Bushlands Avenue and approximately 7.6m higher than the floor of the patio at the rear of the house.

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ATTACHMENTS:

Attachment	Description	TRIM No.
A	Revised clause 4.6 variation request	2014/302481
B	Heritage Consultant comments dated 18 December 2014	2015/056748
C	Urban Design Consultant comments dated 20 February 2015	2015/044719
D	Planning Consultant letter responding to JRPP deferral	2014/302472
E	architectural plans	2014/302861
F	landscape plans	2014/302864
G	stormwater plans	2014/302872
H	assessment report considered by JRPP at the meeting on 11 September 2014	2014/201781
I	JRPP Record of Deferral	2014/239840