

JOINT REGIONAL PLANNING PANEL
Sydney West

JRPP No	2014SYW115
DA Number	DA0185/14
Local Government Area	Ku-ring-gai
Proposed Development	Retain and refurbish Huon Park House, existing chapel, demolish remaining buildings and construct an aged care development (104 residential aged care facility units & 24 independent living units) including landscaping works - heritage item
Street Address	402 Bobbin Head Road, North Turramurra
Applicant/Owner	Southern Cross Homes (NSW) Incorporated
Number of Submissions	3 in opposition
Regional Development Criteria (Schedule 4A of the Act)	CIV in excess of \$20,000,000 (\$42,138,000)
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • KPSO; KLEP 2015; SEPP 55; SEPP (BASIX) SEPP (Infrastructure) • DKLEP 2013 • DCP 31; DCP 40; DCP 43; DCP 47 • No planning agreement
List all documents submitted with	<ul style="list-style-type: none"> - Zoning extract and submitters map - Architectural plans

this report for the panel's consideration	<ul style="list-style-type: none"> - Bushfire report and evacuation plan - Correspondence from the RFS
Recommendation	Refusal
Report by	Adam Richardson

DEVELOPMENT APPLICATION

EXECUTIVE SUMMARY

Primary Property	402 Bobbin Head Road, NORTH TURRAMURRA NSW 2074
Lot & DP	Lot 8 DP 23868
Additional Property(/ies)	Nil
Lot(s) & DP (s)	No related Land
Proposal	Retain and refurbish Huon Park House, existing chapel, demolish remaining buildings and construct an aged care development (104 residential aged care facility units & 24 independent living units) including landscaping works - heritage item
Development Application No.	DA0185/14
Ward	WAHROONGA
Applicant	Southern Cross Care (NSW + ACT)
Owner	Southern Cross Homes (NSW) Incorporated
Date lodged	23/05/2014
Issues	Failure to obtain Bushfire Safety Authority from RFS
Submissions	Yes
Land & Environment Court	N/A
Recommendation	Refusal
Assessment Officer	Adam Richardson

LEGISLATIVE REQUIREMENTS:

Zoning	Special Uses (5A) – Aged Care
Permissible under	KPSO
Relevant legislation	SEPP 55

SEPP (BASIX) 2004
SREP 20 (Hawkesbury Nepean River)
KPSO
KLEP 2015
DCP 31 - Access
DCP 40 – Waste Management
DCP 43 – Car Parking
DCP 47 – Water Management

Integrated development

YES – Rural Fires Act 1997 & Water
Management Act 2000

Purpose of report

This matter is reported to the JRPP as the application has a capital investment value of more than \$20 million (\$42,138,000). Pursuant of Schedule 4A of the Environmental Planning and Assessment Act, 1979, the JRPP is the consent authority.

Pre-DA

No formal Pre-DA consultation was held prior to the application's lodgement.

DA History

23 May 2014	application lodged
6 June to 7 July 2014	application notified
6 June 2014	referral of application to NSW Rural Fire Service and Office of Water
1 July 2014	concurrence issued by Office of Water

20 August 2014	Rural Fire Service deferral of application seeking additional information
11 September 2014	JRPP panel members briefed on proposal
23 September 2014	Council provides written response to RFS in respect of issues related to hazard reduction
19 December 2014	amended plans submitted to Council
23 December 2014	amended plans referred to RFS
18 February 2015	meeting between Council and RFS
27 May 2015	RFS advises Council it will not issue a Bushfire Safety Authority

The site:

Visual character study category:	Post 1968
Easements/rights of way:	No
Heritage Item:	Yes
Heritage conservation area:	No
In the vicinity of a heritage item:	No
Bush fire prone land:	Yes (Bushfire prone vegetation Category 1)
Endangered species:	Yes (Duffy's Forest)
Urban bushland:	No
Contaminated land:	Yes

Site description:

The site is a rectangular shaped allotment located on the western side of Bobbin Head Road, south of the entrance to Ku-ring-gai Chase National Park.

The site has an area of 2.475ha, with approximate dimensions of 130m x 188m. It benefits from an east-west orientation and currently contains a number of buildings that have been developed and adapted for use as a residential aged care facility.

The site is also a locally listed heritage item, being the federation house 'Huon Park House' which occupies the site and is currently used for administration purposes.

Further to Huon Park House, other buildings on site include a 1960's residential aged care facility containing 113 beds and a chapel which relates to its former operation as a church based aged care facility.

The site is sparsely vegetated with ornamental gardens, however features a number of significant trees that relate to the site when it was a substantial residential holding. Remnant vegetation, characteristic of the critically endangered Duffys Forest, exists along the southern boundary.

Figure 1 highlights the site, its various built elements and surrounding built form.



Figure 1

Surrounding development:

Surrounding development is predominantly low density residential of varying scale and design. There are a number of other aged care and seniors living developments within the vicinity of the site

To the east of the subject site is the North Turramurra Recreation Area and beyond to the north and east, the Ku-ring-gai National Park.

THE PROPOSAL

The application proposes:

- demolition of the existing 113 bed residential aged care facility
- additions and alterations to 'Huon Park House' for its ongoing administration use
- construction of a new 104 bed residential aged care facility in the front

half of the site that includes associated administration and back of house facilities, car parking (29 spaces) and a dedicated fire evacuation bunker

- construction of 24 x 2 bedroom independent living units at the rear of the site including common facilities and car parking
- stormwater system upgrading
- tree removal and associated landscaping works
- bushfire mitigation works

Amended plans dated 19 December 2014

The amended plans proposed the following changes:

- provide further and information concerning bushfire, evacuation and associated traffic management
- amend ILU's so as to not trigger SEPP 65 and to also generally satisfy the design / fit out criteria for independent units specified with Schedule 3 of SEPP (housing for seniors and people with a disability) 2005.
- provide further and amended arborist and ecological assessments
- amended landscape and stormwater plans
- amend design of RACF building to address heritage issues and provide further heritage assessment
- submission of a phase 2 contamination report and remediation action plan

COMMUNITY CONSULTATION

In accordance with Development Control Plan No. 56, owners of surrounding properties were given notice of the application. In response, submissions from the following were received:

1. *J & H Adams – 20C Stonecrop Road, North Turramurra*
2. *North Turramurra Action Group – PO Box 3071 North Turramurra*
3. *G. Salisbury – 400a Bobbin Head Road, North Turramurra*

The submissions raised the following issues:

The current plant / air-conditioning is noisy, any new works should ensure that such inclusions are located to not create a nuisance

The proposal has been accompanied by an acoustic report demonstrating that the new Residential Aged Care Facility and associated Independent Living Unit's would operate within the noise parameters of the Industrial Noise Policy.

The site is currently serviced periodically between 1am and 4am, the new proposal should consider this and the impact it causes upon the adjoining neighbours

Servicing of the site be it by waste trucks, delivery trucks or the like could be restricted to between 7am – 7pm daily via condition, minimising any such impact.

All construction access should be limited to the southern entry

Construction access can be restricted to the existing southern entry.

North Turramurra is surrounded on three sides by bushland, any increase in density of vulnerable persons would pose a significant risk in the event of bush fire upon the residents of this development and those already in North Turramurra, as evacuation is extremely constrained

NSW Rural Fire Service declined to issue a Bushfire Safety Authority as they are not satisfied with the proposed bushfire risk presented to the subject development.

The subject site has been identified as being of high bushfire risk, the draft KLEP recognises this and proposed to zone this property and those surrounding as either E3 or E4 which would prohibit this proposal.

As discussed elsewhere in this report, the proposed E3 and E4 zoning of the North Turrumurra peninsula was deferred pending further investigation. Subsequently, the adopted version of the draft LEP which was gazetted reverts back to the KPSO controls, in which case the development is a permissible development on the site.

It is questioned whether in the event of fire the proposed evacuation bunker or the proposed evacuation to North Turrumurra golf course is practical given the number of residents and staff concerned

The application is accompanied by a detailed fire evacuation plan, prepared by a recognised fire consultant. The issues raised in this regard are consistent with the reservations of the RFS, discussed further in this report.

The whole of the North Turrumurra peninsula is mapped as being excluded from Seniors Living developments, this is a seniors development and therefore should not proceed

The mapping referred to and the subsequent exclusions only applies to development that is made pursuant of SEPP (Housing for Seniors and People with a Disability) 2005. This application is not made pursuant to those controls, therefore the exclusions do not apply.

During heavy rain our property is inundated with stormwater from this site, any future development should overcome this

The proposed development includes an updated stormwater system, managing stormwater generated by the proposal in accordance with the prescribed controls of DCP 47. These stormwater works would ensure that impacts upon downstream properties are mitigated.

The design of the development's internal roadways will create light spill impacts

The southern vehicular access road that would be used to access the car parks for the RACF and ILUs would, at the point where it sweeps around the north-eastern end of the RACF, have the potential to orientate car head lights towards the adjoining residences to the south. This potential impact is mitigated through a combination of existing and proposed landscaping, low frequency of vehicular movements, fencing and the proposed levels of the roadway in relation to existing ground levels. On balance, the potential for amenity issues created by head light glare is minimal and acceptable.

The proposed development does not provide adequate screen planting

The proposed development incorporates sufficient screen planting to the boundaries, recognising the need to ensure that such plantings comply with relevant bushfire requirements.

The proposed development will cause a loss of solar access to our property

It has been demonstrated that the shadow cast by the new development will fall within the boundaries of the subject site, ensuring no impact upon adjoining properties.

Amended plans dated 19 December 2014

The amended plans were not notified to surrounding residents as the proposed amendments do not result in a greater environmental impact than the original proposal.

INTERNAL REFERRALS

Heritage

Council's Heritage Advisor commented on the proposal as follows:

Heritage status

The site is listed as an item in Schedule 7 of the KPSO. The listing applies to the existing lot boundary – Lot 8 of DP 23868, a large parcel of land about 2.5 ha, formerly “Nazareth House”. However, the physical description in the inventory information is; “Original house in grounds of Nazareth House”

There are no heritage items within the immediate vicinity of the site and the area is not within a HCA.

The objectives in Clause 61D (1) of the KPSO Clause are:

- (a) To conserve the environmental heritage of Ku-ring-gai,*
- (b) To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) To conserve archaeological sites,*
- (d) To conserve Aboriginal objects and Aboriginal places of heritage significance.*

61D (4) of the KPSO requires that before granting consent to the proposed works Council must consider the effect of the works on the item, nearby items or conservation area concerned. Clause 61D (5) allows Council to require a HIS before granting consent. 61D (10) of the KPSO allows Council to grant consent to any use of a building and the land on which the building is erected provided Council is satisfied that:

- (a) The conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) The proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*

- (c) The consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) The proposed development would not adversely affect the heritage significance of the Aboriginal place of heritage significance, and*
- (e) The proposed development would not have any significant adverse effects on the amenity of the surrounding area.*

Proposed works

The works include demolition of the existing aged care facility, construction of a new dementia care facility and construction of new independent living units. This work includes new roads, services and refurbishment of the original Federation period building and retention of the 1960s chapel.

Statement of heritage impact

The application is supported by a well-considered heritage report. In the introduction it states:

"...it is intended to be a practical working document to guide future actions to Huon Park and Nazareth House Chapel, that currently forms part of the Southern Cross Care Aged Facility at North Turrumurra."

The report contains a relatively detailed history of the site, physical evidence from a site inspection, an evaluation of proposed works against the heritage significance of the site and concludes that the proposed works do not adversely affect the identified heritage significance of the property located at 402 Bobbin Head Road, Turrumurra. The report does not specifically address the "use" of the place as outlined in Clause 61 D (10). The following is the statement of cultural significance in the report:

"The property, originally named "Huon Park", known now as "Nazareth House", comprising residence, chapel and remnant grounds, has local heritage significance for its historic, aesthetic and social values. Having operated as a "gentleman's farm" and orchard from 1896 until 1951, "Huon Park" has historic associations with early subdivision patterns and suburbanisation of North Turramurra, Farm structures and land have been lost through subdivision and development to make way for suburban growth, Nazareth House Chapel, dating to 1963, has moderate historic significance associated with the occupation of the site by the Catholic order of nuns, Poor Sisters of Nazareth and its subsequent phase of use as an aged care facility.

The place has historic associations with prominent persons and owners of the property, George Bertrand Edwards, manufacture and politician, Captain Maurice BR Blackwood, naval officer, and the Poor Sisters of Nazareth.

"Huon Park", the two-storey Federation Queen Anne Style brick residence with slate roof, dating from 1896-98, has aesthetic significance for its architectural detailing representative of the style and period.

The place is held in high esteem by the community that live and work at the site."

Demolition

This application seeks demolition of all the existing c1963 aged persons home buildings and site works but retention of the Chapel and former dwelling. From a site inspection, the 1960s buildings appear to be in satisfactory condition and there appears to be no structural reason requiring demolition. It is understood that demolition is required due to the changed standards for such facilities and bushfire considerations.

The existing aged care facility is primarily one and two storey and in part is 3 storeys. Constructed of blond face brick with low pitched and some flat roof forms. Most of the existing paths, services and road system would also be removed along with a number of trees.

The 1960s buildings were designed by a distinguished architect; Thomas O'Mahony. When built they would have provided a high level of care for such a facility. From the perspective sketches of the development, it is evident that the Chapel was not built as initially planned. The Chapel appears slightly later and is a circular stone clad building connected to the aged care facility via a one storey link. It does have a reasonable level of aesthetic significance (thought to be built in 1966) and is graded as being of local significance in the inventory listing for the site.

Although the existing aged care facility is located on land that is heritage listed, there is no primary objection to demolition as proposed, however all buildings should be photographically recorded to archival standards before any works commence so an understanding of the place can be retained as a permanent record.

Amendments to proposed scheme

Amended information was received by Council on 19 December 2014, including an addendum to the Statement of Heritage Impact (HIS) dated April 2014.

In terms of the heritage issues, the amendments have resulted in a slight realignment of the proposed driveway to provide for a small planting strip along the northern side of the proposed RACF building and some changes to the landscape around the heritage building.

As noted in the HIS dated April 2014, the HIS:

"... is intended to be a practical working document to guide future actions to Huon Park and Nazareth House Chapel, that currently forms part of the Southern Cross Care Aged Facility at North Turramurra."

The addendum to the HIS responds to the issues of retention of a view corridor to the public realm (from Bobbin Head Road) and discussion on the curtilage. An outline drawing indicating its "reduced curtilage" is provided.

View corridor to public realm

The position that was put to the applicant suggested that:

The design and location of the proposed residential aged care facility be amended to allow retention of the existing viewing corridor from the public realm. As a guide, the setback of the proposed residential aged care facility from the existing internal road should be increased to reflect the setback of the existing facility. This would also provide an appropriate garden setting to the northern elevation of the proposed facility.

The amended scheme has retained the footprint of the proposed RACF building and slightly realigned the roadway to provide a planting strip between the RACF building (on its north side) and the roadway. A photomontage has been prepared, demonstrating that a view corridor to the heritage building has been retained and, with demolition of the existing flat roofed link and the provision of a new open flat roofed link, there will be enhanced visibility of the heritage building from Bobbin Head Road which would result in recovery of some views lost as a result of construction of the existing 1960s aged care facility and Chapel.

The proposed RACF building has not been set back nor has the design of the proposed new buildings been amended. The opportunity to

recover a larger visual setting to the heritage building from Bobbin Head Road has not been provided. The small planting strip and realignment of the driveway would provide an improved garden setting to the proposed RACF building from within the site. From a heritage perspective, this is not considered to be a desirable response to this issue.

Reduced curtilage for Huon Park

A reduced curtilage is an area of land that is less than the lot boundary of the property (the legal curtilage). It arises where the significance of an item may not relate to the total lot but to a lesser area and is often defined when development occurs. The legal curtilage is the existing lot defined by the Lot & DP number following subdivision in 1951.

For this site, major development occurred in the 1960s with removal of former outbuildings and vegetation for construction of the existing aged care facility. The Federation period building and much of the treed character of the site was retained. As the proposed development involves demolition of all of the 1960s buildings (apart from the chapel) it is necessary to identify a reduced curtilage sufficient to maintain the heritage significance of the site.

With any major re-development there are opportunities to enhance significance and the following matters should be satisfied:

- whether the significance of the original relationship of the heritage item to its site and locality will be conserved*
- whether an adequate setting for the heritage item will be provided*
- whether adequate visual catchments or corridors will be provided to the heritage item from major viewing points and*

from the item to outside elements with which it has important visual links or functional relationships

- *whether buffer areas are required to screen the heritage item from visually unsympathetic development or to provide protection from other sources*

Previously, it was recommended that a curtilage analysis and a redefined heritage curtilage should be undertaken at this stage before any further development occurs.

The further information submitted includes further discussion on the curtilage of the item. A sketch of a recommended "reduced curtilage" is provided. The additional information states in part:

"The proposed development removes existing intrusive development from within the reduced curtilage. This is shown in Figure 3 where existing development is located to the south and west of Huon Park and south of Nazareth House Chapel. Removing development south of the Chapel will provide a "desirable view line" looking east from Huon Park to Bobbin Head Road. The location of gardens south of "Huon Park" provides a buffer between the two-storey residence and the proposed RACF. The location of a vehicular drive along the southern boundary of the reduced heritage curtilage will provide a further "buffer" between the two-storey residence and the proposed RACF. The location of a vehicular drive along the southern boundary of the reduced heritage curtilage will provide a further "buffer" between the heritage item and the proposed RACF development. On this basis, an increased setback of the RACF to the internal road is not considered necessary."

With development of the site in the 1960s for an Aged Care Facility substantial change occurred. Some of the work, particularly the loss of garden area around the main Federation building and the attachment

of other buildings to the west, have detracted from its setting. The location of the chapel in front of the main Federation building has resulted in very little visual setting from Bobbin Head Road. However, when this work was undertaken there was no heritage legislation in place. Retention of the main Federation building and some of the boundary plantings occurred, possibly due to the large size of the site. The main Federation house was adapted to a residence but largely retained intact. The location in the middle of the site probably suited its use and the needs of the Sisters who operated the facility.

Acknowledging that the site has undergone substantial change, some of the reduced curtilage would be regained with the proposed works and this is a positive aspect of the application. The proposed refurbishment, repair and continued use of the Federation building as a clubroom and office are also considered appropriate.

As suggested in the application a "reduced curtilage" should be drawn along the southern edge of the roadway and no setback provided to the RACF building. From a heritage perspective, the opportunity to recover some of the former visual setting from Bobbin Head Road is lost. The narrow view corridor proposed between the Chapel and the RACF building is considered minimal and a larger "reduced curtilage" to the heritage building, with consideration of the boundary plantings which are part of the visual setting of the place, should be provided.

Conclusion

The amendments have not resulted in any reduction or modification to the location or design of the proposed buildings. The amendments have resulted in some changes to the location of the driveway and provision of plantings.

From a heritage perspective, the now "reduced curtilage" should be increased and more of the former visual setting to the public realm recovered. As initially suggested, the proposed new RACF building

should be set back to at least the line of the existing development on the site.

Landscaping

Council's Landscape and Tree Assessment Officer commented as follows:

Tree impacts

An Arboricultural Assessment prepared by Tree IQ and dated 17/04/14 has been submitted with the application. Tree numbers refer to this report.

Tree removal

The application proposes the removal of 212 trees.

The trees to be removed include both locally indigenous as well as planted Australian native and exotic species; the majority of which have been planted in association with the existing aged care facility. These latter trees are unlikely to survive demolition and are not considered to be of heritage or ecological significance. There is no landscape objection to their removal.

Of the trees to be removed along the southern boundary of the site, several are in good condition and provide neighbor amenity and should be retained as follows:

Trees 138, 129, 115, 93 and 94.

*Two mature *Angophora costata* (Sydney Red Gum - Trees 117 and 118) located in the south-eastern corner of the site are proposed to be removed for the access road. Tree 118 has been identified as one of the six (6) habitat trees on the site. Removal of this tree without further substantiated justification, is not supported.*

Tree 43/ Pinus radiata (Monterey Pine) /located on the front boundary, north of the southern driveway entrance. Removal of this tree, which is in good condition and considered for retention by the arborist, without further substantiated justification, is not supported.

Tree 80/ Araucaria cunninghamiana (Hoop Pine) /located in the front setback, south of the southern driveway entrance. Removal of this tree, which is in good condition, of high landscape significance and considered a priority for retention by the arborist, without further substantiated justification, is not supported.

Trees to be retained

The proposed works encroach within the tree protection zones of numerous significant trees that are proposed to be retained (33 trees with a major encroachment as per AS4970-2009). Of these 15 trees are assessed as of high landscape significance and 13 are of moderate significance. The amended plans have reduced the number of trees to be retained by 2.

Trees with major encroachment into tree protection zones

The arborist report has the following trees where the proposed construction will result in a major encroachment within the tree protection zone of the following tree/s in accordance with AS4970:2009 Protection of trees on development sites.

Tree/Location

Tree 7/Glochidion ferdinandi (Cheese tree) located on the northern boundary, just inside the entrance on the driveway to Huon Park. The existing bitumen road is to be retained and used for construction traffic. Tree protection measures are to be provided. The impact is considered acceptable.

Tree 11/Araucaria cunninghamiana (Hoop Pine) located just inside the entrance on the driveway to Huon Park, on the southern side. The new

entry walls are located in the approximate location of existing walls. The impact is considered acceptable.

Tree 21/ Pinus radiata (Monterey Pine) located in the front setback, directly south of the entrance driveway to Huon Park. The existing bitumen road is to be retained and used for construction traffic. Tree protection measures are to be provided. The impact is considered acceptable.

Tree 33/ Eucalyptus capitellata (Brown Stringybark) located in the front setback, east of the Nazareth Chapel. The proposed building and associated terraces, driveway, sensory garden and associated paths with filling up to 550mm depth will result in a major encroachment on the tree protection zone. The extent of the proposed works is considered excessive and a poor outcome for such a significant specimen. The requirements for solar access and high water use for the sensory garden would also conflict with the proposed location within canopy spread of this low water use tree. To preserve this tree, the setbacks to the RACF terraces/building should be increased and the sensory garden and associated paths should be relocated outside of the tree protection zone of existing mature trees.

Tree 35/ Angophora costata (Sydney Red Gum) located in the front setback, east of the Nazareth Chapel. The proposed path and garden feature is located within the tree protection zone. The proposed path levels are approximately 360mm above existing grades. Any filling greater than 200mm depth is to be avoided. The proposed path levels are to be lowered to reduce filling to tree protection zone and the garden node should be relocated outside the tree protection zone of Tree 21 and 35.

Tree 41/ Angophora costata (Sydney Red Gum) located in the front setback, east of the Nazareth Chapel. The proposed path is located within the tree protection zone. The impact is considered acceptable.

Tree 92/ Eucalyptus capitellata (Brown Stringybark) /located on the front boundary, south of the southern driveway entrance. The existing levels including within the structural root zone are proposed to be modified for the overland flow path diversion. The proposed works include construction

of a play area, path, headwall and trenching for a 375mm diameter pipe will be a major encroachment within the tree protection zone. A calculation of the proposed construction encroachment has not been provided and therefore the extent of works is considered excessive and is not supported.

Tree 116/ Eucalyptus capitellata (Brown Stringybark) /located at the southeast corner of the site, within the front boundary. The proposed driveway and path, excavation for the 600mm pipe for overland flow diversion will be a major encroachment within the tree protection zone. Proposed levels for the path indicate that that it would require excavation within the structural root zone. The extent of works is considered excessive and is not supported. The proposed driveway setback should be increased and the path and overland flow diversion pipe should be relocated.

Tree 122/ Liquidambar styraciflua (Liquidambar) /located at the south-eastern corner of the site. The proposed driveway construction will be a major encroachment within the tree protection zone of this tree. The impacts are likely to be similar to Tree 116, however proposed levels have not been provided in the vicinity of this tree. This tree is of moderate landscape significance. The proposed driveway setback should be increased.

Tree 128/ Eucalyptus capitellata (Brown Stringybark) / located at the south-eastern corner of the site on the southern boundary. The proposed driveway construction will be a major encroachment within the tree protection zone of this tree. The proposed driveway setback should be increased.

Tree 135/ Angophora costata (Sydney Red Gum) located on the southern boundary. The proposed driveway and retaining wall construction will be a major encroachment within the tree protection zone of this tree. The proposed driveway setback should be increased.

Tree 144/ Jacaranda mimosifolia (Jacaranda) located within the southern side setback directly south of the buildings. The proposed driveway

construction will be a major encroachment within the tree protection zone of this tree. The proposed excavation for the driveway is approximately 2 metres from the tree and is likely to encroach within the structural root zone. A retaining wall along the driveway edge is likely to be required. The proposed driveway setback should be increased.

Tree 152/ Pinus radiata (Monterey Pine) /located in the southern side setback. The proposed driveway and retaining wall construction will be a major encroachment within the tree protection zone of this tree. The proposed driveway setback should be increased.

Tree 156/ Eucalyptus microcorys (Tallowood) /located in the southern side setback, north of the existing detention basin. The proposed driveway and retaining wall construction will be a major encroachment within the tree protection zone of this tree. The proposed driveway setback should be increased.

Tree 234/ Angophora costata (Sydney Red Gum) located in the southern side setback. The proposed driveway, retaining walls and stormwater pipes will result in a major encroachment within the tree protection zone. The proposed stormwater pipes should be relocated outside the tree protection zone. The proposed driveway and carparking area setback should be increased.

Response

To preserve the health and condition of the existing remnant trees and mature exotic plantings located in the front setback, the proposed building setbacks should be increased to be closer to the existing building setbacks and the proposed perimeter driveway is to be set back from the front boundary. To avoid root zone impacts and the creation of increased target areas beneath mature trees, all gardens are to be located outside of the tree protection zone of significant remnant trees where possible. The proposed construction of the overland flow redirection pipe in the vicinity of Tree 92, 116, 122, 135 and 136 is not supported.

Impacts on the significance of the heritage item's fabric, setting and views

The proposal includes the demolition of all buildings on the site except the federation house and the Nazareth chapel providing increased setbacks to the south and west elevation to enable the house to be viewed 'in the round'. As likely to be the original intent, views of the house are screened by existing vegetation and the Nazareth Chapel from Bobbin Head Road. A significant view of the house is on approach from the northern driveway. The original bushland views from the lawn terrace to the south of the house have been lost due to the current building configuration. Other important views are from the tennis court to the east (approximate location of the chapel) and from the level lawn area to the south. The proposed reinstatement of the open garden areas around Huon Park, including the alignment of the curved driveway, is to be commended.

Landscape plan

Resident Aged Care facility

The facility includes a sensory garden, a dementia garden and several specialist nodes along the perimeter pedestrian path. The proposed locations of several of these landscape elements within the canopy spread of mature remnant trees is not supported.

Independent Living Units

The development is excluded from the SEPP (Housing for Seniors or People with a disability) 2004 provisions being within land that is mapped on the Bushfire Evacuation Risk Map. The development, however would comply with the SEPP landscape provisions for deep soil zones and landscape area were they to apply and demonstrates the adequacy of the proposal in this regard. In terms of residential amenity, the development includes three sunken gardens with two access paths to the open space surrounding Huon Park including a childrens play area. It is assumed the residents would also be able to use the perimeter path through the site with the specialist nodes.

Access

A perimeter pedestrian path is provided for the development. The road linking Huon House, the chapel and the RACF is a shared pedestrian/vehicle zone.

Stormwater plan

The proposed location of stormwater and overland flow redirection pipes within structural root zones of existing trees to be retained are not supported.

Construction management plan

The construction entrance 3 shown on the construction management plan is not supported due to the likely impacts on trees located within the site and along the Council road reserve. The location is inconsistently shown on the plans A1 and A3/A4 submitted. Any proposed construction entrance is to be included in arborist assessment.

Conclusion

The amended proposal is not supported due to the removal of 3 significant trees (T43, T80 and T118) and will have a significant impact upon the ongoing viability of 7 trees within the front setback (T33, T35, T41, T92, T116, T128 and T135).

The proposal is also considered to have an unacceptable impact upon trees within the southern setback area (T144, T152, T156 and T234). Through further amendment to the driveway design or additional arboricultural information, these trees may be able to be retained.

Engineering

Council's Development Engineer commented as follows:

Water management

The site benefits from an easement over the downstream property, 28 Stonecrop Road, and a pipe is visible in the easement. Neither the site survey nor the stormwater report and site works plans show how the existing detention basin or the new works are connected to this easement or will be connected. The survey plan shows some pits around the detention basin, however the pattern (and size of the outlet) appears to indicate that the outflow from the basin is conveyed to the system within 400a Bobbin Head Road. The property does not benefit from this easement – it was created to carry runoff from Bobbin Head Road.

The original survey plan by Whelans Insites has not been submitted but the extract in the geotechnical report shows additional detail, such as the orifice plate location and diameter which is not shown on the architectural drawing DA001A titled Site Survey.

A BASIX Certificate has been submitted for the residential units. The water commitments include a 110 000 litres rainwater tank, collecting runoff from 2 098 square metres of roof area, with re-use for toilet flushing, clothes washing, irrigation and car washing.

However, the commitments also include collecting runoff from impervious areas as well as garden and lawn. This is stormwater and is not suitable for re-use inside the building without treatment. The Site Works Plan does not show any impervious areas contributing to the rainwater tank and in fact, the rainwater tank is closer to the RACF building. It is to collect runoff from the units, not the RACF.

Furthermore, the water management plan shows a tank of only 70 cubic metres, but the 110 000 litres tank is required to be shown on the DA plans.

A water score of 61 has been achieved, so reducing the size of the rainwater tank and collecting only roof runoff should not result in the score falling below the required 40.

The water management plans are inconsistent with the BASIX commitments and further information about the rainwater tank (roof areas contributing, nature of re-use) should have not been addressed in the Stormwater Report.

A detention tank is proposed under the south western carpark. The plan indicates the volume to be 119 cubic metres, whereas the report gives 50 cubic metres.

The submitted catchment plan seems to indicate that road and parking areas are not drained into the bioretention basins, however the Site Work plan shows that most of the purple catchment is drained to the larger bioretention basin.

Traffic and parking

The site is zoned "Aged Persons Home" and the development is subject to Council's DCP 43 Car parking. There is no specific parking rate given for "Aged Persons Home". Rates are given for Seniors Housing including nursing homes, which would also apply to the RACF component. The subsidised rate is claimed for the ILU component, although the number of spaces in the basement of the ILU building is more suited to that for a resident-funded development.

For the RACF, the rates in DCP 43 are 1 space per 10 beds for visitors (ie 11 spaces) and 1.5 spaces per 2 employees (17 spaces). One ambulance space is also required.

For the ILUs the subsidised rate gives 3 resident and 3 visitor spaces. The resident-funded rate gives 16 resident and 5 visitor spaces.

The number of parking spaces shown on the architectural plans is ample, however only two spaces are suitable for persons with a disability.

Waste management

Council currently collects waste from the premises. The documentation indicates that this situation is to continue. Council's collection vehicles are described in DCP 40. For the RACF, a commercial collection vehicle would be used. Details have been provided demonstrating that the required access could be provided for.

For collection from the ILU building, Council's small waste collection vehicle would be suitable.

Ecology

Council's Ecological Assessment Officer commented as follows:

This ecological review of the study area was based on the results of a desktop review and site inspections by Council's Ecological Assessment Officer

During the site inspection Sydney Sandstone Ridgetop Woodland (SSRW) a non-threatened vegetation type was identified from the south-west corner of the subject property. Duffys Forest, an endangered ecological community listed under the Threatened Species Conservation Act 1995, was identified along the frontage of the subject property and within the south-eastern corner adjacent to Bobbin Head Road.

The site contains a number of large planted Eucalyptus microcorys (Tallowwood) and Eucalyptus scoparia (Willow Gum).

Environmental controls/Impacts

Biodiversity controls

The frontage of the subject is mapped as an area of land identified as biodiversity significance under KPSO (2014). The area mapped contains endangered Duffys Forest.

The proposal will result in the removal of a number of native canopy trees which comprises part of the onsite Duffys Forest community.

The proposed removal of Duffys Forest from the area identified as biodiversity significance is considered to contravene the controls and the objectives of the controls as set out in the KPSO. The proposed removal of Duffys Forest trees within the frontage needs to be considered further in the arborist report and an assessment provided within a revised flora and fauna assessment. The arborist report needs to provide substantial justification for the removal of any Duffys Forest trees particularly trees containing hollows (habitat trees).

With these matters in mind, proposal is not supported on ecological grounds.

EXTERNAL REFERRALS

Rural Fire Service

In accordance with the provisions of section 91 of the Environmental Planning and Assessment Act 1979, the proposal is Integrated Development on the basis that it requires the issue of a Bushfire Safety Authority under S. 100B of the Rural Fires Act 1997.

Accordingly, the development was referred to the NSW Rural Fire Service (RFS).

The initial response from the RFS, dated 20 August 2014, was to defer their comments on this application, citing issues with bushfire hazard reduction works in the surrounding area. Concerns were also raised with evacuation of the residents from the facility as well as the compounding factor that this

would have upon the evacuation of existing residents on the North Turramurra peninsula.

The issues associated with hazard reduction and evacuation were responded to separately both by Council and the applicant. The concerns raised in respect of Council's management of hazard reduction works was criticised which was not in the applicant's power to resolve. A comprehensive and detailed response was sent to the RFS on 23 December 2014.

Council officers met with the RFS on 18 February 2015 to discuss the development and the RFS's preliminary position on the proposal, having regard to its initial comments and concerns and the further information provided to it.

The RFS then provided a written response, dated 27 May 2015 (**Annexure S**), advising that the *NSW RFS is not in a position to issue a Bushfire Safety Authority for the development.*

Section 91(a)(4) of the Environmental Planning and Assessment Act, specifies that when an approval body (RFS) informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, then consent authority must refuse the application.

On two occasions the RFS has failed to issue its approval (concurrence) for the development. As detailed within the letter of **Annexure S**, the issues cited by the RFS regarding its position are complex and seemingly unresolvable.

Therefore, in the absence of a Bushfire Safety Authority from the RFS the development is recommended, and is required to be refused.

Office of Water

Under the provisions of section 91 of the Environmental Planning and Assessment Act 1979, the proposal is also Integrated Development on the basis that it requires concurrence from the Office of Water through the issue

of a Controlled Activity Approval under the Water Management Act 2000, due to it involving excavation associated with the development encountering ground water.

Accordingly, the development has been referred to the Office of Water for comment. Their response is as follows:

The Office of Water has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act 2000 (WM Act), a controlled activity approval is not required and no further assessment by this agency is necessary for one of the following reasons.

The proposed activity is not occurring on waterfront land (which includes (i) the bed of any river together with any land within 40 metres inland of the highest bank of the river, or (ii) the bed of any lake, together with any land within 40 metres of the shore of the lake, or (iii) the bed of any estuary, together with any land within 40 metres inland of the mean high water mark of the estuary).

Please note: Temporary dewatering of an amount above 3 ML may require a water licence to be obtained from the Office of Water before construction commences.

Please note that the proposal must not incorporate provision for the permanent or semipermanent pumping of groundwater seepage from below-ground areas. A fully tanked structure must be used.

In response to the above, the comments regarding dewatering are noted along with the fact that the GTA's would need to be included in any consent granted.

STATUTORY PROVISIONS

Environmental Planning and Assessment Act, 1979

The proposal is "Local Development" under Part 4 of the EP&A Act, 1979 and requires development consent.

The provisions of Section 79C(1) of the Environmental Planning and Assessment Act, 1979 (as amended) determine the matters for consideration in assessing a development application as stated below:

- (a) The provisions of:*
 - (i) any environmental planning instrument, and*
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) any development control plan; and*
 - (iv) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
 - (v) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
 - (vi) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates.*
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest.*

The relevant provisions of environmental planning instruments, draft instruments, DCPs, regulations and policies are addressed in the following

sections of this report. The likely impacts, suitability of the site and public interest are also addressed below and the submissions received have previously been addressed. The application is not subject of any planning agreements.

State Environmental Planning Policy No. 55 - Remediation of Land

The provisions of SEPP 55 requires consideration of the potential for a site to be contaminated.

In accordance with SEPP 55 (clause 7), the consent authority must not grant consent on land unless,

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The development has been supported by a comprehensive soil analysis that has investigated the potential for soil contamination on site (phase 2 contamination report)

The report identified the presence of soil contamination in isolated parts of the site as well as slightly elevated levels of contaminants within the site's ground waste. In recognition of this, the applicant commissioned an environmental consultant to prepare a remediation action plan which details what works are necessary to bring the site up to a standard suitable for the development proposed.

The phase 2 contamination report and the accompanying RAP are such that

only minor remediation works need to occur in order to bring the site up to the necessary standard for its proposed use. Remediation of the site in accordance with the RAP could be mandated through conditions of consent.

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 of SEPP (Infrastructure) 2007 relates to development with a frontage to a classified road, stating that a consent authority must not grant consent to a development on land that has a frontage to a classified road unless it is satisfied that:

- a) where practicable, vehicular access to the land is provided by a road other than a classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - i. the design of the vehicular access to the land, or,*
 - ii. the emission of smoke or dust from the development, or*
 - iii. the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - iv. the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Bobbin Head Road is a nominated State classified road. The submitted traffic report concludes that the development will have little if any impact upon traffic movements along Bobbin Head Road and that traffic along Bobbin Head Road will continue to flow as it currently does.

Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River

SREP 20 applies to land within the catchment of the Hawkesbury Nepean River. The general aim of the plan is to ensure that development and future land uses within the catchment are considered in a regional context. The Plan

includes strategies for the assessment of development in relation to water quality and quantity, scenic quality, aquaculture, recreation and tourism.

The proposed development is considered to achieve the relevant aims under this policy.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A valid BASIX certificate has been submitted for the independent living units. The certificate demonstrates compliance with the provisions of the SEPP and adequately reflects all amendments to the application.

Ku-ring-gai Planning Scheme Ordinance

Part A: Permissibility / Objectives:

The site is zoned Special Uses (5a) – ‘Aged Care’.

Pursuant of the Development control table of Clause 23 of the Ordinance, development that may be carried out only with development consent in the zone is listed as being

*...Demolition of a building or work that is not exempt development.
Development (other than exempt development) for the purposes of: utility installations other than generating works or gas holders; special events. The particular development indicated by scarlet lettering on the scheme map.*

The scheme map (**Annexure A**) indicates that for the purposes of the Special Uses zone that Aged Care is the development to occur on that site. Any other development that is not exempt (or incidental to Aged Care) is prohibited and could not lawfully occur.

Therefore, the suite of development proposed on site is of a type that provides and relates to Aged Care and is permissible.

This being the case, the application has not been made or assessed against the provisions of SEPP (Housing for Seniors or People with a Disability) 2004.

As such, the development is not captured or affected by the controls of the SEPP. This is significant as were the application to have been made under the SEPP, it could not proceed as the site falls within land excluded from the SEPP due to bushfire risk.

Part B: Development standards

Development standard	Proposed	Complies
Site area: 2.45Ha		
Building height higher than 7m requires consent	11.17m (maximum)	YES

Part C: Heritage /conservation areas:

The site to which the development relates is listed as a local heritage item, containing within the grounds of the existing facility a Federation period home 'Houn Park House'.

Based on comments of Council's Heritage Advisor, the proposal will have an undesirable impact on the heritage significance of 'Houn Park House'.

The development therefore does not satisfy the heritage provisions of the KPSO.

Part D: Biodiversity

The site is mapped as containing vegetation of high biodiversity significance, with vegetation characteristic of Sydney Ridge top Open Forest present on site.

Consistent with the comments provided by Council's Ecological Assessment Officer, the proposed works are assessed as having an unacceptable impact upon the vegetation of high biodiversity significance.

Ku-ring-gai Local Environmental Plan 2015

The Ku-ring-gai Local Environmental Plan 2015 was gazetted by the Minister for Planning on 5 March 2015, coming into operation on 2 April 2015. The purpose of the LEP is to replace the KPSO with an LEP consistent with the Department of Planning's standard template.

The effect of the LEP on this application is somewhat limited as a consequence of Clause 1.8A which states:

1.8A Savings provision relating to development applications

If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

Note. *However, under Division 4B of Part 3 of the Act, a development application may be made for consent to carry out development that may only be carried out if the environmental planning instrument applying to the relevant development is appropriately amended or if a new instrument, including an appropriate principal environmental planning instrument, is made, and the consent authority may consider the application. The Division requires public notice of the development application and the draft environmental planning instrument allowing the development at the same time, or as closely together as is practicable.*

The effect of this is that as the application was made prior to the gazettal of the LEP, it is to be determined as if the LEP had not commenced, thus deferring assessment of the application to the KPSO (which is provided elsewhere in this report).

However, the Court of Appeal has ruled that despite Clause 1.8A, it is necessary to consider the development against draft instrument as at the time the application was lodged, it was a prescribed matter for consideration.

When the DLEP was exhibited, it zoned the site and those adjoining as 'E3 Environmental Management', in recognition of the bush fire prone nature of the area as well areas of remnant native vegetation. The environmental focus of the proposed zoning brought about restricted development opportunities, with aged care or seniors living type developments (as is proposed in this case), being prohibited development in the zone. In reality, the only permissible development within the zone is low density residential on large allotments (1500m²+). This being the case, were the proposal lodged at a time when the LEP had been made, the proposal would be prohibited development and the only foreseeable opportunity would be to pursue existing use rights.

With regard to the other controls of the DLEP including, heritage, biodiversity and trees, the development would be inconsistent with those controls, noting that the foreshadowed controls are similar in content and objective to those within the KPSO.

Notwithstanding this, two pertinent factors remain. The now gazetted LEP includes a provision (Clause 1.8A) that requires any application lodged but not yet determined at the time of gazettal (of which this application is), the application is to be determined as if the new gazetted LEP never existed, in which case its determination reverts back to the KPSO, where it is permissible.

In addition to this, after exhibition of the DLEP the version that was formally adopted by Council and referred to the Minister for gazettal, deferred any change or inclusion within the DLEP of the site and those surrounding, pending further investigation. The effect of this is that the deferral of the site from the LEP maintains the operation of the KPSO as the principal planning instrument, with any proposed development being subject to its controls.

Given the situation, the development has been considered against the controls

of the DLEP 2013 and is found to be an inappropriate form of development. It is recognised, however that no certainty of the DLEP's controls exists and subsequently little weight is given to it as part of this assessment.

POLICY PROVISIONS

Development Control Plan 31 - Access

The proposed development has been supported by a detailed access report, prepared by an accredited access consultant.

This report demonstrates that the proposed development has been designed to satisfy the access requirements of the DCP as well as the needs of the future residents of the development which will be aged and frail.

Development Control Plan No. 43 - Car Parking

Car parking for the proposed development has been broken down into two components, being the car parking demand generated by the RACF and ILU. Car parking for the staff use of 'Houn Park House' and the Chapel have not be separately calculated as these building / uses are associated with the aged care facilities on site and themselves do not generate any car parking demand.

Having regard to the car parking demands for the RACF, car parking is to be provided on the following basis:

1 space per 10 beds for visitors and 1.5 spaces per 2 employees plus 1 space for an ambulance

In the case of the ILU's, car parking is to be provided on the following basis:

2 spaces per 3 self contained units and 1 visitor space for every 5 units

The proposal includes a 104 bed RACF with up to 39 staff and 24 ILU's, generating a car parking demand of 61 car spaces across the site as well as

an additional space for the parking of an ambulance. A total of 70 car spaces have been proposed onsite, satisfying the car parking requirements of the DCP.

It is also noted, that in order to satisfy the operational obligations of the site's fire evacuation plan, it is necessary to include a parking area / space for a 12-seater mini bus. The development has been sufficiently design to provide for this necessity, providing for this staging area at the rear of the RACF.

The adequacy of the design of a car parking area and the function of the internal road network is separately discussed by Council's Development Engineer elsewhere in this report.

Development Control Plan 40 - Construction and Demolition Waste Management

A construction and demolition waste management plan has been submitted and compliance with the requirements of the DCP can be achieved.

Development Control Plan 47 - Water Management

The proposed development has been supported by a comprehensive stormwater management plan, prepared in accordance with the requirements of DCP 47. As discussed earlier in this report, the plan has been assessed by Council's Engineer and found to be inconsistent with the requirements of the DCP.

Section 94 Plan

Having regard to the type of development proposed and the owners / operators of the site being a charitable, not-for-profit organisation an exemption from a contribution that would otherwise be payable pursuant of the Ku-ring-gai Contributions Plan 2010 has been sought.

As the development comprises a combination of a residential aged care facility and independent living units that would have a greater population density than the existing facility, this increase in density would attract a contribution payable under the plan. This is due to the type of care provided within the residential aged care facility and independent living units would provide accommodation for permanent residents on site. Such accommodation with regard to Council's contributions plan is considered 'residential development' and is subject of the plan, as the plan applies to ...*all residential development....*

Part B: Contributions Plan Overview, Management – Policies and Procedures section of *Ku-ring-gai Contributions Plan 2010* embodies all Council's policies and procedures on the management of the levying of development contributions.

At the heart of contributions planning, is the onus of reasonableness. On this basis, *Ku-ring-gai Contributions Plan 2010*, like its predecessors, exempts limited small-scale development from the onus to pay development contributions. For example alternations and additions to existing houses have long been exempted and, more recently, secondary dwellings (which are an entirely distinctly different form of development from dual occupancies). This policy exists specifically to support local residents to extend their homes to accommodate their existing family and to provide small-scale affordable housing for elderly relatives or older children without undue financial hardship.

In a similar context, *Ku-ring-gai Contributions Plan 2010* also provides for a limited scope for merit exemptions as it is not always possible to identify in advance all developments which may be able to make a meritorious case for exemption. The section, which commences on page 52 of the Contributions Plan, specifies the limited scope and criteria on which Council may consider a merit exemption on the unique circumstances of the case including (as paraphrased below):

- Developments which provide a distinct community benefit on a not-for-profit basis;
- Development by or for not-for-profit or co-operative organisations which provide a distinct community benefit including community services or the like on a co-operative or not-for-profit basis;
- Development where it can be demonstrated to the satisfaction of Council that in any particular category of contributions 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; and/or
- Development which involves the internal conversion of a dwelling recently used for commercial purposes, back to residential use (except as part of a larger redevelopment).

The proposed development would satisfy one of the above exemption criteria.

It would provide a distinct community benefit on a not-for-profit basis, as Southern Cross Care is a registered charity with the residential aged care facility component of the development providing care for aged, frail and dementia patients. Demand for these services is ever increasing with the ageing population.

Southern Cross Aged Care as applicant (and owner and future operator of the site) has made a comprehensive submission as part of their Development Application to inform and assist Council in assessing the proposal against the key criteria for exemption from the requirement to pay development contributions.

However as the application may not proceed due to the absence of concurrence from the RFS, it is therefore not necessary to test the exemption sought to the contributions.

LIKELY IMPACTS

As provided for within this assessment, the proposed development would present an unacceptable impact upon the residents of the facility and those surrounding in the case of bush fire, particularly with regard to evacuation. To a lesser extent, the proposed development as conceived has an impact upon the natural and built environments, through vegetation loss and intrusion into the curtilage of Houn Park House.

SUITABILITY OF THE SITE

The site due to the absence of concurrence from the Rural Fire service is not considered to be suitable for the proposed development.

ANY SUBMISSIONS

All submissions received have been considered in the assessment of this application.

PUBLIC INTEREST

For the reasons given above, the application is not considered to be in the public interest.

CONCLUSION

Having regard to the provisions of section 79C of the Environmental Planning and Assessment Act 1979, the proposed development is considered to be unsatisfactory. Therefore, it is recommended that the application be refused.

RECOMMENDATION

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

THAT the Sydney West Joint Regional Planning Panel, as the consent authority, refuse development consent to Development Application

No.0185/14 for the retention and refurbishment of Huon Park House and existing chapel, the demolition of the remaining buildings and construction of a 104 bed residential aged care facility & 24 independent living units, including landscaping works on land at 402 Bobbin Head Road, North Turramurra for the following reasons:

1. NSW Rural Fire Service has failed to issue a Bushfire Safety Authority for the development and pursuant to Clause 91A(4) of the Environment Planning and Assessment Act, 1979 , the application must be refused.

Particulars

On 27 May 2015, NSW Rural Fire Service notified Council that it is not in a position to issue a Bushfire Safety Authority, as required by S.100b of the Rural Fires Act 1997. NSW RFS have cited issues with the proposal not meeting the aims and objectives of *Planning for Bushfire Protection 2006* relating to the provisions of safe operable access and egress for emergency services personnel and residents. Furthermore, the proposal fails to provide for suitable emergency access and evacuation arrangements as required in section 4.2.7 of *Planning for Bushfire 2006*.

2. The development would result in adverse tree impacts and is not consistent with Clauses 61D (1) and 61L (1) of the KPSO.

Particulars

The location of the proposed development is within the land identified as "Areas of Biodiversity Significance" under the Natural Resource – Biodiversity Map of clause 61L(2) of the KPSO.

- a. The proposed development is contrary to the objectives of clause 61L(1)(a),(b), (c) and (d) of the KPSO in so far as it does not retain or enhance the biodiversity significant portions of the site.

- b. The proposed development has not been designed or sited in such a way so as to avoid potential adverse environmental impacts as required under clause 61L(4) of the KPSO.
- c. The arborist report does not provide sufficient justification for the removal of Tree 118 which is a significant existing tree. This tree is representative of Duffy's Forest community, an endangered ecological community and is considered significant as a remnant tree in accordance with Clause 3, Scientific Determination, NSW Scientific Committee. This tree is a visually and ecologically significant specimen that has been identified as a habitat tree (p 23, Flora and Fauna Report, Travers Bushfire and Ecology, December 2014).

Tree 118 / *Angophora costata* (Sydney Red Gum) is located in the south-eastern corner of the site.

- d. The arborist report does not provide sufficient justification for the removal of Trees 43 and 80. These trees are significant mature trees in good condition and are considered for retention by the arborist.

Tree 43/ *Pinus radiata* (Monterey Pine) / is located on the front boundary, north of the southern driveway entrance.

Tree 80/ *Araucaria cunninghamiana* (Hoop Pine) / is located in the front setback, south of the southern driveway entrance.

- e. The proposed development results in a major encroachment within the tree protection zone of the following seven (7) existing trees of high landscape significance located within the front setback. The applicant's arborist has not demonstrated that the trees will remain viable through non-invasive methods. The extent of the proposed works is considered excessive and would result in a poor outcome for such significant specimens.

- i. Tree 33/ *Eucalyptus capitellata* (Brown Stringybark) is located in the front setback, east of the Nazareth Chapel. The proposed building

and associated terraces, driveway, sensory garden and associated paths with filling up to 550mm depth will result in a major encroachment within the tree protection zone. The extent of the proposed works is excessive and a poor outcome for such a significant specimen. The requirements for solar access and high water use for the sensory garden would also conflict with the proposed location within the canopy spread of this low water use tree. To preserve this tree, the setbacks should be increased to the RACF terraces/building and the sensory garden and associated paths should be relocated outside of the tree protection zone of existing mature trees.

- ii. Tree 35/ *Angophora costata* (Sydney Red Gum) is located in the front setback, east of the Nazareth Chapel. The proposed path and garden feature is located within the tree protection zone. The proposed path levels are approximately 360mm above existing grades. Any filling greater than 200mm depth is to be avoided. The proposed path levels are to be lowered to reduce filling to tree protection zone and the garden node should be relocated outside the tree protection zone of Tree 21 and 35.
- iii. Tree 41/ *Angophora costata* (Sydney Red Gum) is located in the front setback, east of the Nazareth Chapel. The proposed path is located within the tree protection zone.
- iv. Tree 92/ *Eucalyptus capitellata* (Brown Stringybark) / is located on the front boundary, south of the southern driveway entrance. The existing levels including within the structural root zone are proposed to be modified for the overland flow path diversion. The proposed works include construction of a play area, path, headwall and trenching for a 375mm diameter pipe will be a major encroachment within the tree protection zone. A calculation of the proposed construction encroachment has not been provided
- v. Tree 116/ *Eucalyptus capitellata* (Brown Stringybark) / is located at the south-eastern corner of the site, within the front boundary. The

proposed driveway and path, excavation for the 600mm pipe for overland flow diversion will be a major encroachment within the tree protection zone. Proposed levels for the path indicate that that it would require excavation within the structural root zone. The extent of works is considered excessive and is not supported. The proposed driveway setback should be increased and the path and overland flow diversion pipe should be relocated.

- vi. Tree 128/ *Eucalyptus capitellata* (Brown Stringybark) / is located at the south-eastern corner of the site on the southern boundary. The proposed driveway construction will be a major encroachment within the tree protection zone of this tree. The proposed driveway setback should be increased.
- vii. Tree 135/ *Angophora costata* (Sydney Red Gum) is located on the southern boundary. The proposed driveway and retaining wall construction will be a major encroachment within the tree protection zone of this tree. The proposed driveway setback should be increased.
- f. To preserve the health and condition of Trees 33, 35, 41, 92, 116, 128 and 135, the proposed building setbacks should be increased to be closer to the existing building setbacks and the proposed perimeter driveway should be set back from the front boundary. To avoid root zone impacts and the creation of increased target areas beneath mature trees, all specialist landscape elements are to be located outside of the tree protection zone of significant remnant trees.
- g. The proposed driveway and retaining wall construction will be a major encroachment within the tree protection zone of the following trees:

Tree 144/ *Jacaranda mimosifolia* (Jacaranda). This tree is located within the southern side set back. directly south of the buildings.

Tree 152/ *Pinus radiata* (Monterey Pine). This tree is located in the southern side setback.

Tree 156/ *Eucalyptus microcorys* (Tallowood). This tree is located in the southern side setback, north of the existing detention basin.

Tree 234/ *Angophora costata* (Sydney Red Gum). This tree is located in the southern side setback.

- h. The Construction Entrance 3 indicated on the construction management plan is not acceptable due to the likely impacts on trees located within the site and along the Council road reserve. The location is inconsistently shown on the plans A1 and A3/A4.

3. Insufficient information submitted to enable assessment of the landscape component of the proposal

Particulars

- a. The arborist report is insufficient in respect of the following
 - i. An assessment of impact in accordance with AS4970-2009 Protection of trees on development sites has not been provided. The encroachment of the proposed works within the tree protection zone of existing trees to be retained has not been provided. Where the construction encroachment is greater than 10% of the tree protection zone, the arborist must demonstrate using non-invasive techniques such as root investigation along the line of the proposed excavation and consideration of relevant factors listed in Clause 3.3.4.
 - ii. Further investigation and information is required, to determine the health and structural stability of the following significant trees prior to removal or construction incursions within tree protection zones:

Tree/Location	Inspection
Tree 118/ <i>Angophora costata</i> (Sydney Red Gum)	A Picus Tomograph analysis is to be

undertaken to
assess the
structural
integrity through
the trunk wound

- iii. The arborist assessment should include the impact of the proposed stormwater works, including proposed levels of overland flow redirection pipes. Details of proposed tree sensitive measures should be provided to enable assessment of whether possible (4.4 Arborist Report Tree IQ, 12/12/14)
 - iv. The arborist report should include a tree protection plan that includes fencing and ground protection measures.
 - v. The proposed construction access located within tree protection zones that is not using an existing driveway is to be included in the arborist assessment.
 - b. The landscape plan is insufficient as it does not show proposed fencing to Independent Living Units to enable assessment of the commitments within the BASIX certificate. The Independent Living Units has also failed to be supported by a BASIX landscape compliance diagram.
 - c. An amended ESMP is to be provided indicating stockpile and material locations, tree protection and the deletion of Construction Entrance 3 in accordance with the arborist recommendations.
- 4. The application fails to demonstrate that the site has the legal right to dispose of stormwater runoff as proposed.**

Particulars

The engineering plans submitted, Taylor Thomson Whitting Drawings 131614 C010P2, C040P6, C041P2, C015P3, C016P2, C020P2 and C030P2; show the site stormwater management system being connected to the existing easement

within 28 Stonecrop Road. The easement benefits the development site, but no design details or arborist's advice have been submitted to demonstrate that the replacement of the existing 150mm diameter pipe with a 300mm diameter pipe is feasible.

The pipe extends into the land behind (Lot 21 DP224353) and the plans show that it is proposed to also replace this section with a larger diameter pipe. There is no easement over this site.

Lot 21 DP224353 belongs to the Department of Urban Affairs and Planning (now NSW Planning and Environment). No evidence has been provided that the Department would grant an easement over its land for the extended section of pipe.

The principal existing discharge of stormwater from the site appears to be through 400a and 398a Bobbin Head Road. The easement over these properties is "...for conveying and carrying off surface and stormwaters from Bobbin Head Road"..... The prospect of widening the terms of this easement to also benefit the subject property should be investigated as a less intrusive means of stormwater disposal for the development.

5. The application fails to demonstrate that rainwater and stormwater can be managed on site in accordance with the requirements of SEPP BASIX and Council's DCP 47 *Water management*.

Particulars

A BASIX Certificate has been submitted for the residential units (Certificate 519550M_02 dated 15 December 2014). The water commitments include a 108 000 litres rainwater tank, collecting runoff from 2 098 square metres of roof area, with re-use for toilet flushing, clothes washing, irrigation and car washing.

The commitments also include collecting runoff from impervious areas and garden and lawn. This is stormwater and is not suitable for re-use inside the

building without treatment, so the development as proposed cannot achieve compliance with the BASIX commitments.

The Site Works Plan does not show any impervious areas contributing to the rainwater tank and in fact, the rainwater tank is under the RACF building. The rainwater tank is to collect roof runoff from the unit building, not the RACF.

The water management plan shows a tank of only 70 000 litres, but the BASIX commitments require the 108 000 litres tank to be shown on the DA plans.

The water management plans are not consistent with the BASIX commitments and information about the rainwater tank (such as roof areas contributing, nature of re-use) was not included in the Stormwater Report.

6. The proposed development will have an unacceptable heritage impact and is contrary to the considerations and objectives of Clause 61D of the KPSO.

Particulars:

The now “reduced curtilage” should be increased and more of the former visual setting to the public realm of ‘Huon Park’ recovered. The proposed new RACF building should be set back to at least the line of the existing development on the site.

The opportunity to recover a larger visual setting to the heritage building from Bobbin Head Road has not been provided. The small planting strip and realignment of the driveway would provide an improved garden setting to the proposed RACF building from within the site, however does little to improve or reinforce the views to Houn Park from the public domain.

Signed

Adam Richardson
Executive Assessment Officer

Selwyn Segall
Team Leader Development Assessment

Corrie Swanepoel
Manager Development Assessment

Michael Miocic
Director Development & Regulation

Annexure A – Zoning Map – 2015/135298

Annexure B – Objectors Map – 2015/135302

Annexure C – Site Analysis – 2015/002785 – sheet 1

Annexure D – Site Plan Level 1 – 2015/002785 – sheet 2

Annexure E – Site Plan Level 2 – 2015/002787 – sheet 1

Annexure F – Site Plan Level 3 / Roof – 2015/002787 – sheet 2

Annexure G – Site Plan Roof – 2015/002789 – sheet 1

Annexure H – Elevations – 2015/002791 – sheet 1
Annexure I – ILU Level 1 and 2 Plans – 2015/00279 – sheet 3
Annexure J – ILU Level 3 and Roof Plans – 2015/00279 – sheet 4
Annexure K – ILU Elevations – 2015/002792 – sheet 1
Annexure L – External Materials 2015/002792 – sheet 3
Annexure M – Proposed Shadows – 2015/002792 – sheet 4
Annexure N – Landscape Plan – 2015/002920 – sheet 1
Annexure O – Site Stormwater Plan – 2015/091710 – sheet 1
Annexure P – Extended Stormwater Plan – 2015/091710 – sheet 2
Annexure Q – Bushfire Protection Assessment – 2015/002745
Annexure R – Bushfire Evacuation Plan – 2015/002742
Annexure S – RFS letter – 27 May 2015 – 2015/134595