PLANNING
BUILDING
HERITAGE
URBAN DESIGN

CITY PLAN SERVICES

2 April 2015

Our Ref: 12-094

The General Manager
Ku-ring-gai Council
818 Pacific Highway
GORDON NSW 2072

Dear Sir, cc: Sydney West JRPP

RE: 2013SYW094 - DA NO. 03027/13 – 742, 746, 746A & 748 PACIFIC HIGHWAY, GORDON, LAWSON CLINIC - PROPONENT'S RESPONSE TO COUNCIL'S RECOMMENDATION

We are writing with regard to the above Development Application (DA) which is scheduled for a JRPP public determination meeting on 8 April 2015. Council's latest Supplementary Assessment Report and recommendation is for refusal of the application. This letter provides justification for the proposal and demonstrates that the proposal is worthy of approval and is of merit.

Please find enclosed the applicants response to the issues raised in the Supplementary Assessment Report (dated 27 March 2015) for the Development Application (DA). Each of the issues raised in the Report are addressed in detail as indicated below.

1. Issues Raised by the JRPP

A Council's assessment report was considered by the JRPP at its meeting on 13 September 2014 where it was resolved to defer the determination pending the submission of additional information by the applicant. The applicant submitted the amended design and supporting documentation to reflect the JRPP's record of deferral dated 24 September 2014 which includes the following points:

Issues Raised by JRPP	Response
As a threshold issue, whether or not development of 744 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.	• A row is provided. The site is not isolated however the applicant has purchased No 744 Pacific Highway. • **Council has agreed this is no longer an issue.**
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 amended proposal includes: o Northern setback increased by 377mm to a minimum of 4.241m. The northern set back is a varied building alignment which ranges from 4.618m to 6.76m. o Western setback provides varied setback of 6 to 6.6 metres. o In addition, the entire third storey has been deleted to the north. • **Council has accepted the changes** but raised the other issues as detailed in Section2.
Measures to mitigate the effects of the long western elevation of the main building.	• The amended proposal provides a varied setback of 6 to 6.6 metres and continuous landscape screening throughout. • The building is lower than the height limit for the majority of its length and has a setback greater than requested. • There are no openings/ balconies at the western elevation as might be anticipated if development as an Residential Flat Building with both windows and balconies
	• **Council has accepted the changes** but raised the other issues as detailed in Section2

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.	• The amended proposal has deleted the third storey of the development at the northern end of the building. • The amended proposal results in a minor increase in the height that relates to the roofline only at the southern end of the building. • **Council accepted the northern end changes** but raised the southern end height non compliance issue as detailed in Section2.
Measures to mitigate the perceived excessive height of retaining walls for driveways to the south of the main building.	• Extent of retaining walls in this location is reduced, and their appearance is softened with landscaping and separation. • **Council accepted the changes** but raised the other issues as detailed in Section2.
Demonstration that access to the area of open space to the south is practical and safe.	• The primary and accessible open space area is provided at the northern portion of the building. • Should the southern area be sought to be accessed, this can be achieved via the dedicated pathway along the western boundary. • **Council accepted this justification**.
Demonstration of compliance with the parking requirements of Council or RMS or proper justification for any variations thereto.	• The parking assessment prepared by URaP-TTW was provided with a letter of support and explanation prepared by Dr G Galambos. • This justification is **not accepted by the Council**. • A letter of support and explanation prepared by Dr Kam Tara is provided with this letter which is enclosed.
Provision of a completely consistent set of amended plans.	• Council raised other inconsistencies in the plans. • **This information can be conditioned.**

Address the non-complying stormwater drainage issues as per the council officer's report.	• This matter can be conditioned as recommended by Council.
A building design that better adjusts to the significant north/south gradient of the site, that does not result in unused under building 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. • **Council accepted the changes** but raised the other issues as detailed in Section2.

2. Council's Response to the Information Submitted by the Applicant

In response to the above points raised by JRPP, the applicant submitted amended plans and additional information on 27 November 2014. Council's view of the adequacy of this information to address the above points was indicated in Council's Supplementary Assessment Report (dated 27 March 2015) which is as follows.

2.1 As a threshold issue, whether or not development of 744 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.

Council's Response: Accepted

2.2 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.

Council's Response: Accepted but raised the issue regarding southern setback and visual impact of the proposal on 3 Bushlands Avenue.

CPSD's Response

As indicated in the Council's Assessment Report the increased setback and deletion of the third storey addresses Council' concerns regarding the impact of the building on the heritage significance of the heritage items at 748 Pacific Highway and 750-754 Pacific Highway.

In addition, the development is provided with a varied setback of 6 to 6.6 metres with regular indentations and architectural treatments throughout to break up the appearance of the western facade. The western setback comprises extensive and continuous landscape screening throughout. These design considerations ameliorates the visual impact of the proposal as viewed from the R2 properties to the west.

Additional drawing DA-05.26 DA5 has been prepared which shows the shadow outline looking from above created by complying development with 11.5m building height and the proposed development. This drawing includes dimensions to the outer edge of the shadows.

As demonstrated by the information presented in the above mentioned drawing at the maximum point of height exceedance the shadow at 9am on June 22 is extended by 1.231m to the west and 1.843m to the south. Therefore the actually amenity lose to 3 Bushlands Avenue is quite small and by 10.30 is almost non-existent.

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

Council's Response: Accepted but raised issue regarding southern setback and visual impact of the proposal on 3 Bushlands Avenue

CPSD's Response

As discussed above, the proposal provides a varied setback of 6 to 6.6 metres with regular indentations and architectural treatments throughout to break up and articulate the appearance of the western facade. The western setback comprises extensive and continuous landscaping throughout which screens and further enhances the presentation of the development. These design considerations, coupled with the deletion of the third storey from the northern portion of the building, the proposed landscaping mitigate the visual impact of the proposal as viewed from the properties to the west.

Additional drawing DA-05.26 DA5 has been prepared which shows the shadow outline looking from above created by complying development with 11.5m building height and the proposed development. This drawing includes dimensions to the outer edge of the shadows.

As demonstrated by the information presented in the above mentioned drawing at the maximum point of height exceedance the shadow at 9am on June 22 is extended by 1.231m to the west and 1.843m to the south. Therefore the actually amenity lose to 3 Bushlands Avenue is quite small and by 10.30 is almost non-existent.

The building is lower than the height limit for the majority of its length and has a setback greater than requested. There are no openings/balconies at the western elevation as might be anticipated if development as an Residential Flat Building with both windows and balconies

2.4 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.

Response: Partially accepted in relation to the northern section- raised issue regarding building height non-compliance to the southern end

CPSD's Response

With regard to the southern end of the building, the proposal now comprises a basement car parking area and provides a built form and vehicular circulation which steps down with the gradual slope of the site and surrounds. The presentation of the southern end of the building is designed to be recessive and comprise passive uses and is therefore sensitive to the surrounding residential uses. The proposal results in a minor increase in the height and relates to the roofline only as indicated in the following figure.

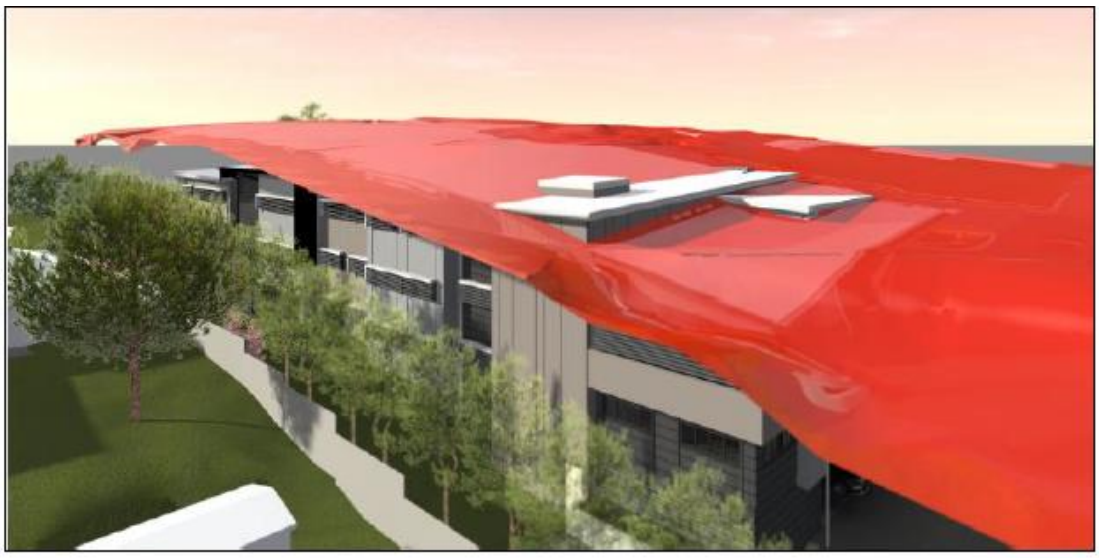

Figure 1: Height Overrun indicating the non compliant parts of the building

Additional drawing DA-05.26 DA5 has been prepared which shows the shadow outline looking from above created by complying development with 11.5m building height and the proposed development. This drawing includes dimensions to the outer edge of the shadows.

As demonstrated by the information presented in the above mentioned drawing at the maximum point of height exceedance the shadow at 9am on June 22 is extended by 1.231m to the west and 1.843m to the south. Therefore the actually amenity lose to 3 Bushlands Avenue is only a marginal and by 10.30 is almost non-existent.

In addition it is important to note that a flat building can be developed on the subject site which could be constructed up to 6m to the southern boundary. A flat building built in this location built to the maximum height of 11.5m would have a far greater visual impact on 3 Bushlands Avenue than the proposed building due to the likely balconies and openings to this boundary.

Furthermore, should Council remain concerned with regard to the minor portions of the building which exceed the building height, we recognise that Council and JRPP may choose to impose an appropriate condition.

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

Response: Accepted but raised issue regarding inadequate landscape setback to the east

CPSD's Response

The area of concern is understood to be the south western boundary. All adjoining land is in the ownership of the applicant. Sufficient distance between the activities is available (7.75m). No disturbance would occur as a consequence of this landscaped setback.

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

Response: Accepted

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

Response: Not Accepted

Council's Traffic engineer states:

"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."

CPSD's Response

The parking provision is sufficient to service the needs of the facility, based on the parking assessment prepared by URaP-TTW. This parking analysis is based on evidence from other private facilities of this type, which is further explained in the attached letter of support and explanation prepared by Dr Kam Tara which concludes:

"The car parking demand for the development has been substantiated in a range of 33 to 37 spaces by utilising Council's Local Centres DCP car parking rates. The development provides a total of 43 spaces including an ambulance bay.

Therefore, the required car parking demand per Council's Local Centres DCP has been met.

However, it should be noted that the current State and National transport policies are aimed to promote active and public transport use by restricting car parking provision."

The proposed facility is located with walking distance of Gordon Station and it to be reasonably amended that visitors and staff will use public transport to access the site. Council's calculations are based on a generic response to consulting room and hospital without due regard to the specific nature of the use and its operation. The numerical reduction of 6 spaces in light of its location and operation should not be determinative in this case.

Furthermore, should Council remain concerned with the car parking, we recognise that Council and JRPP may choose to impose an appropriate condition.

2.8 Provision of a completely consistent set of amended plans.

Councils Response: Not accepted

Details: "The amended plans contain the following inconsistencies:

1. *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*

CPSD's Response

The rainwater tank to be relocated underground upstream of the detention tank. This can be conditioned. Please refer the amended drawing DA-01.01 DA5.

2. *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.*

CPSD's Response

The fence is to be an 1800mm height timber paling fence. This could be conditioned.

3. *The sections (DA-04.01 & DA-04.02) do not match the location indicated on the floor plans (DA-02.01 & DA-02.02)*

CPSD's Response

The attached floor plan show updated section lines that match the sections contained in the drawing set. Please refer to drawings DA-02.01 and DA-02.02 DA5.

4. *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.*

CPSD's Response

The updated floor plans show the outbuilding at the rear of 3 Bushlands Avenue as a temporary dwelling. Please refer to drawing DA-01.01 DA5.

5. *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.*

CPSD's Response

The landscaping is to be provided as per the landscape plan. This could be conditioned.

6. *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."*

CPSD's Response

The RL to be removed and replaced with the note "1800mm high timber paling fence". This can be conditioned.

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

Council's Response: To be conditioned

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

Council's Response: Partially accepted- raised issue regarding western setback and height of the western elevation of the building

CPSD's Response

The proposal has been substantially redesigned, with the main component being the deletion of the top level at the northern part of the building, which has effectively been 'relocated' to the void car parking area. The primary car parking area is now located within a new basement area. The building is stepped down in line with the sloping topography of the site, and results in the ground levels addressing the finished ground levels and avoiding any 'void' areas. The overall floor plates still achieve accessibility within the new building whilst also stepping down with the site and surrounding building forms. In addition, the facades of the building are articulated and address the design techniques which have been employed to mitigate the potential impact on the neighbouring properties and enhance the presentation to the surrounding area.

Furthermore, should Council remain concerned with the western setback and building height of western elevation, we recognise that Council and JRPP may choose to impose an appropriate condition.

3. Additional Changes Recommended by Kuring-Gai Council

The following additional changes are recommended by Kuring-Gai Council:

3.1 cut back the southern end of the first floor level to ensure compliance with the 11.5m building height development standard

Response

The levels on the drawings are necessary to ensure that the driveway ramp will comply with the relevant Australian Standards. Therefore the excavation is required to ensure that the driveway levels will work with the proposed building levels. A small excavation of 600mm is minor work when compared to multiple basements constructed elsewhere adjacent boundaries utilising appropriate underpinning techniques.

Non compliance with the height standard in this case not only satisfies the objectives of the standard but has no tangible impacts.

3.2 increase the size of the basement carpark to allow for six additional car spaces

Response

This is considered unnecessary and unreasonable as expressed in section 2.7.

3.3 retain the existing driveway in the southern access handle as a one way entrance driveway

Response

It appears that the council is requesting the site to become a one way system (clockwise) with entry to the site from the southern driveway and exit from the northern driveway. This will impact on the recirculation of vehicles that may required to travel from the northern car park to the southern car park as this would no longer be possible with the one way system in place.

3.4 provide a narrower exit driveway in the northern access handle with an appropriate landscape treatment

Response

With respect to the request for narrowing of the driveways (both southern and northern), adequate width will still need to be provided as to allow the turning movement of waste vehicles upon entry and exit to the site (in addition to within the site). As shown on Drawing C093 (attached) the entry width currently specified on the northern driveway will need to be duplicated on the southern access driveway. While the currently proposed layout on the northern driveway will need to be retained to provide sufficient turning movement for the exit of the truck (refer C094)

3.5 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

Response

This will impact on the recirculation of vehicles that may required to travel from the northern car park to the southern car park as this would no longer be possible with the one way system in place.

4. Section 94 Contribution

The assessment report previously considered by the JRPP indicated that the applicant's request for an exemption from the payment of section 94 contributions not be granted. The applicant has submitted further information regarding their request for exemption from the payment of section 94 contributions.

Council's Response:

"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."

CPSD's Response

As requested in the original Statement of Environmental Effects which accompanied this DA, Council is requested to exempt the proposed development from the payable of any Development Contributions under the Section 94 Plan.

A s94 exemption is further elaborated in the submitted correspondence from The Lawson Clinic, which details the non profit operations of the facility, and provides significant justification as to why Council should issue an exemption.

It is considered that the proposal should be considered for a meritorious exemption on the basis that it will provide an invaluable mental health resource, not just for the local community of Ku-ring-gai, but the wider Sydney area.

Moreover, the proposed inpatient unit will have a distinct teaching and advanced medical research function in collaboration with UNSW to be undertaken as a 'not-for-profit basis.' The teaching and advanced medical research function of the proposed inpatient unit will be pursued in furtherance of the public interest.

The distinct nature of the development is such that there are absolute meritorious circumstances that would distinguish the case of the subject development from any other, and which would prevent it setting a precedent for other exemptions.

Beyond the specific agreements for exemption it is important to consider the broader nexus arrangement of this facility and its demand for the services and facilities sought through the S94 contribution. Given the impatient nature of the facility it is unclear how the GFA of the accommodation could generate an increased demand for services.

5. Councils Reasons for refusal

Council have cited the following as reasons for refusal:

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

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

3. *Inadequate car parking*

4. *Inaccurate and inconsistent plans*

The proposal has been amended as requested by the JRPP:

The applicant has purchased 744 Pacific Highway to address Council's concern , even though the site is not and was not isolated.

The subject site is in close proximity to shops, community facilities, services and public transport infrastructure;

The zoning of the site and immediate locality along the Pacific Highway allows for high density development;

The proposal maintains compatibility with the surrounding residential dwellings to the west and south of the site;

Minimise the impact on the adjoining properties by including appropriate design treatments;

The proposal provides for services to be provided which offer a direct community benefit in the form of a 65 bed inpatient facility for the treatment of depressive and mood disorders; and

The proposal provides clear and legible vehicular and pedestrian entry points off the Pacific Highway and general internal circulation with adequate number of car parking spaces.

We trust that the above advice assists in the assessment of the proposal. If you require any further clarification of details with regard to the above items, please do not hesitate to contact me on 8270 3500.

Yours Faithfully,

David Ryan
Executive Director