

**JOINT REGIONAL PLANNING PANEL
(Sydney East)**

JRPP No	2014SYE120
DA Number	DA2014/1062
Local Government Area	Warringah LGA
Proposed Development	Demolition works and construction of a residential care facility with associated car parking, internal roads and landscaping
Street Address	Lot1113 / 752038 Oxford Falls Road FRENCHS FOREST
Applicant/Owner	A Spaliviero (Owner) City Plan Services (Applicant)
Number of Submissions	23
List all documents submitted with this report for the panel's consideration	Amended Plans and Information submitted to Council on 20 April 2015
Recommendation	Refusal
Report by	Malcolm Ryan, Deputy General Manager, Environment

Supplementary Assessment Report

Assessment Officer:	Lashta Haidari
Land to be developed (Address):	Lot1113 / 752038 Oxford Falls Road FRENCHS FOREST
Locality:	B2 Oxford Falls Valley
Category:	Category 2 – Housing for Older People or People with Disability
Consent Authority:	Joint Regional Planning Panel (JRPP)
Land and Environment Court Action:	None Pending
Owner:	A Spaliviero
Applicant:	City Plan Services
Application lodged:	3 October 2014
Amended Plans lodged:	20 April 2015
Estimated Cost of Works:	\$ 23,760,759
Recommendation	Refusal
Attachments:	Attachment 1: Amended Plans and Information submitted to Council on 20 April 2015 Attachment 2: Draft Conditions of Consent

PURPOSE OF THIS REPORT

At its meeting on 12 March 2015, the Sydney East Joint Regional Planning Panel (JRPP) considered the development application and resolved to defer the determination to enable the submission of amended plans and additional information. The JRPP provided a list of matters the applicant was to address prior to the application being brought back to the JRPP. Amended plans and information were submitted by the applicant within the nominated timeframe.

This report provides a brief summary against each of the matters identified by the JRPP and addresses the submissions received by Council as part of the re-notification period.

This report does not revisit any matters raised in the original Assessment Officer's report prepared by Council and considered by the JRPP at its meeting of 12 March 2015, which was not specifically referred to in the minutes of the JRPP meeting.

RELEVANT BACKGROUND

The Development Application was referred to the meeting of the JRPP on 12 March 2015, with a recommendation for refusal.

At that meeting, the JRPP resolved the following:

1. ***The majority of the Panel to defer the determination of the application to allow the applicant to submit, by 10 April 2015, a revised proposal incorporating the following changes:***

- a) ***Relocation or reduction of the parking so as to comply with the council's side setback controls as well as with parking controls.***

Comment: The scope of the amendments made by the applicant, and how they respond to the requirements of the above issue, is addressed under the 'Amended Plans & Information' section in this report.

- b) ***Either the production of owner's consent (containing the signatures of all owners and relating to this application) for the private land needed for the Asset Protection Zone; or reduction of the Asset Protection Zone to that already approved for this site in the consent of November 2013 together with production of owner's consent (containing the signatures of all owners and relating to this application) for the private land needed for it.***

- c) ***If the above requires a relocation or reduction of the building footprint, then amended drawings showing this.***

Comment: The amended plans (which are addressed below) submitted by the applicant indicates that the Asset Protection Zone (APZ) has been completely removed from the adjoining private land, therefore owner's consent from the adjoining private property is no longer required.

- d) ***Production of a Bushland Regeneration and Biodiversity Management Plan that regenerates the vegetation on the northern part of the site. The reason for this requirement is that the majority of the Panel considers that the proposal would be more consistent with the Desired Future Character of the Area if the northern part of the site remained free of buildings in perpetuity and the vegetation on it were regenerated.***

Comment: A Bushland Regeneration and Biodiversity Management Plan (BR & BMP) has been submitted in response to the above issue, and is addressed in detail under the 'Amended Plans & Information' section in this report.

2. ***The majority of the Panel considers that there is sufficient change in the revised proposal to require re-exhibition.***

Comment: The amended application was publicly notified in accordance with the above decision. The submissions received in response to the amended scheme have been addressed under the 'Public Exhibition' section of this report.

3. ***The majority of the Panel requests the planning assessment officer to prepare a supplementary report on the way in which the revised proposal complies with the requirements in paragraph 1. The supplementary report should also deal with the public submissions following the re-exhibition and include draft conditions of consent.***

Comment: In accordance with the above issue, this supplementary report addresses the extent to which the amended plans and additional information have responded to the issues in Paragraph 1 and have addressed the submissions received by Council as part of the re-notification period.

As requested by the JRPP, draft conditions of consent have been prepared and are attached to this report (refer to Attachment 2). It should be noted that the draft conditions of consent are not complete until the General Terms of Approval (GTA) are issued by the NSW Rural Fire Service (NSWRFS), being an integrated referral body.

4. ***The two other members of the Panel, voted to accept the recommendation to refuse the application on the grounds mentioned in the assessment report.***

Comment: Noted.

AMENDED PLANS AND ADDITIONAL INFORMATION

Changes made in response to the Requirements of the JRPP Resolution

The amended plans and additional information submitted to Council on 20 April 2015, sought to respond to the following changes required in issue No. 1 of the JRPP's resolution:

- (a) ***Relocation or reduction of the parking so as to comply with the Council's side setback controls as well as with parking controls.***

Comment: Amended plans propose the following changes:

- The parking spaces have been reduced from 30 spaces to 17 spaces.
- The parking layout adjacent to the eastern boundary has been amended, with the deletion of 14 parking spaces and providing an increased setback of 10m from that boundary. The revised car parking scheme accommodates eight car parking spaces and one disable space.
- The deletion of five parking spaces from the parking area adjacent to the southern boundary (facing Barnes Road).
- Relocation and distribution of eight parking spaces around the perimeter of the site.

The proposed parking scheme achieves compliance with the parking requirements and side and front setbacks pursuant to *Warringah Local Environment Plan 2000 (WLEP 2000)*.

In this regard, the amended plans have satisfied the above issue of the resolution.

- (b) ***Either the production of owner's consent (containing the signatures of all owners and relating to this application) for the private land needed for the Asset Protection Zone; or reduction of the Asset Protection Zone to that already approved for this site in the***

consent of November 2013 together with production of owner's consent (containing the signatures of all owners and relating to this application) for the private land needed for it.

- (c) *If the above requires a relocation or reduction of the building footprint, then amended drawings showing this.***

Comment: The APZ has been removed from the private land to the east. The new APZ setback is from the eastern edge of Barnes Road and has resulted in a number of amendments to the proposed development from the original scheme.

The specific amendments to the proposed development are stipulated in the schedule of changes, prepared by City Plan Services, dated April 2015. Overall, the proposed amendments do not alter the proposed development in terms of the number of buildings and beds.

In this regard, the amended plans have satisfied the above two parts of the resolution.

- (d) *Production of a Bushland Regeneration and Biodiversity Management Plan that regenerates the vegetation on the northern part of the site. The reason for this requirement is that the majority of the Panel considers that the proposal would be more consistent with the Desired Future Character of the Area if the northern part of the site remained free of buildings in perpetuity and the vegetation on it were regenerated.***

Comment: With regards to the above issue, the applicant has submitted a Bushland Regeneration and Biodiversity Management Plan (BR & BMP), prepared by Travers Bushfire & Ecology, dated April 2015.

The BR & BMP proposes the regeneration of the northern part of the site by expanding the habitat corridor and by providing additional planting of native trees and shrubs. The BR & BMP concludes that:

The previously proposed habitat corridor, including the riparian restoration, is expanded to 6,900m², providing significantly more fully structured Sandstone Gully Forest. Canopy planting between the habitat corridor and the northern internal access road now amounts to some 9,350m² of the site.

The measures included in the BR & BMP will restrict future development of buildings in the northern part of the site. In this regard, the BR & BMP have satisfied the above resolution.

PUBLIC EXHIBITION

The amended scheme was publicly exhibited in accordance with the *Environmental Planning & Assessment Regulation 2000*, *WLEP 2000* and *Warringah Development Control Plan*. As requested by the JRPP, the application was notified to 165 adjoining residents for a minimum period of 30 days commencing on 24 April 2015 and being finalised on 28 May 2015.

As a result of the public exhibition process, a total of 23 individual submissions have been received at the time of writing this report.

The following issues raised within the submissions are the same as those raised during the previous notification period and were addressed in the original assessment report:

- Bulk and Scale.
- Environmental Impacts.
- Inconsistency with the Desired Future Character (DFC) of the B2 Oxford Falls Valley Locality.

- Increased Traffic, Traffic Conflict and Traffic Congestion.
- Cost of works.
- Inconsistency with the requirement of *State Environmental Planning Policy (Housing for Seniors or People with a disability) 2004 (SEPP (HSPD))*.
- Acoustic and Visual Privacy Impact.
- No owner's consent is provided for the provision and maintenance of APZs on the adjoining land.
- The development forms stage one of a larger proposal.
- Previous concerns not addressed.
- Planning Assessment Commission Report.

In addition to the above issues, the following issues were raised which were not raised in response to the original notification.

1. Plans are misleading

Concerns have been raised that the plans submitted with the application are misleading in the following way:

- *All the plan drawings show a neat row of trees on the NW boundary and on the Landscape Plan 01 DWG 02. A note states that these are the existing Leyland Cypress trees are to be pruned to a height of 3.5m to form a visual screen from neighbouring properties. Given that the trees are approx. 15m tall with many in poor condition it will not be possible to prune the height and sides to form a screen as stated.*
- *The current DA requests approval for a 45 bed facility, yet the Hill PDA Report says 'the proposed Falls Estate will accommodate around 92 people'. If you could clarify this anomaly it would be appreciated as this was not mentioned during the panel hearing on 12/03/2015.*

Comment: The issue relating to the lack of information and misleading information was addressed in detail in the original assessment report. In summary, some of the information (including the Hill PDA Report) that was submitted with the application referred to a previous application and so was not specific to the current proposal.

These concerns have not been addressed by the amended application and will remain as reasons for refusal.

2. APZ on Public Land

Submissions have raised concern about the inclusion of public land and the unformed road reserve within the APZ.

Comment: The appropriateness of the location of the APZ is determined by application of the requirements of *Planning for Bushfire Protection 2006*, developed by the NSWRFs, which allows a consideration of APZs on adjoining land, including a public road in certain circumstances. There is no legislation that requires an APZ to be wholly contained within the subject site.

However, as indicated in the original assessment report, Council does not support the use of public land to support the proposed development, due to the environmental impact.

REFERRALS

External Referrals

(i) NSW Rural Fire Services

Section 100B of the *Rural Fires Act 1997* enables the Commissioner of the NSWRFs to issue a Bush Fire Safety Authority for 'Special Fire Protection Purpose' development. Section 100B (6) of

that Act identifies Seniors Housing (within the meaning of the *SEPP (HSPD)*) as such development.

In their response on 7 July 2015, the NSWRFSS refused to issue GTA, for the following reasons:

The service is not in a position to properly assess the application as submitted by Warringah Council on the basis of the information provided. The following will need to be provided for further assessment:

The NSW Rural Fire Service does not support the proposed amended design.

Building 1 and Building 2 both contain residential components and are required to meet the performance criteria of 'Planning for Bush Fire Protection 2006' where radiant heat levels of greater than 10kW/sqm will not be experienced by occupants or emergency services workers entering or exiting the building. The entire building must meet this requirement. The applicant is requested to reconsider the layout of the facility to address this issue.

The internal road widths have been reduced to below the acceptable solutions set out in 'Planning for Bush Fire Protection 2006' with no explanation as to how the performance criteria is satisfied.

The applicant is requested to modify the proposal in order to meet the acceptable solutions and includes the internal road being linked to the northern end of Barnes Road.

The changes required to be made to the development in order to satisfy the requirements of the NSWRFSS are considered to be substantial in terms of design and impact. The amended plans and associated documentation required to address the above would be required to be re-notified.

Consequently, due to the timeframe required to meet the JRPP timetable, Council does not have sufficient time to request the additional information from the applicant and re-notify the application to satisfy the NSWRFSS requirements.

In this regard, the refusal of the NSWRFSS to issue their GTAs is included as a reason for the refusal of this application.

(ii) NSW Office of Water

The application was referred to the NoW as Integrated Development on 14 May 2015, for works requiring an activity approval under the *Water Management Act 2000*.

In their response on 21 July 2015, the NoW has issued their General Terms of Approval, which are to be included in the consent, should the panel be of a mind to approve the application.

Internal Referrals

The amended application was referred to the following internal departments within Council:

Environmental Health & Protection
Council's Environmental Health & Protection section have provided the following comments: <i>The additional information submitted with regard to waste water management has been reviewed. In particular clarification that waste water disposal is to be directed to the Sydney Water Sewage System subject to a Section 73 Approval under the Sydney Water Act 1994.</i> <i>Therefore, it is recommended that a condition requiring a section 73 approval is to be obtained from Sydney water prior to the issue of construction certificate.</i>
Council's Natural Environment – Biodiversity
Council's Natural Environment – Biodiversity section does not support the proposed development for the following reasons:

- *The proposed development is inconsistent with Clause 52 Development near parks, bushland reserves and other public open spaces of WLEP 2000. The development proposal does not allow for adequate bushfire protection buffers (Asset Protection Zone [APZ]) on private land.*
- *The proposed development is inconsistent with Clause 56 – Retaining distinctive environmental features on site and on adjoining and nearby land. The proposed development is not considered sympathetic to environmental features including remnant bushland and watercourses within the proposed APZ on the adjoining land.*
- *The proposed development is inconsistent with Clause 58 - Protection of existing flora. A portion of the proposed APZ within the Barnes Road Reserve includes native vegetation with all structural layers relatively intact. The proposed development has not been designed to avoid impacts (clearing) on native flora in this area.*
- *The proposed development is inconsistent with Schedule 5 – Bushland in urban areas.*

Council's Natural Environment – Riparian

Council's Natural Environment – Riparian section does not support the proposed development on grounds of insufficient information, which is summarised as follows:

A Waterway Impact Statement that is specific to the creek bank stabilisation works is required; as well as the following information:

- *Detailed design drawings of the proposed works (engineering certification may also be required).*
- *Detailed design drawings which include a surveyed plan, cross sections (across the watercourse) and a long section of the watercourse, showing the proposed works relative to existing and proposed bed and bank profiles and water levels. The cross section should extend to the landward limit of the identified riparian corridor. All plans must include a scale bar.*
- *Detailed report of pre and post construction hydraulic conditions. The report should address bank full discharge, velocity, tractive force or sheer stress, afflux (Modified RTA method is acceptable), Froude and Manning's 'n' roughness values, relative to the proposed structure.*
- *Detailed plans of permanent bed and bank stabilisation works for scour protection.*
- *A site management plan incorporating a works schedule, sequence and duration of works, contingencies (in case of flood or similar), erosion and sediment controls*

Clarification and information is required regarding the redirection of the stormwater drainage line from 50 Barnes Road and down slope of Lot 1 DP 774348 as it is not noted on any Stormwater Management Plans. The redirection is noted in The Waterway Impact Statement dated September 2014 Reference No. A14054WIS, Executive Summary.

Landscape

Council's Landscape Officer has provided the following comments:

Submission of amended plans following deferral by the JRPP is noted. No objection to the proposed landscape plan is raised subject to conditions as recommended.

CONCLUSION

The amended scheme has been assessed against the issues raised in the resolution of the JRPP. This report is supplementary to the original assessment report and the two should be read in conjunction.

The amended application was referred to the relevant internal departments of Council and external authorities. In the response, the NSWRFs has refused to issue concurrence due to insufficient information provided with the application.

Councils' Natural Environment Section has also raised fundamental concerns with the proposal in terms of its impact on the natural environment and riparian zone.

The amended scheme attracted 23 individual submissions in response to the public notification. The submissions raised the same concerns as raised in the notification of the original proposal, including, type and scale of the development being inconsistent with character of the area, bulk and scale, social isolation, impact of bushfire threats, the location being unsuitable for this type of development, the impact upon the neighbouring residential amenity, increased traffic, traffic conflict and congestion, and environmental impact.

New issues raised in the notification of the amended scheme included, misleading information submitted by the applicant and the impact of the proposed APZ on the public land.

Whilst the amended plans and information submitted by the applicant satisfy all of the requirements as set out in the JRPPs resolution, Council's assessment of the amended application concludes that it cannot be supported for the following reasons:

- No General Terms of Approval have been issued by the NSWRFSS, therefore the attached draft conditions of consent are incomplete and consent cannot be granted until such time that GTA are obtained from the NSWRFSS.
- The amended plans have addressed some of the reasons of refusal in the original assessment report, however the majority of the issues raised by Council have not been addressed. Importantly, the inadequate documentation that was submitted with the application to enable Council to make a proper assessment remains unaddressed and is still as a major concern.

It is considered that the proposed development (as amended) does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, it is recommended that the JRPP, as the consent authority, refuse this application for the reasons detailed within the "Recommendation" section of this report.

Notwithstanding, as requested by the JRPP, draft conditions of consent have been provided, should the Panel be of a mind to approve the application.

Recommendation:

THAT the Sydney East Joint Regional Planning Panel, as the consent authority REFUSE Development Consent to Development Application No DA2014/1062 for Demolition works and construction of a residential care facility with associated car parking, internal roads and landscaping on land at Por 1113/752038, Oxford Falls Road FRENCHS FOREST subject to the reasons (as amended) outlined as follows:

1. Pursuant to Section 91A(4) of the *Environmental Planning and Assessment Act, 1979*, the NSW Rural Fire Service has refused to provide General Terms of Approval.
2. Pursuant to Section 79C (1) (a) (i) of the *Environmental Planning and Assessment Act, 1979* and Clause 2(1) (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, the proposed development is not consistent with the aims of the policy.
3. Pursuant to Section 79C (1) (a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(3) (b) of *Warringah Local Environment Plan 2000* (as amended), the proposed development is inconsistent with the Desired Future Character statement for the B2 Oxford Falls Valley Locality.
4. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(a) of *Warringah Local Environment Plan 2000* (as amended), the development is inconsistent with the following General Principles of Development Control as follows:

- a) Clause 56 Retaining Unique Environmental Features,
- b) Clause 57 Development on sloping Land,
- c) Clause 58 Protection of Existing Flora,
- d) Clause 60 Watercourses & Aquatic Habitats,
- e) Clause 66 Building Bulk.

5. Insufficient information has been submitted to demonstrate compliance with the following provisions of *Warringah Local Environmental Plan 2000*:

- a) Clause 40 Housing for Older People and People with Disabilities (support services),
- b) Clause 57 Development on Sloping Land,
- c) Clause 43 Noise,
- d) Clause 68 Conservation of Energy and Water,
- e) Clause 77 Landfill.

6. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000* in that the proposed development is not consistent with following Schedules:

- a) Schedule 5 - State Policies,
- b) Schedule 16 - Principles and Standards for Housing for Older People or People with Disabilities (Clause 21 - Neighbourhood Amenity and Streetscape).

7. Pursuant to Section 79C (1) (c) of the *Environmental Planning and Assessment Act, 1979*, the subject site is considered to be unsuitable for the proposed development.

8. Pursuant to Section 79C (1) (e) of the *Environmental Planning and Assessment Act 1979*, the development is not in the public interest.