

SYDNEY NORTH PLANNING PANEL ASSESSMENT REPORT

Panel Reference	2015SYW189
DA Number	DA0418/15
LGA	Ku-ring-gai
Proposed Development	Demolish structures (except dwelling at 25 Bushlands Avenue) and construct a residential care facility, basement parking and landscaping works under the provisions of SEPP (Housing for Seniors or People with a Disability) 2004.
Street Address	25, 25A and 27 Bushlands Avenue, Gordon
Applicant	Australian Nursing Home Foundation C/O Mark Boffa
Owner	Mei Mei Tse, Mr Bernard Tse, Ms Monica Chu, Mr Andrew Gock, Ms Ellen Louie
Number of Submissions	Original DA: 108 submissions and a petition with 11 signatures objecting to the proposal. 227 submissions (predominantly form letters) and a petition with 8,803 signatures in support of the proposal. Amended DA: 64 submissions objecting to the proposal and 1 submission in support
Regional Development Criteria (Schedule 4A of the Act)	'General development over \$20 million'
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • <i>Threatened Species Conservation Act 1995</i> • <i>Environment Protection and Biodiversity Conservation Act 1999</i> • SEPP 55 – Remediation of Land • SREP (Sydney Harbour Catchment) 2005 • SEPP (Housing for Seniors or People with a Disability) 2004 • Ku-ring-gai LEP 2015 • Ku-ring-gai DCP • Ku-ring-gai Contributions Plan 2010 • Clause 92(1)(b) of the Environmental Planning and Assessment Regulation 2000
Is a Clause 4.6 variation request required?	Yes: The proposal does not comply with clause 26 'Location and access to facilities' of SEPP (Housing for Seniors or People with a Disability) 2004
Does the DA require Special Infrastructure Contributions conditions (S94EF)?	No
Have draft conditions been provided to the applicant for comment? Have any comments	The application is recommended for refusal, accordingly conditions have not been provided to the applicant.

been considered by council in the assessment report?	
List all documents submitted with this report for the Panel's consideration	Attachment A – Pre DA report for meeting held 6/08/2015 Attachment B – Pre DA report for meeting held 14/09/2015 Attachment C – Assessment letter dated 28/04/2016 Attachment D – Applicant's clause 4.6 variation request Attachment E – Heritage Advisor comments Attachment F – Urban Design Consultant comments Attachment G - the <i>Principal Healthcare</i> judgement Attachment H – Location Map Attachment I - Zoning Extract Attachment J – Plans and Elevations
Recommendation	Refusal
Report prepared by	Jonathan Goodwill – Executive Assessment Officer
Report date	8 February 2017

PURPOSE OF REPORT

To determine Development Application No. DA0418/15 which is to demolish structures (except heritage listed dwelling at 25 Bushlands Avenue) and construct an 84 bed residential care facility, basement parking for 29 vehicles and landscaping works under the provisions of SEPP (Housing for Seniors or People with a Disability) 2004 (hereafter referred to as 'SEPP Seniors').

INTEGRATED PLANNING AND REPORTING

Places, spaces & infrastructure

Community Strategic Plan Long Term Objective	Delivery Program Term Achievement	Operational Plan Task
P2.1 A robust planning framework is in place to deliver quality design outcomes and maintain the identity and character of Kuring-gai	Applications are assessed in accordance with State and local plans	Assessments are of a high quality, accurate and consider all relevant legislative requirements

THE PROPOSAL

The application proposes demolition of two dwelling-houses and the construction of an 84 bed residential care facility under the provisions of SEPP Seniors. The proposed works include:

- i. Demolition of all existing structures except the heritage listed dwelling house at 25 Bushlands Avenue. The structures proposed to be demolished include the single storey brick house and swimming pool at 25A Bushlands Avenue, the two storey brick house, detached garage,

swimming pool and shed at 27 Bushlands Avenue and the swimming pool, tennis court, detached brick garage and carport associated with 25 Bushlands Avenue.

- ii. Removal of 62 trees. Retention of 84 trees.
- iii. Consolidation of three existing allotments
- iv. Construction of a 4 level residential care facility to accommodate a maximum of 84 residents in a mix of single and double rooms. The maximum number of staff present on the premises at any time will be 25. The building has a hipped roof with 15 degree pitch and grey corrugated sheet metal cladding. The walls are proposed to have a mix of face brick and painted textured finish. The architectural plans identify a maximum gross floor area of 7,390m² which represents a floor space ratio of 0.645:1.
- v. The basement level (RL 93.56) incorporates the carpark, kitchen, waste room and storage spaces. Twenty-nine (29) car parking bays are provided, including one space for an ambulance and one space for a community bus. Access to the basement is via a two lane driveway on the western end of the street frontage.
- vi. The lower ground floor level (RL 98.06) incorporates the lower level of the West Wing (18 beds) plus a theatre, laundry, gym and dining/lounge room. As a consequence of the cross fall of the site, the eastern side of the lower ground floor level is located below the existing ground level and the western side is located above the existing ground level.
- vii. The ground floor level (RL 101.36) incorporates the East Wing with 23 beds and the West Wing with 20 beds. Each wing contains lounge rooms, dining areas and access to outdoor courtyards. The café/shop is located on the western side of the East Wing. The front door of the facility is located on the southern side of the ground floor level near the centre of the building. Access from the street frontage to the front door is via a pedestrian ramp.
- viii. The first floor level (RL 104.66) is located between the centre of the building and the eastern elevation. The first floor level contains the upper floor level of the East Wing with 23 beds plus lounge rooms, dining area, quiet room, activity rooms and access to the plant room located in the roof space.
- ix. The heritage item at 25 Bushlands Avenue is located on the eastern side of the site. The proposal includes the demolition of the tennis court and swimming pool associated with this building. The proposed works include the use of the heritage item as office space for staff and the rear rooms at the ground floor level as activity/dining rooms for residents. The construction of a glass roof colonnade behind the heritage item to create a weatherproof connection between the eastern and western sides of the East Wing is also proposed.

THE AMENDMENTS

The amended proposal submitted on 18 October 2016 incorporated the following amendments:

- i. The provision of services and facilities on site to satisfy the requirements of clause 26 of the SEPP and avoid the need for a clause 4.6 variation request.
- ii. Internal café relocated to the western side of the East Wing, increased in size, renamed the 'Tea House' and provided with a deck, outdoor seating and views towards landscaping in the north-western corner of the site.
- iii. An increase in the number of trees to be retained including Tree 50, which is part of the Sydney Turpentine Ironbark Forest ecological community, by increasing the setback of the northern elevation from the rear boundary.

- iv. Front setback of the eastern wing increased so that it sits in alignment with the rear elevation of 25 Bushlands Avenue. Front setback of the western wing decreased from 19.8m to 14.6m so that it is in front of the front wall of 25 Bushlands Avenue.
- v. Construction of a new front fence across the entire frontage based on historical photos of the original front fence for 25 Bushlands Avenue.
- vi. Removal of the 'U' shaped driveway with drop off bay in the centre of the front setback to provide additional landscape area, reduce level changes and delete retaining walls.
- vii. Elevations modified to incorporate a strong base of face brick with the upper level incorporating a textured render and painted finish.
- viii. The removal of the skylight structures that were above the 8m height control and replacement with skylights flush to the roof surface.
- ix. Replacement of roof level plant platforms with ventilated plant rooms inside the roof.
- x. Reduction in the rear setback of the eastern wing from 10.5m to 6.5m and the depth of the courtyard directly behind 25 Bushlands Avenue reduced from 20.6m to 10.2m.
- xi. Increased side setbacks for the western elevation and additional privacy screening measures to windows on the eastern, northern and western elevations.
- xii. Additional articulation to the western elevation to break down the building mass and improve the visual relationship with adjacent dwelling-house development.
- xiii. Footprint of lower ground floor level extended to the eastern side of the site and increased in size to accommodate a significantly larger theatre and gym.
- xiv. Footprint of basement extended towards the eastern side of the site to include an additional car space and more storage area.

THE SITE AND SURROUNDING AREA

The site:

The site has a total area of approximately 7,406m². It is rectangular in shape with a frontage of 70.7m to Bushlands Avenue and a maximum depth of 104.83m. The site contains three allotments, three dwelling-houses, three swimming pools, one tennis court and ancillary structures. The existing dwelling-houses on the site include the two storey heritage item known as 25 Bushlands Avenue (Birralee), a single storey brick dwelling house on a battleaxe allotment known as 25A Bushlands Avenue and a two storey brick dwelling house known as 27 Bushlands Avenue.

The heritage significance of 25 Bushlands Avenue is summarised as:

No. 25 Bushlands Avenue has local heritage significance as part of the first wave of residential suburban development undertaken in the area prior to World War 1, an important phase of the growth of the Ku-ring-gai Local Government Area when rural lands were being subdivided for housing. The development of No. 25 Bushlands Avenue demonstrates the popularity of suburban living, made possible due to the provision of public infrastructure to support the growth of suburbs such as Gordon, away from the inner city which was seen as being unhealthy, overcrowded and dissolute. Birralee, built c. 1915 and highly intact, is a fine example of a Federation Bungalow style house retaining most of its original features. The attractive garden of Birralee retains key features of the original garden and demonstrates the strong links between Federation houses and their gardens. The garden provides an appropriate setting for Birralee.

The rear half and central parts of the site contain a patch of Sydney Turpentine Ironbark Forest (STIF) vegetation, which is listed as an Endangered Ecological Community under the *Threatened Species Conservation Act 1995* and a Critically Endangered Ecological Community under the *Environment Protection and Biodiversity Conservation Act 1999*. The patch of STIF vegetation is also identified as approximately 3,600m² of biodiversity significant land under Ku-ring-gai LEP 2015.

The site is located to the south-west of the Gordon town centre on a street that is predominantly zoned R2 Low Density Residential. The nearest bus stop is located at the frontage of 786 Pacific Highway Gordon, which is a 670m walking distance from the site. The Gordon town centre, which is generally represented by B2 Local Centre zoned land north of St Johns Avenue, is a 530m walking distance from the site.

The traffic report advises that Bushlands Avenue carries 38 vehicles in the AM and PM traffic peak hours. The site is 310m from the intersection of Bushlands Avenue and Pacific Highway. The site is located approximately 8.6m downslope from the Pacific Highway, which has an RL of approximately RL 120 at the intersection with Bushlands Avenue.

The site frontage slopes 4.35m from the eastern side (RL 101.40) to the western side (RL 97.05). The rear boundary of the site slopes 4.96m from the eastern side (RL 101.12) to the western side (RL 96.19). The cross fall of the site is approximately 6%.

Constraint:	Application:
Visual character study category	1920-1945
Easements/rights of way	25A Bushlands Avenue is subject to a drainage easement
Heritage Item - Local	Yes: No. 25 Bushlands Avenue 'Birralelee'
Heritage Item - State	No
Heritage conservation area	The northern boundary of the site adjoins the St Johns Avenue Heritage Conservation Area
Within the vicinity of a heritage item	No
Bush fire prone land	No
Natural Resources Biodiversity	Yes
Natural Resources Greenweb	Yes: Support for Core Biodiversity Land and Biodiversity Corridors and Buffer Areas
Natural Resources Riparian	No
Within 25m of Urban Bushland	No
Contaminated land	No
Within 25m of Classified Road	No
Within 25m of a rail corridor/tunnel	No

Surrounding development:

The site is located on land zoned R2 Low Density Residential and which is subject to a statutory building height limit of 9.5m and a floor space ratio of between 0.3:1 and 0.4:1 depending on site area. With the exception of the Ravenswood boarding house facility at the eastern end of Bushlands Avenue all the allotments in Bushlands Avenue are occupied by dwelling-houses. Nearby recreational facilities include the Gordon Golf Club to the west of the site at 4 Lynn Ridge Avenue and the Gordon Bowling Club to the south of the site at 4 Pennant Avenue. Bushlands Avenue has sealed width of approximately 7m, with kerb and gutter on the northern side of the road and a grass verge with no kerb and gutter on the southern side of the road. A footpath is located on the northern side of the road.

The adjacent property to the east of the site is 23 Bushlands Avenue. This property contains a single storey dwelling house and a swimming pool in the backyard. The adjacent property to the west of the site is known as 29 Bushlands Avenue. The property contains a single storey dwelling house with a two storey rear wing and a detached garage. The subdivision pattern of Bushlands Avenue is mixed, as the deep allotments have facilitated multiple battleaxe lots. The streetscape is a mix of single and two storey dwellings in a landscaped setting characterised by generous front gardens and canopy

trees. A notable characteristic of the street is that the allotments on the southern side of the street are significantly shallower than those on the northern side of the street. The dwellings on the southern side of the street between Browns Road and Yarabah Avenue have shallower front setbacks than the dwellings located on the northern side of the site. The adjacent properties to the rear of the site include Nos. 40, 42, 44 and 46 St Johns Avenue which are located within the St John Avenue Heritage Conservation Area.

HISTORY

Pre DA

Two pre-development application consultation meetings were undertaken for the proposed development.

PRE0094/15

A pre DA consultation for, 'Demolition of three dwellings and construction of a Residential Care Facility pursuant to SEPP (Housing for Seniors or People with a Disability) 2004' was held on 6 August 2015. The applicant was advised that the following fundamental issues had been identified and that it was unlikely that the proposal would be supported:

- location and access to facilities
- site compatibility test
- departures from development standards
- compatibility with area character
- biodiversity impacts

The pre DA meeting report (**Attachment A**) was issued to the applicant on 4 September 2015.

PRE0111/15

A pre DA consultation for, 'Demolition of two dwellings and construction of a Residential Care Facility pursuant to SEPP (Housing for Seniors or People with a Disability) 2004' was held on 14 September 2015. The applicant was advised that the following fundamental issues had been identified and that it was unlikely that the proposal would be supported:

- location and access to facilities
- site compatibility test
- departures from development standards
- compatibility with area character
- biodiversity impacts

The pre DA meeting report (**Attachment B**) was issued to the applicant on 30 September 2015.

Interim Heritage Order

On 11 August 2015, Council resolved to place an Interim Heritage Order on 25 Bushlands Avenue Gordon. The Interim Heritage Order was published in the Government Gazette dated 14 August 2015.

On 15 December 2015 Council resolved to proceed with a Planning Proposal to amend Ku-ring-gai LEP 2015, to include 25 Bushlands Avenue, Gordon, as a local heritage item. The Planning Proposal was placed on public exhibition between 11 March 2016 and 1 April 2016.

On 26 April 2016 Council resolved to proceed with the Planning Proposal. On 6 May 2016 an amendment to Ku-ring-gai LEP 2015 was published on the NSW legislation website and the property known as No. 25 Bushlands Avenue Gordon was formally listed as a heritage item.

Site DA history

Council's electronic database references the following Development Applications made with respect to the subject site:

Type	Application	Description	Decision	Date
BA	1130/86	Resurface tennis court at 25 Bushlands Avenue.	Approved	20/08/1986
BA	1282/88	Carport at 25 Bushlands Avenue.	Approved	24/07/1988
DA	50/89	Additions to the house at 27 Bushlands Avenue.	Approved	13/02/1989
BA	2266/88	Swimming pool at 25A Bushlands Avenue	Approved	27/10/1988
BA	937/90	Additions to the house at 25A Bushlands Avenue.	Approved	12/10/1990
DA	5108/04	Alterations and additions to the house at 25 Bushlands Avenue.	Approved	27/09/2004
DA	791/04	Additions to the house at 27 Bushlands Avenue.	Approved	27/09/2004
DA	1209/07	Alterations and additions to the house at 25 Bushlands Avenue.	Approved	19/02/2008

Current Application History

Date	Action
24 September 2015	Application lodged.
9 October 2015	The application was notified to neighbouring property owners for a period of 30 days.
9 November 2015	The applicant submits a Heritage Impact Statement, Conservation Management Plan, physical model and statement from the proponent regarding community consultation.
16 November 2015	Applicant submits clause 4.6 variation request to vary the development standard for floor space ratio in Ku-ring-gai LEP 2015
28 January 2016	Update on status of DA assessment provided to applicant.
4 March 2016	The application was re-notified to neighbouring property owners for a period of 30 days due to a potential error regarding the description of the proposal in the previous notification letters.
28 April 2016	An assessment letter (Attachment C) was sent to the applicant advising that Council staff maintain their view that clause 26 of the SEPP is not a development standard is maintained but the applicant will be given to an opportunity to amend the application to address merit issues including: site compatibility, skylights/building height, streetscape and architectural character, privacy, building bulk, internal site amenity, overshadowing, community consultation, inconsistent documentation, heritage, landscaping, tree removal, ecology, engineering. The applicant was requested to submit the amended plans by 28 May 2016.
6 May 2016	No. 25 Bushlands Avenue Gordon is listed as a heritage item in Schedule 5 of Ku-ring-gai LEP 2015
16 May 2016	The applicant advises that the amended plans are likely to be submitted by the end of June.
1 June 2016	Council staff provided an update to the JRPP on the status of the DA assessment
3 June 2016	The applicant had a meeting with Council staff.
17 June 2016	The applicant had a meeting with Council staff.
23 June 2016	Council staff provide the applicant with comments regarding appropriate amendments to the western elevation to address privacy and visual bulk concerns.
6 July 2016	Council staff provided an update to the JRPP on the status of the DA

	assessment and a copy of the assessment letter issued on 28 April 2016.
20 July 2016	The applicant submits a revised west elevation plan which seeks to address the issues identified in the correspondence of 23 June 2016. Staff advised the applicant that the amendments are acceptable.
10 August 2016	The applicant is requested to submit the amended plans prior to 8 September 2016 so that referrals and notification can be organised prior to a period of annual leave.
26 August 2016	The applicant advised that they will amend the plans to allow for the retention of Tree 50.
18 October 2016	The applicant submits amended plans.
20 October 2016	Council staff advised the applicant that it is unlikely that the services provided on site satisfy the requirements in clause 26 of SEPP Seniors and that the submission of a revised clause 4.6 variation is recommended notwithstanding the view that clause 26 does not operate as a development standard.
26 October 2016	Amended civil drawings submitted
28 October 2016	The amended application was re-notified to neighbouring property owners for a period of 30 days.
1 November 2016	Council staff asked the applicant whether they have plans which show the existing and proposed ground levels. The applicant advised that the plans contain sufficient detail regarding this matter.
14 November 2016	The JRPP requests and is provided with an update on the status of the DA assessment.
21 November 2016	The functions of the Sydney West JRPP were transferred to the Sydney North Planning Panel.
2 December 2016	Robson J of the Land and Environment Court hands down the decision in the matter of <i>Principal Healthcare Finance Pty Ltd v Council of the City of Ryde [2016] NSWLEC 153 (Attachment F)</i> which holds that clause 26 of SEPP Seniors is a development standard amenable to clause 4.6 of the Ryde LEP.
22 December 2016	The applicant advised that they are preparing an additional submission with respect to clause 26 of SEPP Seniors which will be submitted early in the new year.
23 December 2016	Council staff advised the applicant that the additional submission should be submitted before 16 January 2017 so that it can be considered in the assessment report.
13 January 2017	The applicant submits a revised submission with respect to clause 26 of SEPP Seniors including revised clause 4.6 and SEPP 1 variation requests.

SUBMISSIONS AND COMMUNITY CONSULTATION

In accordance with the notification controls of the Ku-ring-gai Development Control Plan, owners of surrounding properties were given notice of the application. In response, 108 submissions and a petition with 11 signatures objecting to the proposal were received. Also received, were 227 submissions (predominantly form letters) in support of the proposal.

The following matters were raised in the submissions supporting the proposal:

The proposal is a very worthwhile development very much needed by the North shore community and especially the Asian community. This facility will cater for the fast growing population of elderly Asian residents currently living in Northern Sydney that require a care home in which language and cultural background is shared.

SEPP Seniors aims to encourage the provision of Seniors Housing. Seniors Housing is ordinarily prohibited in the R2 Low Density Residential zone and may only be approved if it complies with the relevant planning controls. An assessment of the application has been carried out and it is considered that the proposal does not comply with the planning controls and should not be approved.

The proposed 27 car parking spaces and drop off ambulance space appears to be appropriate to reduce parking impact on surrounding areas.

The number of car spaces complies with the requirements of SEPP Seniors.

The following issues were raised in the submissions objecting to the proposal:

The proposal is inconsistent with strategic planning and reasonable expectations of neighbours as to the likely form of development in the R2 zone.

During the assessment of the application the Land and Environment Court handed down a decision which endorsed the applicant's legal opinion that clause 26 of SEPP Seniors operated as a development standard. Accordingly, the applicant is able to rely on clause 4.6 of the Ku-ring-gai LEP 2015 to seek dispensation from the requirements of clause 26 which require that seniors housing be located within 400m of a public transport service or the facilities specified in clause 26.

The density of the development is substantially greater than nearby dwellings and is an unfair imposition on adjoining land owners who purchased their properties with the expectation that development would conform to the R2 Low Density Residential zoning criteria.

One of the aims of the SEPP is to override Council requirements and allow for development that may be of a significantly greater density than that permitted by the relevant Local Environmental Plan. The ability for a proposal to rely of the provisions of the SEPP is predicated on compliance with the location requirements specified by the SEPP or a well founded clause 4.6 variation to the location requirements. In the subject case, it is considered that the clause 4.6 variation is not well founded.

Appropriate R3 and R4 zoned sites nearby.

Seniors housing is a permissible use in the R3 Medium Density Residential zone. Seniors housing is prohibited in the R4 High Density Residential zone, however the majority of this land is within close proximity to public transport services and is likely to satisfy the location requirements in clause 26 of SEPP Seniors. It is likely that there are other sites in the Ku-ring-gai LGA suitable for the proposed use and which comply with the location requirements specified by the SEPP. However, this issue is not directly relevant to the planning merits of the proposal.

The proposal to replace 3 dwellings with a facility with the capacity for 84 residents plus staff is not consistent with the R2 zoning objectives.

For the reasons identified in the assessment report, it is considered that the proposed development is not consistent with the third objective of the R2 Low Density Residential zone.

The applicant's request to vary the location requirements of the SEPP is not well founded as the objectives of chapter 3 of the SEPP are not satisfied. The ANHF statement that people who wish to undertake independent travel would not be eligible for admission does not comply with the requirements of the SEPP and they may not legally be able to refuse people admission.

The variation request ignores the needs of staff and visitors to have access to services such as public transport. Visitors may wish to take residents to these services but would not be able to because they are not nearby. Failure to appropriately locate the site will prevent elderly relatives without a drivers license from visiting the facility.

The applicant's request to vary the location requirements specified by the SEPP has been considered in detail and is not supported for the reasons outlined in this report. The applicant has not advised that persons physically or mentally capable of independent travel would not be eligible for admission. The applicant has advised that persons who expected to undertake independent travel would not be admitted.

The provision of a community bus to override the location requirements specified by the SEPP cannot be policed and would create an undesirable precedent which would allow for the construction of other seniors living developments on sites which did not comply with the location requirements.

It is agreed that the provision of a private bus is not an adequate reason to vary the location requirements specified in clause 26 of the SEPP. It is noted that in the matter of Pace Property Management Services Pty Ltd v Ku-ring-gai Council (case No. 10866 of 2001) the Land Environment Court rejected the provision of a private bus for a SEPP 5 development in lieu of compliant access (i.e. distance and gradient) to a public transport service. It is agreed that if the subject proposal is considered acceptable on the basis of the reasons provided in the clause 4.6 variation request, such as the provision of on site services and a private bus, it is likely that other development proposals would seek to rely on those same reasons to justify other seniors living developments which do not comply with the location requirements specified by the SEPP.

The argument that the residents will be frail & immobile and will not need or be able to walk anywhere is disingenuous. There is nothing to prevent the future acceptance of residents in the facilities that may be mobile once the development is approved and built.

The proposal is for a residential care facility as defined in the SEPP Seniors. The SEPP does not restrict admission of persons that are physically or mentally capable of independently accessing nearby commercial, retail or community services. Development consents run with the land to which they relate. Planning law does not permit the imposition of conditions which restrict the benefactors of development consents to specific operators or entities. If the development application is approved the residential care facility would be required to comply with the relevant land use definition and occupancy restrictions specified by the SEPP, these requirements do not prohibit the admission of persons that are physically or mentally capable of independently accessing nearby retail/commercial services, community services and recreation facilities.

Other ANHF operated facilities in Sydney comply with the 400m access requirement specified by the SEPP.

The fact that other facilities operated by ANHF comply with the location requirements specified by the SEPP is not directly relevant to the consideration of the current development application.

ANHF purchased the property knowing that it did not comply with the location requirements specified by the SEPP.

This issue is not relevant to the merits of the applicant's request to vary the location requirements specified by the SEPP.

Additional traffic from visitors, deliveries, shuttle buses, staff.

The traffic report estimates that the proposal will result in an additional 12 vehicle trips in the road network peak hour, which represents an increase of 31.5% over existing traffic levels. Additional traffic generated by the development is unlikely to exceed the traffic carrying capacity of Bushlands Avenue or negatively impact the operation of any nearby intersection.

The hedge on the boundary with 23 Bushlands Avenue is 3.5m high not 5m high as claimed by the developer. For the hedge to survive it will need to withstand the construction process and the loss of all westerly sun.

Council's Landscape and Tree Assessment Officer is of the opinion that the setback of the proposal from the hedge is sufficient and adequate sunlight to facilitate its growth will be provided. The proposal does not rely on the hedge to prevent overlooking of the adjacent dwelling-house.

Overshadowing of 3 skylights and a pool water heating system on the western side of 23 Bushlands Avenue.

The shadow diagrams demonstrate that the proposal will not overshadow the pool water heating system on the roof of 23 Bushlands Avenue.

Additional parking demand will require Council to construct a kerb and gutter in Bushlands Avenue between Yarabah Avenue and Browns Road. If this is required ANHF should pay for it.

The installation of a kerb and gutter in Bushlands Avenue is not part of the proposed development. In the event that the application was approved and the additional demand for on-street car parking did require the installation of a kerb and gutter, it is unlikely that Council would be able to require the applicant to cover the costs of undertaking this work. The number of car spaces in the proposal complies with the minimum requirements specified in the SEPP.

No details of the size or height of kitchen exhaust stacks.

The kitchen exhaust is incorporated into the roof level plant room which has louvred openings. The exhaust is not higher than the roof.

The DA form nominates the heritage item 25 Bushlands Avenue as the house that will be demolished.

The DA form contains an error, the applicant has advised that the demolition of 25 Bushlands Avenue is not proposed and the plans show that this building is to be retained.

The car parking is not convenient because it is below ground.

The basement level car park provides direct lift access into the facility and is considered to be a convenient type of parking for the residential care facility.

Excessive tree removal.

In the amended proposal, the number of trees nominated for removal was reduced, however Council's Landscape and Tree Assessment Officer has identified concerns regarding impacts on trees that are nominated for retention. To reduce these impacts, further design changes would be required.

Excessive building bulk is not compatible with neighbourhood character.

Council's Urban Design consultant and Heritage Advisor have concluded that the design of the development is unacceptable having regard to encroachments into the Curtilage of the heritage item and an insufficient setback of 6.5m from the rear boundary.

The depth of the building is excessive and does not respond to neighbourhood character.

The depth of the building is considered to be inconsistent with the design principles of the SEPP as the front setback of the West Wing is less than that of the heritage item at 25 Bushlands Avenue and the rear setback of the East Wing does not provide for the retention of trees that are part of the Sydney Turpentine Ironbark Forest ecological community. The failure to provide an appropriate rear setback from the East Wing also result in unacceptable visual impacts on the private open space of dwelling houses to the rear of the site and the heritage significance of the adjacent Heritage Conservation Area.

The 3m side setbacks do not provide a suitable transition in scale due to the substantial difference in the bulk of the subject and neighbouring buildings.

The development has a minimum side setback of 3m from the eastern side boundary and 3.5m from the western side boundary. The setbacks are considered acceptable having regard to the site planning response to the constraints, the height of the elevations and the visual, overshadowing and overlooking impacts of the proposal.

The northern portion of the eastern and western facades do not incorporate adequate articulation.

The issue of adequate articulation to the facades has been addressed in the amended plans.

Inconsistent representation of mechanical plant on the plans.

This issue was addressed by the amended plans. The location of mechanical plant is identified on the floor plans, roof plan and sections.

The void element above the entry will detract from the streetscape as it is an uncharacteristic element.

The void element has been deleted.

The proposed grey sheet metal roof is not consistent with red and dark tiled roofs common in the locality.

The roof of the building has a low pitch for which sheet metal cladding is an appropriate material. The nominated colour of the roofing is Woodland Grey, this colour is a natural tone that is compatible with the character of the streetscape.

The number of car spaces is inadequate. Additional car parking should be provided as the proposal does not comply with the site related requirements specified by SEPP Seniors.

The car parking requirements of SEPP Seniors are non-discretionary development standards, therefore additional car parking may not be required despite the proposal being non-compliant with the location and access to facilities requirements specified by clause 26 of SEPP Seniors.

The built form of the RACF will dominate 25 Bushlands Avenue.

Council's Heritage Advisor is of the opinion that the proposal will have an unacceptable impact on the heritage significance of 25 Bushlands Avenue due to significant encroachments into the curtilage of the building and an inadequate street setback for the West Wing.

Overshadowing of neighbouring dwellings.

The proposal will not result in significant overshadowing of the private open space or windows of adjoining dwellings.

Overlooking of private open space and no special privacy protection measures

The amended proposal has satisfactorily resolved overlooking issues through changes to window locations and the addition of privacy screens to the eastern and western elevations. The north facing windows of the 'quiet room' at the first floor level behind No. 40 St Johns Avenue have high sill heights that will prevent significant overlooking.

The non compliance with the 8m height limit results in a roof form that is uncharacteristic of surrounding development and not consistent with clause 33 of the SEPP.

The amended proposal complies with the 8m height limit.

Additional runoff could result in localised flooding.

The proposal includes a stormwater detention system. Council's Development Engineer is of the opinion that the design of the system is consistent with the DCP requirements and localised flooding is unlikely.

Noise from operation of facility and construction process.

If approval of the application were recommended, construction and operational noise could be addressed by conditions of consent.

The proposed excavation of sandstone could damage neighbouring dwellings and the heritage building 25 Bushlands Avenue.

If approval of the application were recommended, the management of any vibration that occurred during the excavation process could be managed through conditions of consent.

The acoustic report is not adequate as the plant equipment has not been nominated. This also means that the adequacy of any screening cannot be assessed.

If approval of the application were recommended, these issues could be addressed through conditions of consent.

Inadequate information has been submitted with the application.

The amended proposal includes all required documentation.

The vegetation management plan contains contradictory information regarding tree removal methods.

The inconsistency has been resolved in the amended plans.

Impacts on fruit trees and native trees located on the boundary of 29 Bushlands Avenue.

Council's Landscape Officer has reviewed the amended proposal and is satisfied that the proposal will not significantly impact trees located inside No. 29 Bushlands Avenue.

Impacts of odours from the kitchen.

The kitchen exhaust is located near the centre of the building which is also near the centre of the site. It is unlikely that odours from the exhaust would impact nearby dwellings.

An electricity substation may be required.

An electricity substation is shown on the site plan at the western end of the street frontage.

Adequacy of sewerage system for additional demand.

In the event that the development application was approved the applicant would be required to consult with Sydney Water regarding the capacity of the sewerage system and whether any upgrades are required.

Loss of green views from adjacent properties due to tree removal.

The proposed development would result in a significant change to the outlook currently enjoyed from the adjacent dwelling-houses to the east, north and west of the site, however the proposal does retain significant trees in the north-western part of the site and complies with the landscape area development standard specified by SEPP Seniors.

Collection of seepage water from the basement may dry out the soil and damage the foundations of adjacent dwellings.

The statement of environmental effects states that the proposed basement will be a waterproofed (i.e. tanked) structure, accordingly the collect of seepage water would only be required during the excavation/construction phase of the development.

There is no fence on the boundary with 29 Bushlands Avenue for much of the length of the boundary.

The applicant has advised that boundary fencing would be installed as part of the proposed development and in accordance with the Dividing Fences Act.

The proposed tree removal and impacts on STIF do not satisfy the no net loss requirements of the LEP.

Council's Ecological Assessment Officer has reviewed the application and advises that the impacts on Trees 27, 30 and 50, which are part of the STIF community, are likely to require the removal of these trees. The likely removal of these trees has not been considered in the Flora and Fauna Assessment Report as the author has assumed that the trees can be retained. The subject trees are also located within Biodiversity Significant land. The significant impacts on these trees are not consistent with the LEP requirements for development to be sited and designed to avoid any potentially adverse impacts unless that impact cannot be avoided.

The application documentation and the applicant's website suggest that the facility will only be available for use by people of Asian background. The facility should be available to all Ku-ring-gai residents.

Operators of such facilities would be subject to laws that prevent discrimination on the basis of cultural background.

The proposed building has a commercial character that does not make any reference to the heritage property at 25 Bushlands Avenue.

The amended proposal includes changes to the architectural treatment of the roof and elevations. The aesthetic character of the proposal is considered to be appropriate for the site, however the impacts on the curtilage and heritage significance of the heritage item are not considered to be acceptable.

The distances between 25 Bushlands Avenue and the new buildings do not comply with the requirements of the DCP.

The impact of the proposal on the curtilage and heritage significance of No. 25 Bushlands Avenue has been considered in details by Council's Heritage Advisor, refer to referral comments below.

Evacuation risk due to proximity of site to bushfire prone land.

The bushfire prone land is to the west of the site. The access path to the Pacific Highway is not within bushfire prone land. The SEPP only prohibits seniors housing on land identified on the bushfire evacuation risk map, which the site is not.

Biodiversity protection clause not addressed in the statement of environmental effects.

The Biodiversity protection clause of Ku-ring-gai LEP 2015 has been considered in the Flora and Fauna Assessment Report submitted with the amended DA. Council's Ecological Assessment Officer has concluded that the proposal is not consistent with the provisions of this clause.

A flood study should be provided.

Council's Development Engineer has advised that a flood study is not required as Council's Blackbutt Creek Flood Study shows that the site is not affected by flooding.

The Geotechnical Report is invalid as boreholes were taken after a dry spell.

Council's Development Engineer has not raised any concerns regarding the conclusions of the Geotechnical Report.

The proposal will impact on property values

The impact of development on property values is not a valid consideration in the assessment of a development application.

AMENDED PLANS

The amended plans were notified for 30 days from 28 October 2016 to 28 November 2016. In response, to the notification 64 submissions objecting to the proposal and one submission in support of the proposal received.

The submissions raised the following additional issues:

The provision of on site services means that the facility will function as a commercial operation in a low density residential zone.

The provision of on site services will predominantly be achieved by representatives from service providers visiting the site and the sale of merchandise from the on site shop. The applicant has advised that these services will only be available to residents of the facility. The provision of on site services is ancillary to the residential care facility use and would not change the land use to a commercial or retail premises prohibited in the R2 Low Density Residential zone.

The provision of medical services at the facility does not appear to be realistic as medical professionals such as dentists and optometrists require special equipment that is not portable.

It is likely that certain medical services will need to be provided off site, however clause 26 of the SEPP only requires that access to the practice of a General Practitioner be provided.

The applicant has acknowledged that the development will partially overshadow No. 29 Bushlands Avenue during mid-winter and the equinox but has not made any attempt to rectify the situation. The extension of the western wing toward the boundary will result in overshadowing of the front garden as well.

Shadow diagrams were not submitted with the amended proposal, however the amendments would not increase overshadowing of private open space or windows as the setback from the shared boundary has been increased, there is no change to height and additional shading of the front garden would not impact private open space.

The reduced street setback of the western wing is not consistent with the streetscape character.

The original plans proposed a front setback which matched the setback of Nos. 25 and 29 Bushlands Avenue. The proposed setback is located forward of both properties and is not considered to be compatible with the streetscape character and the requirements of the DCP that apply to proposals that are adjacent to heritage items.

The kitchen and waste area appear to be too close together.

The kitchen and the waste storage room share a wall, however the shared wall is of brick construction and the entrances to each facility are separate.

The landscape plan contains insufficient detail, is unclear and includes inappropriate species selections.

Council's Landscape Officer is of the opinion that the landscape plan is not sufficient and requires amendments to address deficiencies regarding details and species selection.

Replacing 50 metres of 2 year of fencing between 27 & 29 Bushlands Avenue with new fencing is unnecessary and has the potential to damage trees close to the boundary.

The replacement of boundary fencing is a civil matter.

No. 29 Bushlands Avenue is lower than No. 27 Bushlands Avenue. Because of this drop, most of the front boundary fencing between us is built on a retaining wall of 2, 3 or 4 bricks. If a 1.8 metres high fence is erected on top of this, this will be viewed as a 2 metres high solid barrier.

The side boundary fence in the front setback has a height of 1200mm, an 1800mm high fence is not proposed for this part of the boundary.

The amended proposal has not addressed all of Council's concerns regarding impacts on the heritage item 25 Bushlands Avenue.

This statement is correct, refer to Heritage Advisor comments for further details regarding this issue.

The amended proposal has not addressed overshadowing of the solar pool heating system and skylights on the roof of 23 Bushlands Avenue.

The nominated ground floor level of RL 101.35 for the East Wing is lower than the existing ground level (RL 102.20) adjacent to the western wall of 23 Bushlands Avenue. The ridge height of the single storey wing at the rear of 23 Bushlands Avenue is RL 108.44, and the ridge height of the East Wing of the proposal is RL 108.74. The wall height of the proposal is approximately 1.2m higher than the wall height of the single storey wing at the rear of 23 Bushlands Avenue. The proposal has a setback of 3m from the shared boundary, accordingly it will not significantly overshadow the solar heating system and skylights of 23 Bushlands Avenue.

The amended proposal has not addressed overlooking of 29 Bushlands Avenue.

There are nine windows on the first floor level of the western elevation facing towards 29 Bushlands Avenue. Windows on the northern end of the elevation are to a quiet room and bedroom where views will be obscured by existing landscaping. Windows on the southern end of the elevation will have views of the roof, carport and front garden of 29 Bushlands Avenue which is not private open space. There are four windows near the centre of the elevation that have the potential to overlooking the private open space area of 29 Bushlands Avenue, three of these windows have privacy screens. It was previously agreed with the applicant that the four windows between the detached garage of 29 Bushlands Avenue and the rear wall of the front part of the house should have privacy screens. As per previous discussions with the applicant, the room with 2 beds should also have a privacy screen. If approval of the application were recommended, this could be achieved by condition.

The amended proposal has not addressed overlooking from the eastern elevation to 23 Bushlands Avenue.

There are eight windows on the eastern elevation. Four of the windows are for bedrooms and will overlook the roof of the single storey wing at the rear of 29 Bushlands Avenue. Two of the windows have privacy screens which would prevent overlooking. The lounge room window on the northern end of the elevation has a high sill. The window to the tea activity room on the southern end of the elevation does have the potential to overlook the entry door and hallway of 29 Bushlands Avenue, if approval of the application were recommended, a condition requiring that this window have a high sill height to match the lounge room window could be imposed.

The justification for the removal of the Blackbutt trees (Trees 46 and 49) is not sufficient. The trees should be treated by an arborist and retained.

Tree 46 displays evidence of root decay and limb decay. Tree 49 displays evidence of significant limb decay, stress indicators of reduced crown cover and density, large deadwood and epicormics growth through the crown. The retention of the trees is not viable in the medium to long term, therefore removal of the trees is supported by Council's Ecological Assessment Officer and Landscape and Tree Assessment Officer.

The additional 500mm setback from the western boundary is a minimal concession that does not adequately ameliorate the visual bulk of the building as viewed from 29 Bushlands Avenue.

The amended proposal incorporates a minimum setback increase of 500mm for the western elevation. The setback of the quiet room and bedroom on the northern end of the elevation has been increased by up to 3000mm. The 45m length of the elevation is significantly greater than a typical Bushlands Avenue dwelling house, however the SEPP allows a density of more than three times the maximum permitted for dwelling-house development on sites of this size. The visual bulk of the building as viewed than 29 Bushlands Avenue is considered to be acceptable having regard to the height of the wall, the minimum setback of 3.5m, the constraints which limit the location of the building footprint and the ability to screen the elevation with existing and proposed vegetation.

The amended proposal contains erroneous information regarding impacts on stormwater infrastructure.

Council's Development Engineer is satisfied that the information submitted with the amended proposal demonstrates that the proposal is consistent with the water management objectives of the Ku-ring-gai DCP and LEP.

The petition submitted by the proponent in support of the proposal conflates the issue of the demand for the facility and whether the site is appropriate for the facility. The petition does not demonstrate that potential signatories were made aware of the zoning of the site, the scale of the development or that the site does not comply with clause 26 of the SEPP. A limited number of signatories are from the Ku-ring-gai LGA and the petition does not demonstrate strong community support for the application.

Section 79C of the Act requires that any submissions made in accordance with the Act or regulations be considered in the determination of a development application. Neither submissions in support or in objection to a proposal override the planning controls that are the focal point of the decision making process. The proposal is considered to be inconsistent with the requirements of the relevant planning controls and refusal is recommended for this reason.

The provision of activity rooms and a community bus suggests that respite care may be offered at the facility, further adding to traffic and noise.

Page 59 of the statement of environmental effects submitted with the original proposal advised that respite care would be offered at the facility. The provisions of SEPP Seniors do not prohibit residential care facilities from providing respite care. It is unlikely that the provision of respite care would increase traffic to a level that exceeded the carrying capacity of Bushlands Avenue.

The provision of outdoor exercise stations, a gym plus yoga and tai chi classes suggest that the residents of the facility may be capable of independent travel.

Page 59 of the statement of environmental effects states:

It is a policy of ANHF (the care provider and proponent) that any independent seniors who wish to gain access to the facility and expect to undertake independent travel or visit local shops, for example, will not be eligible for admission.

The policy of ANHF is not designed to prevent the admission of persons who could undertake independent travel, but to prevent the admission of persons that wished to undertake independent travel. By implication, this means that persons capable of undertaking independent travel would be eligible for admission if they accept that independent travel would not be permitted. The relevance of the admission policy to the merits of the clause 4.6 variation request is discussed in further detail elsewhere in this report.

The provision of on site services will increase the traffic generated by the development and the demand for car parking.

The provision of on site services may increase traffic generated by the development, however it is unlikely that additional traffic would exceed the traffic carrying capacity of the street. On site services may also increase demand for car parking, however the application cannot be refused for this reason as the proposal complies with the a non-discretionary development standard for car parking.

The argument that the proposal should be supported due to the number of trees being retained on adjoining site should not be accepted.

Concern has been raised regarding proposed removal of trees located on site, refer to referral comments of Council's Ecological Assessment Officer and Landscape and Tree Assessment Officer for further information.

There is no guarantee that the proponent would continue to provide on site services and the development could be sold to another corporation.

The applicant's clause 4.6 variation request has been assessed and is not considered to be well founded.

The acoustic report has not addressed the noise generated by large vehicle accessing the site for deliveries and waste removal.

The acoustic report includes an assessment of the noise generated by vehicles accessing the basement carpark. Council's Environment Health Officer is satisfied that noise impacts are capable of being addressed through conditions of consent.

APPLICANT'S PETITION

On 27 October 2016, the applicant submitted a petition with 8,830 signatures in support of the proposal. Specifically the petition states:

'We, the undersigned:

- 1. Acknowledge there is a vital need for a residential aged care home—in which language and cultural background is shared—to cater for the growing population of elderly Chinese and South-East Asian people living in Northern Sydney.*
- 2. Support the Australian Nursing Home Foundation's initiative to build the north shore's first culturally specific, residential aged care home to cater for the area's growing population of elderly people from Chinese and South-East Asian backgrounds.*
- 3. Invite the people and the Council of Ku-ring-gai to positively consider the benefits this significant new service will bring to the region as it fosters the wellbeing of ageing people and their families.'*

Council staff do not have a position on the likely demand for the services offered by the facility. The likely demand for any kind of development proposal is not a matter for consideration in section 79C of the Environmental Planning and Assessment Act 1979. The submission of a petition in support of the proposal cannot override the requirements specified in the planning controls that apply to the development. As a matter of good planning practice it is considered that it would be inappropriate for a consent authority to approve an application which did not comply with the relevant planning controls on the basis of a petition being submitted by the applicant.

REFERRALS

Heritage

Council's Heritage Advisor identified the following issues regarding the impact of the proposal on 25 Bushlands Avenue (Birralelee) and the St Johns Avenue Heritage Conservation Area:

- a. Development on any part of a site that includes a heritage item should respect the heritage values of the item, including the values and qualities of its curtilage. A curtilage analysis was not provided in the Statement of Heritage Impact or Conservation Management Plan. The curtilage of Birralelee is not limited to the footprint of the building, it extends over the adjoining landscape to include the visual catchment. In the case of Birralelee, this visual catchment includes the backyard, trees to 25A and 27 Bushlands and those at the rear of the adjoining properties in St John's Avenue and the streetscape setting of Bushlands Avenue. The original*

proposal included a 20.6m deep courtyard directly behind Birralee, in the amended proposal the depth of the courtyard has been reduced to 10.2m.

- b. The new aged care facility building will be built over the amalgamated site and will extend over most of the rear half of its significant curtilage. The legibility of the property within the streetscape as a representative house and garden will be overwritten by the monolithic form and scale of the proposed development.*
- c. The scale, form and siting of the proposed aged care facility building does not respond to or interpret the significant curtilage to the rear of Birralee. The alignment of the curtilage could be interpreted within the siting and form of the new structures but this would achieve a limited heritage outcome unless more of the rear garden area was also kept to retain the integrity of the curtilage in a more meaningful manner.*
- d. In the original plan, the front wall of the western wing was in alignment with the front wall of Birralee. In the amended proposal the western wing of the development is positioned 4.5m forward of the front elevation of Birralee. The western wing should have a setback greater than the heritage item, as required by the Ku-ring-gai DCP.*
- e. The rear setback of the development from the boundaries of Nos. 40 & 52 St John Avenue, which are located within a heritage conservation area was 10.5m and has been reduced to 6.5m in the amended DA. The rear setback is insufficient as the two storey form of the building will have unacceptable impacts on the setting of the heritage conservation area.*

On the basis of the above issues, Council's Heritage Advisor is of the opinion that the proposal does not satisfy the requirements in clause 33 of SEPP Seniors for development to, '*retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items*' and is also inconsistent with the objectives of clause 5.10 'Heritage conservation' of the Ku-ring-gai LEP 2015 and the objectives and design controls in Part 19 'Heritage Items and Heritage Conservation Areas' of the Ku-ring-gai DCP. The full comments of Council's Heritage Advisor are **Attachment E**.

Urban Design

Council's Urban Design Consultant assessed the proposal and identified the following issues:

- a. The western wing should not be located forward of No 25 Bushlands Avenue (Birralee)*
- b. Heritage impacts from the combination of proposed building lines, location of modified massing closer to the rear of Birralee and proximity of the entry wing*
- c. Loss of Courtyard 1 functionality resulting from the modified building footprint*
- d. Extent of excavation for the western wing lower ground level and loss of northern aspect to the communal rooms and deletion of northern terrace.*
- e. Solar amenity to the primary communal lounge and dining areas generally*
- f. The amended DA includes a 'Tea House' building which is located on the western side of the East Wing and will dominate the outlook from eight residential rooms.*
- g. Northern setback of the East Wing in context of the St Johns Avenue HCA and R2 zone setbacks are insufficient to satisfy the heritage context and intended landscape character defined by Council's setback controls for the R2 zone in the vicinity of an HCA.*
- h. Insufficient information regarding setbacks, rebates of all walls from boundaries, lengths of walls, sizes of courtyards, separations between buildings.*

- i. *Insufficient information regarding levels. RLs need to be shown at regular intervals, including spot levels within landscape areas, internal and external spaces adjacent to the building, existing and proposed levels where finished levels will be different, top and bottom of retaining walls, ramps and landings.*
- j. *Solar access to the living/dining room on the lower ground floor level of the West Wing will be poor.*

On the basis of the above issues, the proposal is considered to not satisfy the Design principles in Part 3 of SEPP Seniors and the aims of SEPP Seniors which includes that housing will, 'be of good design'. The full comments of Council's Urban Design Consultant are **Attachment F**.

Landscaping

Council's Landscape and Tree Assessment Officer provided the following comments:

Adverse tree impacts:

Tree 14/ Cedrus deodara (Himalayan Cedar). This tree is located within the front setback on the eastern boundary. The proposed stormwater line will encroach within the tree protection zone. If approval of the application were recommended, the stormwater line would need to be relocated by condition.

Tree 27/ Angophora costata (Sydney Red Gum). This tree is located on the northern boundary. The proposed building is approximately 2.8m from this tree. This is considered a major encroachment within the tree protection zone (3.96m). The proposed setback is insufficient for the long term viability of this tree. Removal of the end bedrooms of the east wing to reinstate the 8m wide landscape buffer area to the rear of the allotments which is referred to as a positive element of the proposal in the Flora and Fauna Assessment Report is required. The design amendments required to protect Tree 27 would require amended plans.

Tree 30/ Eucalyptus pilularis (Blackbutt). This tree is located at the north-eastern corner of the site. The proposed building is approximately 4.9m from the tree and will result in a major encroachment within the tree protection zone (14%). Removal of the end bedrooms of the East Wing to reinstate the 8m wide landscape buffer area to the rear of the allotments, referred to as a positive element of the proposal in the Flora and Fauna Assessment Report is required. The proposed stormwater pit within the tree protection zone has not been included in the arborist assessment and could be deleted by condition, however, the removal of the end bedrooms to facilitate the retention of Tree 30 would require amended plans.

Tree 38/ Macadamia tetraphylla (Macadamia). This tree is located at the north-eastern corner of the site. The proposed excavation for the secured courtyard is approximately 1.8m from this tree. This tree provides effective screening of the east wing and is to be retained, however, to preserve long term viability, the excavation for the retaining wall is not to encroach within 2.5m of the trunk of the tree. If approval of the application were recommended this design amendment could be achieved by condition.

Tree 50/ Syncarpia glomulifera (Turpentine). This tree is located between Deck 3 and the Tea House. The Tea House results in additional encroachments. To preserve the health and condition of this tree, the following amendments are required:

- *Deck 3 will need to be reduced to a width of 3m*
- *The depth of decks 1 and 2 need to be reduced from 7.5m to 7m*
- *The Tea house will need to be shifted 2m north and Two Bangalow palms (Trees 55 and 56) that are not of high landscape significance removed*
- *Those parts of Deck 1 within 4 metres of Tree 59 need to be deleted.*

The design amendments required to protect Tree 50 would require amended plans.

As a consequence of the above issues, the development is considered to be contrary to the design principle 33(f) for neighbourhood amenity and streetscape of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 which requires the retention of major existing trees through sensitive site planning.

Landscape plan

The landscape plan is considered unsatisfactory for the following reasons,

- *Proposed planting has not been identified in accordance with Council's DA Guide. The plant schedule is to include quantities.*
- *Proposed planting of *Corymbia maculata* and *Eucalyptus mannifera* is not sympathetic to the landscape character.*
- *Existing levels, including spot levels at the base of trees to be retained, have not been shown.*
- *The proposed levels of external areas including terraces and paths have not been provided. Top of wall levels have not been provided.*
- *The landscape plan does not reflect the recommendations of the vegetation management plan including the bushland restoration zone along the northern boundary and STIF/Landscape Integration Zone.*

Ecology

Council Ecological Assessment Officer provided the following comments:

The proposed development has not adequately assessed the proposed impacts upon the endangered STIF ecological community existing on the Site, which is listed under section 6 of the Threatened Species Conservation Act 1995 (TSC Act) as an endangered ecological community.

*The impact assessment (7-part test) fails to consider that the following trees: , T27- *Angophora costata* (Sydney Red Gum), T30-*Eucalyptus pilularis* (Blackbutt) & Tree 50- *Syncarpia glomulifera* (Turpentine) are likely to be affected by the proposed development. The development plans need to be amended to ensure the retention of the aforementioned trees see landscape assessment officer comments further detail. In the absence of amendments, the ecological assessment is insufficient and would need to be amended.*

Note: The development is to be setback at a minimum of 3m from the trunk of T27 to ensure its long-term retention. It is fundamental that's trees T27, T30, & T50 are adequately retained and protected as these trees form part of the area mapped as being biodiversity significant.

STATUTORY PROVISIONS

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 require Council to consider the potential for a site to be contaminated. The subject site has been historically used for residential purposes including dwelling houses. As such, it is unlikely to contain any contamination and further investigation is not warranted in this case

Sydney Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005

Matters for consideration under SREP 2005 include biodiversity, ecology and environmental protection, public access to and scenic qualities of foreshores and waterways, maintenance of views, control of boat facilities and maintenance of a working harbour. The proposal is not subject to the provisions that apply to the assessment of development applications as the site is not located in the Foreshores and Waterways Area.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The application has been submitted pursuant to the SEPP. The relevant provisions are addressed below.

Chapter 3 'Development for seniors housing'

Clause 14 states that the objective of this chapter is:

'...to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.'

Clause 15 of the SEPP states that development on land zoned primarily for urban purposes for the purposes of any form of seniors housing is permitted despite the provisions of any other environmental planning instrument if the development is carried out in accordance with the SEPP. In accordance with clause 15 the proposal is permissible development as the site is located on land that is zoned primarily for urban purposes and development for the purpose of dwelling-houses is permitted.

Clause 18 - Restrictions on occupation of seniors housing allowed under Chapter 3

This clause states that development allowed by Chapter 3 may only be carried out for the accommodation of:

- (a) seniors or people who have a disability,*
- (b) people who live within the same household with seniors or people who have a disability,*
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.*

Consent must not be granted to a development application unless a condition reinforcing the above through a requirement to register a restriction to user on the property title has been imposed. Subclause (3) of clause 18 states that subclause (2) does not limit the kinds of conditions that may be imposed on a development consent, or allow conditions to be imposed on a development consent otherwise than in accordance with the Act.

Clause 26 - Location and access to facilities

This clause states that:

- (1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:*
 - (a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
 - (b) community services and recreation facilities, and*
 - (c) the practice of a general medical practitioner.*

Subclause (2) states:

- (2) Access complies with this clause if:*
 - (a) the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development that is a distance accessible by means of a suitable access pathway and the overall average gradient for the pathway is no more than 1:14, although the following gradients along the pathway are also acceptable:*
 - (i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,*

- (ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,
 (iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time,
 or
 (b) in the case of a proposed development on land in a local government area within the Sydney Statistical Division—there is a public transport service available to the residents who will occupy the proposed development:
 (i) that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and
 (ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and
 (iii) that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive),
 and the gradient along the pathway from the site to the public transport services (and from the public transport services to the facilities and services referred to in subclause (1)) complies with subclause (3),

Subclause (2) states that compliance with the clause can be achieved in two ways, the site being within 400m of the facilities and services specified in clause 26 (1) or the residents of the development having access to a public transport service that will take the residents to facilities and services specified in clause 26 (1).

The site is unable to comply with the access requirements in clause 26 (2) (a) as the Gordon town centre is more than 500 metres from the site. The site is unable to comply with the access requirements of clause 26 (2) (b) as the nearest bus stops are located over 670 metres from the site in front of the property known as No. 786 Pacific Highway Gordon and the bus interchange at Henry Street Gordon. The access pathway to the Gordon town centre and the nearby bus stops also fails to comply with the gradient requirements as the footpath at the eastern end of Bushlands Avenue has gradients of up to 1:6.4 over a distance of 48 metres. The gradient of the access pathway represents a substantial departure from the requirement for a maximum gradient of 1:8 for a distance of no more than 1.5 metres. The applicant has acknowledged that the site does not comply with the distance and access pathway gradient requirements specified by the SEPP (Statement of Environmental Effects prepared by Evolution Planning pp 10 and 48).

The amended proposal submitted in October 2016 included a letter prepared by Evolution Planning dated 14 October 2016 which stated that the proposal had been amended to provide all the services required by clause 26 on site. The amendments to achieve compliance with clause 26 were not significant physical changes to the design of the facility but additional details regarding the goods available at the on-site shop/cafe and the various service providers that will visit the facility. The applicant also stated that the on-site services are ancillary to the residential care facility use and would not be available to the general public. On 16 January 2017, the applicant provided a letter prepared by Evolution Planning, dated 13 January 2017, which stated that the following services will be provided on site:

Retail and commercial services		
Café where biscuits and snacks can be purchased	Hair and beauty salon where products such as make-up, skin cleaners, moisturisers, shampoos and conditioners can be purchased	Community shop where toiletries, confectionary, snacks, writing materials, postage stamp, books, magazines, newspapers
Newspapers and magazines	Postal services	Telephone and internet
Laundry	Legal services	Chemist (visiting pharmacist or staff operated medicine collection service)
Online shopping	Funeral services	Tailoring and alterations
Community services and recreational facilities		
A 21 seat community bus for outings	Worship meetings and activities, Christian Praise and Workshop service; Australian	library

	Love and Kindness Association (Buddhism); Evangelical Free Church of Australia;	
theatre	gymnasium	arts and crafts tutorials
Tai chi	yoga	gardening
Landscaped areas for passive relaxation and walking		
Visiting medical professionals		
General Practitioner	Geriatricians	Dieticians
Occupational Therapist/Rehabilitation counsellor	Optometrists	Pharmacist
Podiatrist	Registered Music Therapist	Dentist

Whilst the above facilities and services will be of benefit to the residents of the residential care facility, it is not accepted that the facilities and services provided on site satisfy the requirements of clause 26. As the SEPP requires that access to the facilities and services be satisfied by geographical proximity or access to public transport services, it is considered that it is the intention of the SEPP for residents to have access to a wide range of services that the public at large would also be able to access is not complied with. It is also noted that the mandatory requirement for residents to have access to shops and bank service providers is not satisfied by on site 'shops' and visits from mobile bankers.

Appendix 3 of the Department of Planning guide to SEPP Seniors lists the following services as those potentially required by clause 26:

Type of service required by clause 26	Examples
Shops, banks and other retail and commercial services	corner shop, local convenience store, public telephone, butcher, general grocery store, other groceries, newsagent, bank, chemist, post office, major shopping centre.
Community services	community information services, libraries (home and branches), council staff
Recreational Facilities	cinema, theatre, public parks, swimming pools, senior citizens centre, bowling clubs, neighbourhood centres running social activities

The above table suggests that residents of residential care facilities should have access to a diverse range of retail, commercial, community and recreation facilities.

It is considered that the applicant's expectation that only services likely to be required by residents of a residential care facility operated by the Australian Nursing Home Foundation does not follow the appropriate methodology for assessing whether a development complies with a development standard. If the services were to be provided on site they would need to be all the services ordinarily required by residents of a residential care facility that complied with the land use definition and occupancy requirements specified by the SEPP. The only reasonable way of providing access to the wide range of facilities required by a diverse range of residential care facility residents is for these facilities to be within proximity of the site or public transport to these facilities being available as required by clause 26 (2).

The applicant acknowledged in their correspondence, dated 13 January 2017, that the consent authority may not accept that the provision of services on site satisfies the requirements of clause 26 and has provided a clause 4.6 variation request (**Attachment D**). The merits of the clause 4.6 variation request are considered under the heading, 'Clause 4.6 Exceptions to Development Standards' below.

Clause 29 - Site compatibility

Clause 29 of the SEPP provides that where a site compatibility certificate is not required the

matters listed in clause 25 (b) (i) (iii) and (v) must be considered in the assessment of the development application. The consent authority must be of the opinion that the proposed development is compatible with the surrounding land uses having regard to (at least) the following criteria:

- (i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,*
- (iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,*
- (v) without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development,*

For the following reasons the proposal is not considered to be consistent with these requirements:

- The location of the site does not satisfy the 'Local and access to facilities' requirements specified in clause 26. The clause 4.6 variation to the requirements in clause 26 of the SEPP is not considered to be well founded.
- The proposal will adversely impact the Sydney Turpentine Ironbark Forest ecological community that is located on site. The impacts on this ecological community are not consistent with the provisions of clause 6.3 'Biodiversity protection' of Ku-ring-gai LEP 2015.
- The impacts of the development on the curtilage of the heritage item at 25 Bushlands Avenue are not consistent with the provisions of clause 5.10 'Heritage conservation' of Ku-ring-gai LEP 2015 and clause 33 (b) of SEPP Seniors.

Part 3 Design requirements

Clause 30 – Site analysis

This clause requires that the consent authority be satisfied that the applicant has taken into account a site analysis prepared in accordance with the requirements specified in the clause. The site analysis submitted with the application complies with the requirements specified in clause 30 of the SEPP. The consent authority can be satisfied that the applicant has taken into account the site analysis.

Clause 33 - Neighbourhood amenity and streetscape

This clause states:

The proposed development should:

- (a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and*
- (b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and*
- (c) maintain reasonable neighbourhood amenity and appropriate residential character by:*
 - (i) providing building setbacks to reduce bulk and overshadowing, and*
 - (ii) using building form and siting that relates to the site's land form, and*
 - (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and*

- (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and*
- (d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and*
- (e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and*
- (f) retain, wherever reasonable, major existing trees, and*
- (g) be designed so that no building is constructed in a riparian zone.*

The proposal is considered to not satisfy the requirements of clause 33(b) as it does not sensitively harmonise with the adjacent St Johns Avenue Heritage Conservation Area and No. 25 Bushlands Avenue which is a heritage item. The proposal does not provide an adequate rear setback for the East Wing which results in unacceptable visual impacts on the Heritage Conservation Area. The street setback of the West Wing is less than that of the heritage item and the proposal results in a substantial encroachment into the curtilage of the heritage item. Council's heritage Advisor is of the opinion that the proposal will have an unacceptable impact on the heritage significance of the St Johns Avenue Heritage Conservation Area and the heritage item No. 25 Bushlands Avenue.

The rear elevation of the East Wing has a wall height of up to 7.6m and a setback of 6.5m to the rear boundary of the dwelling-house at No. 40 St Johns Avenue. The rear wall of a dwelling housing would be required to have a minimum setback of 12m. The rear of the East Wing in the original plans had a setback of 10.6m. The proposal is considered to not satisfy the requirements of clause 33(c)(i) as the 6.5m rear setback of the two storey East Wing is insufficient to protect existing Trees 27 and 30 and is not compatible with the prevailing character of development in the locality.

The proposal is considered to not satisfy the requirements of clause 33(d) as the 14.3m street setback of the West Wing, is significantly less than the 19.2m setback of the heritage item No. 25 Bushlands Avenue, the 18.5m setback of No. 23 Bushlands Avenue and the 18.9m setback of No. 29 Bushlands Avenue. The front building line is not set back in sympathy with the existing building line.

The proposal is considered to not satisfy the requirements of clause 33 (f) as it will result in impacts on the health of three significant trees (Trees 27, 30 & 50) that are part of the endangered ecological community Sydney Turpentine Ironbark Forest and which are also located on land identified by the LEP as being of biodiversity significance.

Clause 34 - Visual and acoustic privacy

This clause states that development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:

- (a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and*
- (b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.*

The proposal has addresses these requirements by incorporating appropriate setbacks, privacy screening, landscaping opportunities and sensitive window locations into the amended plans.

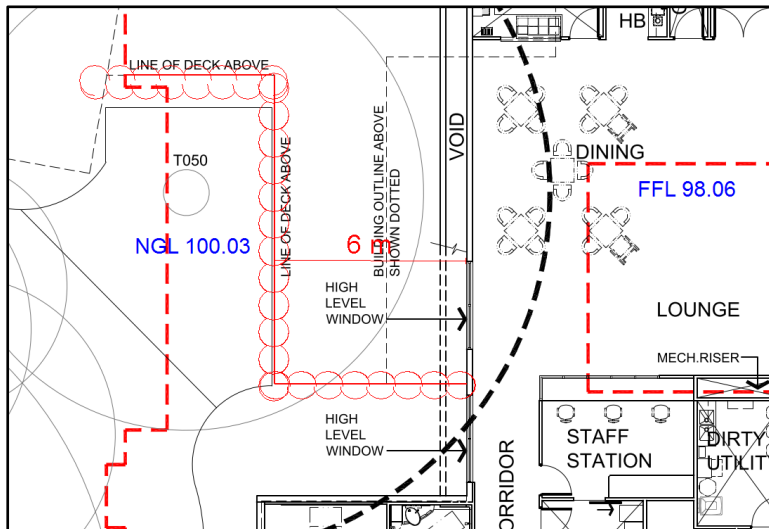
Clause 35 - Solar access and design for climate

This clause specifies that:

- The proposed development should:*
- (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and*
- (b) involve site planning, dwelling design and landscaping that reduces energy use*

and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.

The dining/lounge room on the lower ground floor level of the West Wing has a finished floor level of RL 98.06 which is approximately 2m lower than the existing ground level. The dining/lounge room has one north facing highlight window that is located underneath the deck and lounge room of the floor above. These structures project 6m in a northerly direction beyond the alignment of the window.



As a result of the proposed finished floor level and location of the window, the dining/lounge room will not receive any direct solar access. Reasonable solar access to the living areas of the lower ground floor level could be achieved by replacing two of the bedrooms at the northern end of the West Wing with a lounge room. A lounge room located in this part of the building would benefit from northerly orientation, good solar access and views of the treed garden at the rear of the site.

The site orientation, proposed wall heights and setbacks to the side boundaries result in minimal overshadowing impacts to living areas and private open space of adjoining dwellings.

Clause 36 - Stormwater

This clause specifies that:

The proposed development should:

- (a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and*
- (b) include, where practical, on-site stormwater detention or re-use for second quality water uses.*

The proposal includes a stormwater detention system which has been designed in accordance with the requirements in the Ku-ring-gai DCP.

Clause 37 - Crime prevention

This clause specifies that:

The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:

- (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets*

from a dwelling that adjoins any such area, driveway or street, and
(b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and
(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.

The proposal is consistent with the intent of the above controls, the internal courtyards are overlooked by private rooms and communal areas, the front path is visible from the entry foyer and reception area and a CCTV system is proposed to be installed.

Clause 38 - Accessibility

This clause specifies that:

The proposed development should:
(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and
(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.

The pedestrian entrance to the site is located near the centre of the site frontage in an obvious location. There is a direct line of sight between the front entry at the site frontage and the front entry to the facility. The proposal provides more than the minimum number of car spaces within a basement carpark that has been designed in accordance with the design standards of AS2890.1. The proposal is generally consistent with the clause requirements with the notable exception that the pedestrian links from the site will not provide access to public transport services or local facilities in accordance with the requirements specified in clause 26, as public transport services and local facilities are located at a distance of more than 400m from the site and the access pathway does not comply with the maximum gradient controls.

Clause 39 - Waste management

This clause specifies that:

The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities

A waste room of adequate size for the likely number of waste containers is located in the basement. The applicant has submitted an operational waste management plan which details the waste management procedures for the facility. General waste and recyclables is to be separated by staff and collected from the basement by a private contractor. The proposal is therefore consistent with the requirements of this clause.

Clause 40 - Development standards

Standard	Proposal	Compliance
Site area: 1000m ²	7,406m ²	YES
Site frontage: 20m	70.7m	YES
The height of all buildings in the proposed development must be 8 metres or less	YES	YES
A building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height.	2 storeys maximum for elevations adjacent to site boundaries	YES
A building located in the rear 25% area of the site must not exceed 1 storey in	The proponent is a social housing provider, therefore this development	N/A

height.	standard does not apply	
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Clause 46 - Inter-relationship of Part 7 (non-discretionary development standards) with design principles in Part 3

This clause states:

(1) Nothing in this Part permits the granting of consent to a development application made pursuant to this Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Note.

It is considered possible to achieve good design and achieve density ratios set out in Division 2. Good design is critical to meriting these density ratios.

(2) For the avoidance of doubt, nothing in this Part limits the matters to which the Director-General may have regard in refusing to issue a site compatibility certificate

In accordance with this clause the proposal is considered to not satisfy the design principles in clause 33 'Neighbourhood amenity and streetscape' despite being compliant with the non-discretionary development standards in clause 48.

Clause 48 - Standards that cannot be used to refuse development consent for residential care facilities

Standard	Proposal	Compliance
Building height: 8m	<8m	YES
Floor space ratio: 1:1	<1:1	YES
Landscaped Area: 25m ² per bed	>25m ² per bed	YES
Parking: 1 per 10 beds or 1 per 15 dementia beds 1 for every 2 employees 1 ambulance space	YES	YES

Clause 55 - Residential care facilities for seniors required to have fire sprinkler systems

If approval of the application were recommended a condition requiring the installation of a fire sprinkler system would need to be imposed.

Ku-ring-gai Local Environmental Plan 2015

Ku-ring-gai Local Environmental Plan 2015 is the statutory LEP for the subject site.

In summary, the objectives of this plan are to:

- guide future development with respect to environmental, social, economic, heritage and cultural outcomes,
- provide housing choice,
- achieve land-use relationships that promote efficient use of infrastructure.

Permissibility

The site is zoned R2 Low Density Residential. The proposed use is defined as *seniors housing* which is a prohibited form of development in the R2 Low Density Residential zone. The proposal has been submitted pursuant to the provisions of SEPP Seniors. The SEPP applies to the site as it is zoned primarily for urban purposes and dwelling-houses are permitted on land zoned R2 Low Density Residential, however the proposal does not comply

with the requirements of clause 26 'Location and access to facilities' and relies on a clause 4.6 variation request to these requirements. If the Sydney North Planning Panel determines to not support the applicant's clause 4.6 variation request, the development may not be approved.

Zone objectives

The objectives of the zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai.*

The first two objectives are overridden by SEPP Seniors as Seniors Housing is prohibited in the R2 zone and SEPP Seniors allows for development densities significantly greater than that ordinarily permitted by the floor space ratio controls for R2 zoned land. It is considered that for the reasons of heritage impacts, streetscape impacts and tree/biodiversity impacts the proposed development is inconsistent with the third objective of the R2 Low Density Residential zone.

Development standards

The development standards for building height (9.5m) and floor space ratio (0.3:1) in the LEP do not apply to the proposal as they are overridden by the standards for height and floor space ratio in SEPP Seniors.

Clause 4.6 - Exceptions to development standards

Clause 4.6 'Exceptions to development standards' is the mechanism by which an applicant's request to vary a development standard can be considered. In the *Principal Healthcare* judgement, Robson J of the Land and Environment Court held that clause 26 of SEPP Seniors was a development standard amenable to clause 4.6 of the Ryde LEP 2014. Both Ryde LEP 2014 and Ku-ring-gai LEP 2015 are 'standard instrument' style LEPs, therefore clause 26 of SEPP Seniors is also amenable to clause 4.6 of the Ku-ring-gai LEP 2015.

On the basis of the *Principal Healthcare* judgement, it is considered unnecessary to also consider the merits of the applicant's SEPP 1 variation request.

The arguments advanced in the clause 4.6 variation can be summarised as:

- (i) A better planning outcome is achieved as the proposal is consistent with the aim of the SEPP to increase the supply of seniors living housing;
- (ii) The residents will be incapable of travelling due to frailty or in-house restrictions therefore it does not matter whether the facilities and services are 50m away or 1km away as they would not be permitted to leave the site unaccompanied regardless;
- (iii) The residents will not be able to safely access external services independently;
- (iv) The provision of a community bus service is superior to a public bus service which is only a requirement for facilities located in the Sydney Statistical Division, seniors living housing outside the Sydney Statistical Division are entitled to rely on a private transport service to satisfy clause 26;
- (v) The clause 4.6 variation is necessary to address a deficiency in the SEPP in terms of not differentiating between the services and facilities required by residents of the different housing typologies permitted by the SEPP; and

- (vi) The services and facilities provided on site are based on the extensive experience of the Australian Nursing Home Foundation which has operated residential care facilities for over 35 years.

Clause 4.6 provides flexibility in applying certain development standards on the following grounds:

(1) *The objectives of this clause are as follows:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*
 (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 (b) *the concurrence of the Director-General has been obtained.*

1. Whether compliance with the standard is unreasonable and unnecessary in the circumstances of the case

The appropriate methodology for the consideration of this question is enunciated in the decision of Chief Justice Preston in *Wehbe v Pittwater Council*. In this decision, the Chief Justice summarised the case law on the consideration of this question and expressed the view that there are five ways in which an applicant may demonstrate that compliance with a development standard is unreasonable or unnecessary. The applicant seeks to rely on the first way and the second way, details of which are provided in the table below:

Planning principle	Summary of applicant's response
The objectives of the standard are achieved notwithstanding non-compliance with the standard	The services required by clause 26 will be provided on site. Access to other services will be provided by the provision of a community bus.
The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	The applicant acknowledges that the objective or purpose of the standard is relevant to the development, but that the development standards for proximity of services or access to a public transport service are not relevant as any independent seniors who expect to undertake independent travel will not be eligible for admission.

The applicant's view that compliance with the development standard is unreasonable and unnecessary is not accepted for the following reasons:

- (i) It is based on the operator of the residential care facility implementing an admission policy that would prevent persons who desired independent access to services from residing in the facility.
- (ii) It would be unreasonable for a consent authority to vary a development standard on the basis of the operational policies foreshadowed by the proponent, which are not planning requirements endorsed by the Seniors Living SEPP.
- (iii) It would be unreasonable and inappropriate for a consent authority to impose more onerous occupancy restrictions on a residential care facility than those required to be imposed by clause 18 of the SEPP. The implementation, monitoring and enforcement of such a condition would be problematic if not impossible. A condition framed in this manner would be inconsistent with the *Newbury* principles.

2. Environmental planning grounds to justify contravening the development standard

The applicant has provided the following grounds in support of the development standard variation:

- (i) *All services and facilities reasonably required by residents will be available within the facility, or where external services are required which cannot be delivered on-site then appropriate arrangements will be made for accompanied trips;*
- (ii) *A communal 21 seater bus will be available to residents and accompanied trips will be organised to external services as required;*
- (iii) *Any non-compliance with the standard and the provision of services within the development does not result in any significant adverse environmental impacts on surrounding properties or the locality. The facilities and services provided on-site are designed so as not to impact on neighbouring residents.*
- (iv) *The provision of services within the development will result in less traffic generation;*
- (v) *The kitchen and laundry services will be located underground where any impacts on neighbouring properties may be satisfactorily mitigated;*
- (vi) *Without the application of Clause 4.6, any perceived non-compliance with Clause 26 may have the effect of being determinative and may be fatal to the delivery of this important facility in terms of the significant social, housing and care benefits it will introduce.*
- (vii) *The proposed development, which is consistent with all other related planning policy, is an instance where a variation to the standard is considered to be entirely justified.*
- (viii) *The proposed development fully satisfies the underlying intent of Clause 26 which is to provide appropriate services and facilities to residents taking into account the type of housing proposed and the level of independence of the residents which is a concept acknowledged in Principal Healthcare Finance Pty Ltd v City of Ryde Council.*
- (ix) *The proposed variation to the standard will result in a better planning outcome for those reasons outlined above;*
- (x) *The proposed development is considered to be consistent with Objects of the Act which, as relevant to this proposal, are*
 - ii. the promotion and co-ordination of the orderly and economic use and development of the land*
 - 1. iii. the provision and maintenance of affordable housing,"*

The proposed development will make a significant contribution to the availability of this specialised type of accommodation within the Council area and will promote the social well-being of the community. The availability of such accommodation and care alternatives, will allow existing aged residents within the area to address their care needs, and vacate their past homes which are often larger than necessary. The follow-on effect of this movement is the freeing up of dwellings onto the real estate and rental markets, adding to supply and improving housing affordability, an issue of State significance.

The very purpose of the proposed development is to cater for persons who are incapable of safe independent access to services which Clause 26 seeks to provide. By hindering the development by strictly imposing a development standard which is not relevant to this particular proposal would be inconsistent with the objects of the Act in terms of the "co-ordination of the orderly and economic use and development of land."

The environmental planning grounds nominated by the applicant are based on assumptions that could be considered contradictory. The applicant has advised that numerous services will be available on-site and that access to off site services will also be provided by way of a community bus. It is accepted that the provision of services on site is a genuine attempt to satisfy clause 26, however it is also an acknowledgement that the residents of the facility are likely to require services not located on site.

Several of the arguments advanced by the applicant relate to the benefits of the proposal regarding the provision of additional seniors housing. It is accepted that the development is a form of seniors housing for which there is likely to be demand, however the ability of SEPP Seniors to override local planning controls is not unfettered. Clause 2 (2) (a) of the policy states that the aims of the policy are to be achieved by setting aside local planning controls that would prevent seniors housing that meets the development criteria and standards specified by the policy:

(a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and

The subject proposal does not comply with the development standard in clause 26, the site compatibility criteria in clause 29 and the Design requirements in Part 3.

To suggest that the variation to the development standard should be supported because the proposal is for a form of Seniors Housing allowed by the SEPP is not a reasonable environmental planning ground as it does not relate to the objective of the development standard. This ground could only be regarded as a neutral factor as it suggests that favourable consideration should be given to the development standard variations for the reason that the development is of a type permitted by the policy.

3. Public interest – Development consistent with the zone objectives and objectives of the development standard

Zone objectives

The R2 Low Density Residential zone objectives are:

- *To provide for the housing needs of the community within a low density residential environment*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents*
- *To provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai*

The applicant states that the development is consistent with the zone objectives for the following reasons:

- (i) *The proposed development includes the retention and adaptive re-use of one of the three existing dwellings;*
- (ii) *The majority of the new development is setback behind the front setback of the retained building;*
- (iii) *The form of the new buildings are consistent with the existing built form in terms of the two-storey construction with pitched roofs, albeit low pitched roofs to assist in mitigating any perceived massing issues;*
- (iv) *The proposed development is orientated to be perpendicular to the street and maintains the prevailing low density street rhythm;*
- (v) *The side walls of the development are satisfactorily modulated and articulated to minimise potential massing impacts associated with the length of walls to be consistent with the articulation requirements for a dwelling house under the related Development Control Plan;*
- (vi) *No significant adverse impacts will be introduced on vegetation of significant biodiversity and ecological value. On the contrary, the core area at the rear of the site will be improved and retained in perpetuity by way of covenant and a Vegetation Plan of Management.*
- (vii) *Significant trees including a cedar tree in front of 25 Bushlands Avenue and the line of jacaranda street trees will be retained and protected during construction thereby protecting the streetscape landscaping qualities of the site; and,*
- (viii) *The garden setting of the development is consistent with the R2 zone context.*

Any perceived contravention to Clause 26 does not hinder the ability for the proposal to achieve the objectives of the zone.

The proposed development is considered to be in the public interest because, in accordance with Clause 4.6, it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed.

We further consider the development, including any variation to Clause 26, to be entirely within the public interest given that there are now approximately 353,800 Australians living with dementia, with 1.2 million people involved in their care. In less than 5 years this figure is estimated to increase to 400,000 and will be close to 900,000 by 2050.

As the demand for such facilities continually grows the provisions of the SEPP will continue to be relied upon in terms of setting aside local planning instruments that would otherwise prohibit such development and like the current proposal may continually need to be considered on merit in terms of strict compliance with development standards such as access to facilities due to the decreasing availability of sites which strictly meet such criteria.

This is not to say that the development standard should be ignored, but rather it should be applied with flexibility with a focus on achieving the principal aims of the SEPP by delivering this type of housing but also by carefully considering the level of services and methods of access the future residents would practically require.

Clause 4.6 states that the consent authority must not grant consent unless the development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is not considered that the density of the development is consistent with the characteristics of the low density residential environment in which the proposal is located. The dimensions of the building in terms of width and depth are substantially greater than the dwelling houses situated in the locality. The 0.64:1 floor space ratio of the development substantially exceeds the maximum permitted for R2

zoned land, which under the provisions of Ku-ring-gai LEP 2015 is generally between 0.3 and 0.4:1. Whilst it is generally considered that the proposal is not consistent with the first zone objective by reason of excessive density, it is noted that the density requirement of 1:1 specified by the SEPP is a non-discretionary development standard and that clause 5 of the SEPP states that the provisions of the SEPP prevail over the provisions of the LEP, therefore in this instance the failure of the proposal to comply with the first of the three R2 zone objectives is not an issue that could justify rejection of the clause 4.6 variation request.

The second objective of R2 zoned land is the provision of facilities and services to meet the day to day needs of residents. The facilities and services to which this objective refers are considered to be those land uses that are permissible in the zoning table for the R2 zone. The objective is inconsistent with the SEPP as the SEPP seeks to set aside local planning controls that prevent the development of housing for seniors or people with a disability (clause 2 (2) (a)). This objective cannot be used to justify rejection of the clause 4.6 variation request as the SEPP prevails over any inconsistency with any other environmental planning instrument.

The third objective of R2 zoned land is to provide housing that is compatible with the existing environmental and built character of Ku-ring-gai. This objective is consistent with the SEPP as the Design principles in Division 2 of the SEPP contain similar requirements. For the reasons outlined elsewhere in this report the proposal is not considered to be consistent with these principles.

Objectives of the development standard

Clause 26 of the SEPP does not specify any objectives for the development standard. In the Land and Environment Court judgement for *Symon v Hornsby Shire Council* [2015] NSWLEC 1028, Pearson C endorsed the following approach:

'...the underlying objectives of the standard in cl 26 are to be derived in the context of Chapter 3 as expressed in the objective in cl 14, which requires a focus on the design and location of housing intended to serve the needs of both independent and mobile seniors and those who are frail or have a disability. In that context, the underlying objective of the standard in cl 26 is appropriately expressed in (a) and (b) above, that is, ensuring access to the appropriate services and facilities, by means that are appropriate.'

In the above excerpt, the references to (a) and (b) above, are:

- (a) To ensure that older people and people with disabilities have access to public transport or shops and services and are able to walk to or travel to bus stops and services by electric wheelchair or motorised cart.*
- (b) To provide suitable pathways to access a transport service to shops, services or facilities as set out in clause 26(2) of the SEPP*

The applicant's clause 4.6 variation request states that the objectives of clause 26 should be derived by applying the following approach:

For the purpose of this Clause 4.6 request it may be reasonably assumed that that the objectives are to ensure that the future residents of the development have access to all facilities and services that they would reasonably require.

In terms of the variety of services which the residents may reasonably require, we believe the best authority to answer this question is the proponent – Australian Nursing Home Foundation, who have over 35 years experience in owning and operating culturally appropriate residential care facilities (Burwood 45 beds; Eastwood 46 beds; and Hurstville 70 beds) and know from firsthand experience what their residents require.

The applicant has also stated:

The purpose of the development is to care for people who are no longer capable of taking adequate care of themselves or are capable of independent living and travel.

It is a policy of ANHF (the care provider and proponent) that any independent seniors who wish to gain access to the facility and expect to undertake independent travel or visit local shops, for example, will not be eligible for admission.

Even if access to a public transport service and local services was within 400m of the site, it would not be available to the future residents.

The above statement suggests that the requirements of clause 26 are not relevant to the proposed development as the occupants of the development would not be able to undertake independent travel even if it were available. This position is not supported, as it is inconsistent with the 'Aims of the Policy', in particular clause 2 (1) (b) which states that the provision of housing (including residential care facilities) which makes efficient use of existing infrastructure and services will be encouraged:

(1) *This Policy aims to encourage the provision of housing (including residential care facilities) that will:*
(a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
(b) ***make efficient use of existing infrastructure and services, and***
(c) *be of good design.*

Clause 14 of the SEPP also states that the objectives of Chapter 3 (which includes clause 26) is to create housing that is located and designed in a manner suitable for seniors or people with a disability.

The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.

Clause 26 is a site related requirement that applies to all forms of housing covered by the SEPP. The *obiter dicta* comments of Robson J in the *Principal Healthcare* judgement, suggest that the relevance of the clause 26 requirements to seniors housing will vary depending on the type of senior housing proposed. Whilst a *residential care facility* is likely to accommodate persons with the lower level of independence than persons residing in a *self-contained dwelling*, people capable of undertaking independent travel do live in residential care facilities. The applicant's mooted admission policy, acknowledges that persons capable of undertaking independent travel would be eligible for admission providing that they do not expect to partake in independent travel.

The decision of the Land and Environment Court in *Symon* is that the objectives of clause 26 are to provide access, whether by walking, motorised scooter or electric wheelchair to pathways or transport services to the services and facilities described in clause 26. The applicant seeks to distinguish the proposed use on the basis of the likely frailty of the residents, however the SEPP does not distinguish between residential care facilities that provide high or low levels of care. (Note: the terms high care and low care were removed from the Aged Care Act in 2014). If approved, the facility would be required to operate as a residential care facility in accordance with clause 11 of the SEPP. Clause 11 sets the following requirements for residential care facilities:

- i. residential accommodation is provided for seniors or people with a disability;
- ii. meals and cleaning services are provided;
- iii. personal care or nursing care, or both is provided; and
- iv. appropriate staffing, furniture, furnishing and equipment for the provision of that accommodation and care is provided.

As required by clause 18, a restriction on occupation of the development to the following people must be imposed:

- (a) *seniors or people who have a disability,*
- (b) *people who live within the same household with seniors or people who have a disability,*
- (c) *staff employed to assist in the administration of and provision of services to housing provided under this Policy.*

There would be no planning impediment to the facility being operated by a service provider that did not employ an internal policy that prohibited the admission of persons that wished to retain their independence and have the opportunity to independently access off-site services. The definitions relevant to the operation of a facility permitted by the SEPP are 'residential care facility' and 'seniors or people who have a disability'. These definitions do not exclude able bodied persons from utilising this form of accommodation. The SEPP does not require that residential care facilities provide nursing care; the provision of meals, cleaning and personal care alone satisfies the SEPP requirements for residential care facilities. As a relevant planning instrument, the SEPP is required to be given primacy in the assessment and determination process. The objectives of the SEPP should prevail over the operational preferences of the applicant which are not planning requirements. It is considered that minimal determinative weight can be applied to the applicant's statement that independent seniors would not be eligible for admission. The admission policy is not consistent with the aims of the SEPP and the requirements of clause 18.

The failure of the site to comply with clause 26 also has implications for the ability of staff and visitors (relatives, friends etc) to access the site. For example, the site is not located within 400 metres of public transport services that may be utilised by staff and visitors (i.e. relatives and friends of residents). Visitors would also be discouraged from independently accessing the facility due to the distance of the site from public transport services and the gradient of the access pathway. For example, the location of the site would make it difficult for a family member to accompany a resident with mobility difficulties on an outing to a café or restaurant or to make use of wheelchair-accessible public transport services. The location of the site, being more than 400 metres from a public transport service, is not consistent with the stated aim of the Policy to encourage housing that makes efficient use of existing infrastructure and services.

If the intention of the SEPP was to exclude residential care facilities from the location and access requirements of clause 26, this type of seniors housing would not be subject to the clause. The proposal does not meet the provisions of clause 26 of the SEPP and is inconsistent with the intent and objectives of the SEPP.

4. Concurrence of the Director General.

Circular PS 08-003, issued on 9 May 2008, informed Council that it may assume the Director-General's concurrence for exceptions to development standards. In the absence of a requirement for concurrence, Council is required to consider the following matters:

- (a) *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.*

The clause 4.6 variation request relates to a development standard that is contained in a State Environmental Planning Policy which overrides local planning controls and has the effect of allowing development in circumstances where it would be prohibited under the local plan. The development standard variation has regional significance as the proposal is to be determined by the Sydney North Planning Panel which is responsible for the determination of Schedule 4A Development in the Sydney North Region. If the development standard variation is endorsed, it is likely to have implications for other proposals for residential care facilities submitted pursuant to SEPP Seniors.

The application seeks to address the requirements of clause 26 by on site services and a community bus, this is a strategy that could be adopted by other residential care facility developments which do not comply with the development standards in clause 26.

In *Hooker Corporation Pty Ltd v Hornsby Shire Council* (1986) 130 LGERA 428 Cripps J said:

'...Furthermore it is now established that although the discretion conferred by the SEPP No 1 is not to be given a restricted meaning and its application is not to be confined to those limits set by other tribunals in respect of other legislation, it is not to be used as a means to effect general planning changes throughout a municipality such as are contemplated by the plan making procedures set out in Part III of the Environmental Planning and Assessment Act'

The comments of Cripps J are in reference to SEPP 1, however they have also been accepted by the Land and Environment Court as being of relevance to the application of clause 4.6. The determining authority should consider whether the construction of residential care facilities on land which does not comply with clause 26, but where on site services and a community bus is proposed, is a planning outcome that does not affect a general planning change throughout the Sydney North Region.

(b) The public benefit of maintaining the development standard.

For the reasons identified above it is considered that the clause 4.6 variation request does not satisfy the requirements of clause 4.6. The variations to clause 26 are substantial and there is no evidence that the standard has not been consistently applied by Council or the Sydney North Planning Panel. The proposed variation has the potential to create a precedent that may be relied upon for other seniors living developments which sought to depart from the provisions of clause 26.

(c) Any other matters required to be taken into consideration by the Director-General before granting concurrence.

No other matters require consideration by the Director-General.

LEP - Part 5 Miscellaneous provisions

Clause 5.3 Development near zone boundaries

Not applicable to this application

Clause 5.4 Controls relating to miscellaneous permissible uses

Not applicable to this application

Clause 5.9 – Preservation of trees or vegetation

Council's Landscape and Tree Assessment Officer is of the opinion that the proposed development will unduly impact upon three trees (Trees 27, 30 and 50) that are proposed to be retained. To protect the health of these trees amendments to the design of the proposal are required. Refer to Landscape and Tree Assessment Officer comments for further information.

Clause 5.10 – Heritage conservation

Refer to Heritage Advisor's comments above.

LEP - Part 6 Additional local provisions

Clause 6.2 - Earthworks

The proposed development is unlikely to restrict the existing or future use of the site, adversely impact on neighbouring amenity, the quality of the water table or disturb any known relics.

Clause 6.3 - Biodiversity protection

This clause applies to the proposal as the site contains land identified as an area of biodiversity significance on the Natural Resource-Biodiversity Map. Subclause (3) states:

(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:

(a) the impact of the proposed development on the following:

(i) any native vegetation community,

(ii) the habitat of any threatened species, population or ecological community,

(iii) any regionally significant species of plant, animal or habitat,

(iv) any biodiversity corridor,

(v) any wetland,

- (vi) the biodiversity values within any reserve,*
- (vii) the stability of the land, and*
- (b) any proposed measure to be undertaken to ameliorate any potential adverse environmental impact, and*
- (c) any opportunity to restore or enhance remnant vegetation, habitat and biodiversity corridors.*

The development includes the removal of two Blackbutt trees (Trees 46 & 49) which are part of the Sydney Turpentine Ironbark Forest community and within the area identified as biodiversity significant land. The removal of these trees is acceptable and consistent with the requirements of clause 6.3 as they contain defects and have a SULE value of 4, which means that they should be removed within 5 years.

The Flora and Fauna Assessment Report submitted with the amended proposal includes an assessment against clause 6.3 of the LEP and concludes that the proposal is consistent with the clause as selected tree removal/retention is appropriate and the existing Sydney Turpentine Forest will be enhanced by new planting in accordance with a Landscape Plan and Vegetation Management Plan. The conclusions of the Flora and Fauna Assessment Report are based on the feasibility of retaining Sydney Turpentine Ironbark Forest trees located within areas of biodiversity significant land. If the retention of these trees is feasible the conclusions of the Flora and Fauna Assessment report could be supported, however the amended proposal results in impacts on Tree 27 (Sydney Red Gum) and Tree 30 (Blackbutt) due to the reduction in the rear setback of the East Wing and impacts on Tree 50 (Turpentine) due to the location of the new 'Tea House' structure and associated decking. As the proposal will have unacceptable impacts on three trees, the conclusions of the Flora and Fauna Assessment Report are not supported.

Subclause (4) states:

- (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
- (a) is consistent with the objectives of this clause, and*
- (b) is designed, and will be sited and managed, to avoid any potentially adverse environmental impact or, if a potentially adverse environmental impact cannot be avoided:*
 - (i) the development minimises disturbance and adverse impacts on remnant vegetation communities, habitat and threatened species and populations, and*
 - (ii) measures have been considered to maintain native vegetation and habitat in parcels of a size, condition and configuration that will facilitate biodiversity protection and native flora and fauna movement through biodiversity corridors, and*
 - (iii) the development avoids clearing steep slopes and facilitates the stability of the land, and*
 - (iv) measures have been considered to achieve no net loss of significant vegetation or habitat.*

The proposal is capable of complying with the above requirements through further design amendments to reduce encroachments into the Tree Protection Zones of Trees 27, 30 and 50 however the proposal, as submitted, is inconsistent with the requirements of Clause 6.3 for the following reasons:

- (i) The objectives of Clause 6.3 are not satisfied as the development does not protect, maintain and improve the diversity of the native vegetation; does not encourage the recovery of the Sydney Turpentine Ironbark Forest community and does not protect biodiversity corridors (cl 6.4(4)(a)).
- (ii) The impacts of the proposal on Trees 27, 30 and 50 are not consistent with the requirements to design and site development to avoid adverse impacts on Sydney Turpentine Ironbark Forest (cl 6.4(4)(b)).
- (iii) The development does not minimise disturbance and adverse impacts on Sydney Turpentine Ironbark Forest (cl 6.4(b)(i)).
- (iv) The impacts on Trees 27, 30 and 50 will not achieve no net loss of significant vegetation (cl 6.4(b)(iv)).

Clause 6.4 - Riparian land and waterways

The site is not mapped as riparian land under Council's mapping system.

Clause 6.5 - Stormwater and water sensitive urban design

Council's Development Engineer is satisfied that the proposed development has been designed to manage urban stormwater run-off as per the requirements of the LEP & DCP.

Ku-ring-gai Development Control Plan

KU-RING-GAI DEVELOPMENT CONTROL PLAN - COMPLIANCE TABLE		
Section A		
Part 2.1: Site Analysis		
Control Development applications must contain a site analysis that includes: i) a sketch/diagrammatic plan with a legend; and ii) a written component.	Proposal An adequate site analysis has been provided.	Compliance YES
Part 3: Land Consolidation and subdivision		
The proposal is not subject to these requirements as it will not isolate any adjoining sites and lot consolidation is not proposed.	N/A	N/A
Part 13: Tree and Vegetation Preservation		
The proposal seeks consent for the removal of trees and works within the roof zone of trees which requires consent under the DCP.	Refer to Landscape and Tree Assessment Officer comments.	
SECTION B		
Control	Proposal	Compliance
Part 15: Land Contamination		
Refer to Council's <i>Contaminated Land Policy 2016</i> for a list of activities that may cause a site to be considered 'potentially contaminated land', and for requirements for development applications, rezoning and remediation works on contaminated land.	The site history indicates that the site has not been used for a potentially contaminating activity.	YES
Part 16: Bushfire Risk		
The site is not bushfire prone land.	N/A	N/A
Part 17: Riparian Lands		
The site is not riparian land.	N/A	N/A
Part 18: Biodiversity		
The site contains biodiversity significant land.	Refer to Ecological Assessment Officer's comments.	NO
Part 19: Heritage Items and Heritage Conservation Areas		
The site contains a Heritage Item and is adjacent to a Heritage Conservation Area.	Refer to Heritage Advisor's comments.	NO
Part 20: Development Near Road or Rail Noise		
The site is not near road or rail noise.	N/A	N/A
SECTION C		
Part 21: General Site Design		
Part 21.1: Earthworks and slope		
Control	Proposal	Compliance
Development must be accommodated within the natural slope of the land. Level changes across the site are to be primarily resolved within the building footprint. This	The floor levels are stepped in response to the sloping topography of the site.	YES

may be achieved by: i) stepping buildings down a site; and ii) locating the finished ground floor level as close to existing ground level as practicable.		
Development is to minimise earthworks on steeply sloping sites. Sites with a slope in excess of 15% may require certification from a geotechnical engineer as to the stability of the slope in regard to the proposed design.	Not a steeply sloping site	N/A
Landscape cut or fill should not be more than 600mm above or below natural ground line.	Cut and fill for landscaping purposes would not exceed 600mm	YES
A minimum 0.6m width is required between retaining walls to provide adequate soil area and depth to ensure that they do not read as a single level change, and for the viability of landscaping.	YES	YES
Existing ground level is to be maintained for a distance of 2m from any boundary.	YES	YES
Grassed embankments are not to exceed a 1:6 slope. Vegetated embankments, planted with soil stabilising species, may be to a maximum of 1:3.	N/A	N/A
Fill and excavation are not permitted within sensitive environments, such as riparian lands, bushland, or significant vegetation.	YES	YES
Retaining walls, excavated and filled areas shall be located and constructed to have no adverse impact on: <ul style="list-style-type: none"> structures to be retained on the site; structures on adjacent public or private land; trees to be retained on site or on adjoining sites. 	YES	YES
Excavated and filled areas are to be constructed so as not to redirect or concentrate stormwater or surface water runoff onto adjoining properties.	N/A	N/A
The design of the proposal must consider the impacts of altered subsurface/groundwater flows or direction on groundwater dependent ecosystems or species.	A waterproofed basement is proposed. No concerns have been identified by Council's Ecological Assessment Officer.	YES
For any dwelling house development, excavation within the building footprint must not exceed 1.0m depth relative to ground level (existing), fill must not exceed 1m relative to ground level, with a maximum level difference across the building footprint of 1.8m.	N/A	N/A
Retaining walls on low and medium residential density sites must not exceed 1m in height above existing ground level. Where greater level change over the site is required, the site should be terraced.	YES	YES
Part 21.2: Landscape Design		
The site planning and design of developments must:		
i. retain and enhance indigenous vegetation, biodiversity corridors and existing natural features on the site including trees, shrubs and groundcovers, soils, rock outcrops and water features. These provide habitat, breeding sites, food and shelter for a wide variety of life forms and ecological processes that support life and define the character of the locality.	The impacts on Trees 27, 30 and 50 are not consistent with these requirements.	NO
ii. retain the most significant and visually prominent trees and vegetation that contributes	The impacts on Trees 27, 30 and 50 are not consistent	NO

to neighbourhood character	with these requirements.	
iii. retain vegetation and garden fabric such as paths, walls,	Retention of existing landscaping plus new landscaping is proposed.	YES
iv. steps, ponds and terraces, that contribute to the heritage significance of the setting of a heritage item or a site within a heritage conservation area;	Retention of some garden features of the heritage item is proposed.	YES
v. be located to retain views of public reserves;	The site is not located near a public reserve.	N/A
vi. consider subsurface/groundwater flows near bushland	The site is not located near bushland.	N/A
vii. Retain habitat within the site including: -- drainage features and damp areas; -- rock outcrops -- hollow-bearing trees; -- areas of leaf litter; -- bushrock.	N/A	N/A
The retention of existing appropriate screen planting is encouraged.	N/A	N/A
Structures (including services) must be located outside the canopy spread of trees to be retained. This applies to street trees, trees on site and on adjoining sites.	The proposed works inside the tree protection zones of Trees 27, 30 and 50 are not consistent with these requirements.	NO
Disturbance of natural soil profiles must be minimised.	YES	YES
Existing ground level must be maintained beneath the canopy spread of trees to be retained.	Works which impact existing ground level will impact on Trees 27, 30 and 50.	NO
The introduction of imported soils and disturbance of local seed banks must be avoided wherever possible.	YES	YES
Vegetation retention must consider the following: i) healthy specimens that have a high Safe Useful Life Expectancy are to be the first priority for retention; ii) trees within heritage items or heritage conservation areas are to be assessed in terms of heritage significance; iii) mature trees and hollow-bearing trees within biodiversity areas are a priority for retention; and iv) while single trees may be ecologically important in their own right, or as part of a broader community, retaining and planting trees in groups.	An arborist assessment of tree health has been provided and considered in the assessment of the development application.	YES
Seasonal temperature control and improved air quality can be achieved through effective landscape design and application of the design principles in design control No. 8.	These provisions have been considered by Council's Landscape and Tree Assessment Officer.	YES
Siting and choice of planting must consider the design principles in design control No. 9.	These provisions have been considered by Council's Landscape and Tree Assessment Officer.	YES
Planting beds for screen planting must be of adequate width to allow the plants to flourish.	YES	YES
Where development is located close to a reserve, the landscaping design is not to prevent passive surveillance of the reserve.	N/A	N/A
The height of planting within the front setback is to allow partial views to and from the dwelling or main building and beyond.	YES	YES
Where a property boundary is within 100m of bushland,	N/A	N/A

planting is to consist of not less than 70% locally native tree species and 30% locally native understorey species. Species are to reflect the relevant vegetation communities within the area.		
Where a property boundary is between 100m and 300m from bushland at least 50% of the overall number of trees and shrubs must be locally occurring native species. Species are to reflect the relevant vegetation communities within the area.	N/A	N/A
For development on sites where single residential development is permitted, and all property boundaries are greater than 300m from bushland, at least 25% of the overall number of trees and shrubs must be locally occurring native species. Species are to reflect the relevant vegetation communities within the area.	YES	YES
The planting of species listed in Council's Weed Management Policy will not be permitted.	The planting of weed species is not proposed.	YES
Species used for planting in or directly adjacent to areas with significant vegetation or habitat should be of local provenance.	This requirement has been included in the Vegetation Management Plan.	YES

Part 22: General Access and Parking		
Part 22.1: Equitable Access		
Control	Proposal	Compliance
<p>1 For the purpose of this Part "access" is defined as:</p> <p>i) an ability to travel from one point to another in a continuous and independent manner, following a reasonable route;</p> <p>ii) an ability to communicate or obtain information or service from any person, display or facility which is intended to communicate or provide that information or service to any person.</p> <p>2 Designing for access for all people is encouraged for all development types.</p> <p>3 Where minor alterations or additions to an existing building are proposed, the alterations must not reduce the accessibility of the building.</p> <p>4 Applications for development, other than single dwellings, are to demonstrate how access to and within developments meets the requirements of the Disability Discrimination Act 1992 (DDA).</p> <p>5 Entry access ramps for people with a disability must be located within the site and must not dominate the front façade.</p> <p>6 The provision of access for all to and within heritage items is to:</p> <p>i) have minimal impact on the significant fabric of the item;</p> <p>ii) be, as far as possible, reversible.</p> <p>7 Where such access is likely to have a major adverse impact on significant fabric, alternative solutions should be considered. However every effort is to be made to provide equitable access through the main entrance to the building.</p> <p>8 Building entries are to be clearly visible from the street. Where site configuration is conducive to having a side entry, the path to the entry must be obvious from the street.</p> <p>9 Ensure pedestrian areas have clear sightlines, are appropriately lit and overlooked by buildings that provide</p>	<p>An Access Report addressing the requirements of the Disability Discrimination Act 1992 was submitted with the application. The access ramp to the front entry is perpendicular to the street boundary and does not dominate the front façade. The proposal is to use the heritage item for predominantly staff purposes which will minimise any physical alterations for accessibility purposes. The front entry and foyer is located near the centre of the site where it is clearly visible from the street frontage. The foyer has sliding glass doors that will provide views of the entry ramp from inside the building.</p>	YES

<p>street level activity.</p> <p>10 Access ways for pedestrians and for vehicles are to be separated.</p> <p>11 Ensure landmarks, including landmark buildings, are distinctive in form and reinforce the street pattern and topography to enable people to find their way.</p> <p>12 Buildings are to be sited and designed to avoid obscuring landmark features and views which enable ease of orientation from the street and public open space areas.</p> <p>13 Ensure all users of the site can find their way within the development. This can be achieved by:</p> <p>i) Designing foyers and orienting reception and information desks so that arriving visitors can be seen;</p> <p>ii) Locating reception and information desks near lifts to enable staff to assist visitors with directions;</p> <p>iii) Dividing large-scale sites into distinctive smaller parts, or zones of functional use, while preserving a 'sense of place' and connectivity between spaces;</p> <p>iv) Organising the smaller parts of the development under a simple organisational principle, such as 'use' through a zonation plan with a logical and rational structure;</p> <p>v) Providing frequent directional cues throughout the space, particularly at decision points along routes in both directions;</p> <p>vi) Displaying/using appropriate international symbols for facilities.</p>		
<p>Residential only</p> <p>14 All Multi Dwelling Housing, Residential Flat Buildings and Shop Top Housing within Mixed Use developments are to provide access to, and between, dwellings and parking in accordance with the <i>Livable Housing Guidelines</i> as stipulated in Part 6 Multi Dwelling Housing, Part 7 Residential Flat Buildings and Part 8 Mixed Use Development</p>	N/A	N/A
Part 22.2: General Vehicle Access		
1 Except as provided in <i>Part 14 of this DCP</i> , car park entry and egress, for developments other than low density residential, must be provided from secondary streets or lanes where these are available.	A secondary street or laneway is not available.	N/A
2 The width and number of vehicle access points are to be limited to minimise potential pedestrian/vehicle conflicts. Wherever practicable, commercial and mixed use buildings are to share, amalgamate or provide a rear lane for vehicle access.	One vehicle access point is proposed.	YES
3 Vehicle access driveways must be set back a minimum of 10m from street intersections or as specified in <i>Clause 3.2.3 of AS2890.1</i> (whichever is the greater).	The access driveway is more than 10m from the nearest intersection.	YES
4 Vehicle and pedestrian access to buildings must be separated and clearly distinguished. Vehicle access must be located a minimum of 3m from pedestrian entrances.	Separate vehicle and pedestrian access points are proposed.	YES
5 Provide clear sight lines at pedestrian and vehicle crossings.	YES	YES
6 The width of any driveway for a low density residential development, as measured at the front site boundary,	N/A	N/A

must not exceed 3.5m.		
7 For all other development types, driveway width is to comply with the table in the DCP. Greater widths will only be considered where it is required by RMS or Australian Standards relating to off-street parking and pedestrian safety.	Driveway width is suitable for two way traffic.	YES
8 Long driveways (greater than 30m) are to be avoided. Where they are unavoidable, driveways over 30m long are to be provided with a passing bay.	Driveway length is less than 30m.	N/A
9 Vehicles must be able to enter and leave the site in a forward direction.	YES	YES
10 Vehicle entries and service areas are to be set back or recessed from the main facade line and integrated into the overall façade design, so as not to dominate the building elevation.	YES	YES
11 Vehicle entries, walls and ceilings are to be finished with high quality materials, finishes and detailing, similar to the external facades of the building.	If approval of the application were recommended compliance with this provision could be achieved by conditions of consent.	YES
12 Service ducts, pipes and storage facilities must not be visible from the street	YES	YES
13 External security doors may be provided where necessary. Security doors are to be of high quality material and detail and must blend into the building facade.	No security doors proposed on façade.	YES
14 For driveways on sloping sites, where high retaining walls are required on both sides of the driveway, one wall is to be no higher than 1.2m. Where greater level change is required, the retaining wall should be stepped back and softened by landscaping. High solid walls should be relieved by i) change in colour or finish; ii) recessing; and/ or iii) exposed brick or block work.	N/A	N/A
Part 22.3 Basement Car Parking		
A logical and efficient structural grid must be provided to the basement car park areas.	YES	YES
The minimum height between floor level and an overhead obstruction is to be 2.2m, except for the following: i) 2.5m for parking area for people with a disability; ii) 2.6m for residential waste collection and manoeuvring area; and iii) 4.5m for commercial waste collection and manoeuvring area.	Sufficient height for the community bus and waste collection vehicle has been provided.	YES
Where natural ventilation is not possible, a ventilation system for the basement car park is to be provided and designed in accordance with <i>AS1668.2 The use of ventilation and air conditioning in buildings - Ventilation design for indoor air contaminant control</i> . Monitoring of CO2 and variable speed fans are to be provided with any basement car park mechanical ventilation systems.	If approval of the application were recommended compliance with these provisions could be achieved through standard consent conditions.	YES
Basements must be fully tanked to prevent unnecessary subsurface or groundwater extraction	The application documentation advises that a waterproofed basement is proposed.	YES
Unimpeded access to visitor parking and waste and	Unimpeded access to visitor	YES

recycling rooms located within a secure basement parking must be maintained.	parking and waste and recycling room is provided.	
Where ventilation grilles or screening devices are provided they are to be recessed and integrated into the overall facade and landscape design of the development.	The basement is mechanically ventilated, therefore ventilation grilles are not proposed.	N/A
Vehicle access ways to basement car parking must not be located in direct proximity to doors or windows of habitable rooms.	Only one secondary window to a bedroom and activity room windows are located above the basement ramp.	YES
Where visitor parking is not separated from residential parking by a barrier, a light colour palette is to be used for the interior of the car park and lines of sight are to be open and avoid concealment and entrapment areas.	N/A	N/A
Part 22.4: Visitor Parking		
This section applies where visitor parking is required by this DCP. 1 Where visitor parking is required by this DCP, the spaces are to be provided on site and clearly marked. 2 Visitor parking located behind a security grille require an intercom system to gain entry. 3 At least one visitor parking space it to be accessible, designed in accordance with AS2890.6.	N/A	N/A
Part 22.5: Parking For People With A Disability		
1 Accessible car parking spaces are to be level and have a continuous path of travel to the building's principal entrance or lift. 2 Accessible car parking spaces are to be identified by a sign incorporating the international symbol specified in AS1428 and be designed in accordance with the provisions of AS2890.6. 3 Appropriate international symbols for the disabled must be displayed/used where appropriate to assist in direction to ramps, lifts etc. 4 Car parking spaces for residential development (excluding single dwellings) are to be designed in accordance with the requirements of the <i>Livable Housing Guidelines</i> as stated within Part 6 Multi-Dwelling Housing, Part 7 Residential Flat Buildings and Part 8 Mixed Development. 5 Provision of accessible car parking for non-residential development is to comply with the minimum rates specified in part 22.5 of the DCP, rounded up to the nearest whole number. 6 For other land uses/facilities, the minimum number of spaces should be at least 1%, unless supported by a merit assessment.	In accordance with the BCA one accessible car space has been provided, this is less than the three required by the DCP. If approval of the application were recommended additional accessible spaces could be required by condition, however this would reduce the overall number of car spaces to less than the SEPP specified minimum.	NO
Part 22.6: Pedestrian Movement Within Car Parks		
Marked pedestrian pathways, with clear sight lines and appropriate energy efficient lighting must be provided in all car parks. See <i>Austroads Guide to Traffic Management Part 11 - Parking</i> . 2 Pedestrian pathways, entrances, stairway and lift areas must be clearly visible, conveniently located, well lit and have minimal conflict with vehicular traffic. 3 All pathways and ramps within car parks must conform to the minimum dimensional requirements set out in AS1428.1. 4 All pedestrian path surfaces within car parks are to be stable, even and constructed of slip resistant material.	If approval of the application were recommended compliance with these provisions could be achieved by condition.	YES

Part 22.7: Bicycle Parking And Facilities		
Bicycle parking and storage facilities are to be designed in accordance with AS2890.3 to ensure: i) both wheels and frames can be locked to the device without damaging the bike; ii) easy access from a bicycle lane or roadway with appropriate signage; iii) access paths have a minimum width of 1.5m to accommodate a person pushing a bicycle, and adequate sight lines for safety.	Bicycle parking is not required for residential care facilities.	N/A

Part 23 – General Building Design and Sustainability		
23.1: Social Impact		
Control	Proposal	Compliance
Proposals must consider the impacts of the development on nearby residents and users of the site.	The proposed facility is unlikely to have a significant social impact.	YES
A Social Impact Statement will be required in the case of proposals which are likely to have a significant social impact because they are likely: i) To contribute to social inequity; ii) To increase risk to public safety; or iii) To threaten the existing sense of community identity or cohesiveness.	The proposed use is not identified as one that is likely to require the preparation of an SIS.	YES
23.2: Green Buildings		
This section applies to all buildings that are not required to comply with BASIX standards. All new non-residential development with a floor area of between 2000m ² and 5000m ² must achieve a 4 star Green Star rating.	The statement of environmental effects refers to BCA energy efficiency requirements which are lower and less comprehensive ESD standards than those required for a 4 star Green Star rating. The proposal should comply with the Green Star requirement of the DCP which is consistent with objective 5(a)(vii) of the Act, 'to encourage ecologically sustainable development'.	NO
23.3: Sustainability of building materials		
Development proposals must consider the following in the selection of building materials: i) recycled or recyclable materials with low embodied energy; ii) materials that come from renewable sources; iii) materials that generate a lower environmental cost over time; iv) materials with a low life cycle cost and/or high durability; v) production methods with a low environmental impact.	Could be achieved by condition	YES
Where the use of timber is proposed, only FSC, AFS or PEFC certified timbers may be specified for construction or finishing. Medium Density Fibreboard (MDF) and particleboard must not be specified as a construction material for the development.	Compliance with this requirement could only be determined at CC stage.	N/A

The use of alternatives to PVC piping is highly encouraged including Colorbond (above ground only), and HDPE where appropriate.	Compliance with this requirement could only be determined at CC stage.	N/A
The use of construction materials and chemicals with toxic components must be avoided, to facilitate recycling and reduce pollution.	Compliance with this requirement could only be determined at CC stage.	N/A
Structures must be designed with physical, rather than chemical, termite measures. This can be achieved by: i) appropriate materials and construction design; ii) physical barriers; iii) suspended floor systems.	The proposed building is predominantly of masonry construction.	YES
Low Volatile Organic Compounds (VOC) are to be used throughout the building interior (carpets, paints, adhesives, sealants and all other finishes), and low emission building materials are to be used across the site.	Compliance with this requirement could only be determined at CC stage.	N/A
Avoid the use of ozone depleting products and materials, or products and materials manufactured using ozone depleting substances.	Compliance with this requirement could only be determined at CC stage.	N/A
Avoid materials likely to contribute to poor internal air quality, such as those generating formaldehyde, or those that may create a breathing hazard in the event of fire, such as polyurethane.	Compliance with this requirement could only be determined at CC stage.	N/A
The requirements below apply only to non-residential development: i) use heavy weight building materials, such as concrete, as thermal mass on roofs and/or walls. Where lighter weight materials are used they are to be well insulated. ii) encourage the use of photovoltaic cells which can be mounted as panels, or used as an integrated building cladding or sun shading. iii) use light coloured internal finishes to improve internal reflections and minimise lighting use.	The proposal does not include an ESD report which demonstrates how a 4 star Green Star rating will be achieved for the development. An ESD report for a 4 star Green Star rating would go some way to addressing these requirements.	NO
Part 23.4: Materials and Finishes		
External walls must be constructed of high quality and durable materials and finishes.	The selected materials of face brick, stone, textured render and corrugated powder coated sheet metal are consistent with these requirements.	YES
Reuse or recycling of existing local materials such as sandstone and brick is encouraged.	There is no sandstone or brick to be recovered	N/A
Large, unbroken expanses of any single material and finish (rendered or not) to building facades must be avoided.	YES	YES
New development is to avoid extensive use of highly reflective or gloss materials on the exterior of buildings.	YES	YES
For buildings of 3 storeys and above, a large expanse of sandstone or face brick is not to be used on the upper levels of the buildings.	N/A	N/A
The exterior finish material (eg. sandstone or brick) must be integral to the overall building façade design and must not appear to be cosmetic.	YES	YES
Highly contrasting coloured bricks are to be restricted to use on building elements such as sills, window heads, string courses and to assist in the division of the building into bays.	The use of highly contrasting coloured bricks is not proposed.	YES

For buildings of 3 storeys and above, lightweight materials and finishes (eg. timber and copper/steel) are encouraged for the upper levels of buildings to assist in minimising the bulk and scale of the building.	N/A	
When louvres are used, they are to be an integral element in the building façade design.	Louvres as a wall element are not proposed.	N/A
Where building cladding is used, consider dual purpose solutions. For example, use of photovoltaic cells mounted on panels used for cladding.	The walls of the building are a masonry material, not cladding.	N/A
Where additions and alterations are proposed, external materials and finishes must complement the existing building.	N/A	N/A
<p>The selection of a colour scheme for new development and in the restoration of existing facades must comply with the following guidelines:</p> <p>i) Base colours for major areas of building façade are to be light in tone (eg. earth tone) with minimal colour intensity (or hue) eg. Off white or grey colours. Larger expanses of bold colour, black and white must be avoided, as these detract from the prominence of other façade details. Contrasting tints, tones and shades are to be restricted to small areas.</p> <p>ii) Highlight colours to window and door mouldings, string courses, parapet details and the like, are to be in sufficient contrast to the base colour. Strong colours to large sections of the building must be avoided. Details should be finished in a matt to semi gloss range. Trim colours for window frames and awning fascias are to be a darker contrast to base and highlight colours. Window frames should be finished in either a semi gloss or full gloss.</p>	YES	YES
Part 23.5 Roof Terraces and Podiums		
The proposal does not incorporate a roof terrace or podium.	N/A	N/A
Part 23.6: Building services		
All applicants must consult with service providers such as energy, electricity, gas, water, telephone and fire.	Standard conditions of consent require consultation with service providers.	YES
Services and structures required by the providers are to be located within basements, or concealed within the facade, with appropriate access. Where this is not possible, the proposal must demonstrate an alternative method of minimising street impact, such as screening with landscape or built elements. Particular care should be taken in mixed use precincts to ensure substations and fire hydrants are not visible from the primary street and principal active street frontages.	The proposed substation is proposed to be screened by landscaping and the front fence.	YES
Ventilation stacks are to be concealed within the building. Where they exhaust at street level (eg. from basements) they should be integrated within the design of the site.	YES	YES
All new developments designed to allow for commercial uses must include an internal ventilation shaft to ensure future alterations do not place the shaft in an unsuitable location.	N/A	N/A
With the exception of dwelling houses, all buildings must accommodate proposed or future air conditioning units within the basement or on rooftops, with provision of	The air conditioning units are located in a louvered plant room that is inside the roof	YES

associated vertical/ horizontal stacks to all sections of the building.	space.	
Air conditioning units located within basements must be screened and have adequate ventilation.	N/A	N/A
Air conditioning units located on the roof will only be permitted where they are well screened, integrated into the building form and do not result in adverse noise impacts on neighbouring occupants.	The air conditioning units are located in a loured plant room that is inside the roof space.	YES
Part 23.7: Waste Management		
General 1. All waste and recycling facilities must comply with the BCA and all relevant Australian Standards. 2 All waste and recycling storage containers must be stored within the boundary of the subject site. 3 All putrescible and non-putrescible waste materials stored in any waste and recycling room or at centralised collection points must be contained in approved rigid containers supplied by the Council. 4 During the design of the development, waste must be minimised by: i) using recycled materials, selecting materials that reduce waste or do not require disposal, or can be reused or recycled in the future; and ii) designing with minimal site disturbance by avoiding unnecessary excavation or fill. 5 No compaction equipment is to be used for any sized bin.	Compliance with the BCA and Australian Standards is a prescribed condition of the Environmental Planning and Assessment Act.	YES
Storage room 6 Sufficient space must be provided within the premises for the storage and manoeuvring of the number of bins required to store the volume of waste and recycling materials. 7 Sufficient space must be provided to adequately house any additional equipment to handle or manage the waste generated. 8 For buildings exceeding four (4) storeys which contain a residential component; where a chute system is proposed, a fully enclosed waste and recycling materials compartment must be provided within each storey of the building. The facility must be designed to contain the waste chute hopper and the number of recycling storage bins equivalent to 2 x 240 litre bins for every 4 units per storey.	YES	YES
Access to collection point 9 The location of the waste and recycling room must be conveniently accessible and have unimpeded access for both occupants and collection service operators. In the event that the proposed development is protected by a security system and/or locked gates, the waste and recycling room/s must have unimpeded access for the collection service providers. Where security gates are provided to the development, gates must be accessible by Council's master key. 10 The waste and recycling collection point must be located on a level surface away from gradients and vehicle ramps, with the path of travel being free from any floor obstructions such as steps to allow for the transfer of wheelie bins to and from the storage room to the collection vehicle.	Waste is to be collected from the basement by a private contractor.	YES

<p>11 The vehicle access road leading to and from the collection point in a waste and recycling room must have a minimum finished floor to ceiling height of 2.6m for residential waste rooms and 4.5m for commercial waste rooms for the entire length of travel within the building. This clearance is to be kept free of any overhead conduits, ducting, services or other obstructions.</p> <p>12 The Waste Management Plan (WMP) must describe how the waste management system is to be managed and who is responsible for each stage of the process.</p>		
<p>Construction of waste and recycling rooms</p> <p>13 The floor of any waste and recycling room must be:</p> <ul style="list-style-type: none"> i) constructed of either concrete which is at least 75mm thick; or other equivalent material; and ii) graded and drained to a floor waste which is connected to the sewer. <p>14 The walls of any waste room, recycling room and waste service compartment are to be constructed of solid impervious material and shall be cement rendered internally to a smooth even surface coved at all intersections.</p> <p>15 All waste and recycling rooms must be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock. This does not include waste and recycling service compartments located on residential floors of multi occupancy dwellings.</p> <p>Note: This control is to aid in cleaning of the area.</p> <p>16 A close-fitting and self-closing door that can be opened from within the room must be fitted to all waste and recycling rooms.</p> <p>17 In the event that Council permits the installation of a roller shutter door (under special circumstance only), a sign must be erected in a conspicuous position drawing attention to the fact the door must be kept closed at all times when not in use.</p> <p>18 All waste and recycling rooms must be constructed to prevent the entry of vermin (eg. no gaps under access doors etc).</p> <p>19 All waste and recycling rooms must be ventilated by either:</p> <ul style="list-style-type: none"> i) mechanical ventilation system exhausting at a rate of 5L/s per m² of floor area, with a minimum rate of 100L/s; or ii) permanent, unobstructed natural ventilation openings direct to the building exterior, not less than one-twentieth (1/20th) of the floor area. <p>20 Meters and piping are not to be located in the waste and recycling room.</p> <p>21 All waste and recycling rooms must be provided with artificial light controlled by switches located both outside and inside the rooms.</p> <p>22 Clearly printed "NO STANDING" signs must be affixed to the external face of each waste and recycling room.</p> <p>23 Clearly printed signage must be affixed in all communal waste collection and storage areas, specifying which materials are acceptable in the recycling system and identifying the location of</p>	<p>Proposal is capable of complying with these provisions through conditions of consent.</p>	<p>YES</p>

waste and recycling storage areas, as well as waste and recycling service compartments. 24 Waste management systems must not be visible from outside the building. Where this is unavoidable and Council is in agreement, it must be designed to be consistent with the overall appearance of the development.		
Residential Buildings 25 Centralised waste collection points are required in the following circumstances: i) Attached dwellings where the number exceeds four dwellings in total; and ii) Where site characteristics (e.g. steep sites, narrow street frontage) make access to the street difficult for individual unit holders and where placement of bins on the street frontage is assessed as dangerous for either the public or service personnel,	N/A	N/A
Medium / High Density Housing This section applies to attached dwellings where the number exceeds four dwellings in total (eg. residential flat building, multi-dwelling housing) where basement parking is provided. 37 Number of containers to comply with the table in design control 37. 38 All new dwellings must be designed so as to allow the internal accommodation of one receptacle to collect waste and another to collect recycling, each with the capacity to store one day's worth of materials. 39 Centralised waste and recycling rooms must be provided in the basement that has sufficient capacity to store all waste and recycling likely to be generated in the entire building in a week. 40 The full path of travel to and from the waste and recycling room is to be designed to allow a 6m rigid vehicle, weighing GVM 7 tonnes, to enter and exit the development in a forward direction. 41 The maximum grade of any access road leading to a waste and recycling room must be not more than 1:5 (20%). The turning area at the base of any ramp must be sufficient to allow for the manoeuvre of a 6.0m rigid vehicle to exit the building in a forward direction. 42 The minimum floor to ceiling height within the vehicle accessway leading to and from the waste and recycling room(s) must be 2.6m for the entire length of travel required within the development. 43 Noise attenuation measures are required to ensure that the use of, and collection from, the waste and recycling room do not give rise to "offensive noise" as defined under the <i>Protection of the Environment Operations Act 1997</i> . 44 An area is to be nominated for on-site communal composting.	N/A	N/A
Part 23.8: General Acoustic Privacy		
Development is to be designed to minimise the impact of external noise sources (eg busy roads, railways, swimming pools, heavy vehicle entries) on the internal and external spaces used by occupants.	The site is not subject to significant external noise sources.	N/A
Balconies and other external building elements are to be designed and located to minimise infiltration and	N/A	N/A

reflection of noise onto the facade.		
Buildings must be designed to minimise noise transmission by, but not limited to: i) careful siting and orientation of the building; ii) locating bedrooms away from both internal and external noise generators of a development, eg by using storage or circulation areas as a buffer or grouping room uses according to the noise level generated.	YES	YES
Measures such as mounding or high solid fencing will only be permitted where they are compatible with the streetscape.	No mounding or high solid fencing is proposed.	YES
When designing and siting active open space areas (eg BBQ areas, swimming pools, communal areas etc) regard must be paid to potential noise impacts on adjacent rooms and buildings, such as bedrooms.	The use of the courtyards spaces will be controlled by staff, therefore unacceptable impacts on adjacent bedrooms within the facility are unlikely.	YES
The noise level from air conditioning systems is not to exceed the Laeq 15 minute by 5dBA measured at any bedroom window.	If approval of the application were recommended compliance with this control could be achieved by condition.	YES
Part 23.9: General Visual Privacy		
1. Private open spaces and principal living spaces of the proposed dwelling/s and adjacent dwellings are to be protected from direct or unreasonable overlooking from all new residential and non-residential developments. Siting and design measures to achieve this include: i) use of distance or slope; ii) appropriate dwelling layout; iii) off-setting windows in relation to adjacent windows; iv) use of obscure glass or highlight windows; v) screening devices such as fences, louvres, translucent screens, perforated panels, trellises and courtyard walls; vi) using louvres/screen panels to windows and balconies; vii) using solid or semi-transparent balustrades or screens to balconies or terraces; viii) off setting balconies in relation to adjacent balconies; ix) using recessed balconies and/or vertical fins between adjacent private balconies; x) using deep sills with planter boxes or incorporating planter boxes into walls or balustrades xi) providing vegetation as a screen between spaces; xii) utilising pergolas or shading devices to limit overlooking of lower building levels or communal and private open space.	The proposal utilises window location, window sill height, privacy screening, setbacks and landscaping to protect adjacent dwelling-houses from direct or unreasonable overlooking.	YES
2 For low density residential development first floor decks, balconies and roof top terraces are not permitted where they unreasonably overlook or would directly overlook principal living spaces or private open space and the impact cannot be adequately mitigated.	The proposal is not low density residential development, however it does not incorporate roof terraces, balconies or decks that would overlook principal living spaces or private open space.	YES

3 Continuous transparent balustrades are not permitted to balconies or terraces for the lower 3 storeys.	N/A	N/A
Part 23.10: Construction, demolition and disposal		
<i>Environmental Site Management Plan</i> 1 Site disturbance during construction or demolition must be minimised by: i) avoiding excavation beyond the building area; ii) restricting machinery and vehicle movement to the building footprint and access corridor; iii) locating service lines close to the building or within previously excavated areas where possible; iv) locating storage areas to areas outside the tree protection zones of trees to be retained. 2 An environmental site management plan showing tree protection areas, machinery usage zones, storage areas, site sheds and location of stormwater pollution barriers is to be submitted with the application as per Councils DA Guide.	An adequate Environmental Site Management Plan has been provided.	YES
<i>Waste Management Control</i> 3 A Waste Management Plan (WMP) must be submitted with the application, in accordance with 23R.8 of the DCP. Evidence such as weighbridge dockets, copies of invoices or some other form of written evidence will be required to be submitted to Council on completion of the development to verify the quantities and destination of waste and recycling materials generated during works (either demolition and or construction). 4 Provide source separation facilities on building sites so that different waste streams may be easily separated during construction and demolition to encourage the reuse and recycling of materials.	An adequate waste management plan has been submitted.	YES
<i>Stormwater Quality Control During Construction</i> 5 Manage soil, water and materials on construction sites to prevent erosion, sedimentation and pollution of waterbodies and the natural environment. 6 Manage the quality and quantity of post-construction stormwater runoff from the site to protect downstream ecological communities, to prevent altered nutrient regimes and to reduce litter entering the waterways. 7 Control erosion and sedimentation by: i) minimising the extent of disturbance; ii) rapidly stabilising the disturbed areas; iii) diverting clean runoff around work areas; and iv) trapping eroded sediment as close to the source as is practical. 8 Provide for appropriate management of wastes, chemicals and fuel through: i) Appropriate storage and handling to prevent discharge of pollutants to waterways; ii) On-site containment of waste water from construction activities; iii) Appropriate storage and disposal of waste materials; and iv) Appropriate management and disposal of waste water.	Compliance with these controls could be achieved by a condition of consent.	YES
<i>Erosion and sediment control</i> 9 All activities that have the potential to pollute must comply with the requirements of the Protection of the Environment Operations Act	An erosion and sediment control plan has been provided. Compliance with these controls could be	YES

<p>10 All development applications must be accompanied by an 'Erosion and Sediment Control Plan' (ESCP) that describes the measures undertaken at development sites to minimise land disturbance and to control sediment pollution. The ESCP shall be prepared in accordance with "Managing Urban Stormwater, Soil and Construction, 2006 (Landcom)".</p> <p>11 Disturbance to existing vegetation should be minimised when installing controls, especially along watercourses, on highly erosive lands and in high-conservation-value areas.</p> <p>12 Where land disturbance activities occur in riparian zones (Category 1 and 2) or watercourses, a separate Vegetation Management Plan may be required. This plan is to cover all disturbed lands within the riparian zone. It should address revegetation, bush regeneration and weed control. It should ensure that previously stored topsoil is respread over disturbed lands and the litter layer is restored. Any imported topsoil must be weed free.</p> <p>13 All disturbed areas should be rehabilitated as soon as possible after excavation or completion of the construction period. This includes, but may not be limited to:</p> <p>i) restoration of all surfaces to their original condition (or as specified);</p> <p>ii) re-establishment of surface stability with suitable cover to achieve a permanent C-factor of less than 0.1 (equivalent to 60 per cent ground cover) within 20 working days from the start of works.</p> <p>14 Disturbance to existing vegetation should be minimised when installing controls, especially along watercourses, on highly erosive lands and in biodiversity significant areas.</p>	<p>achieved by a condition of consent.</p>	
24 Water Management		
<p>This Part facilitates development in achieving the requirements of the clauses titled 'Stormwater and water sensitive urban design' in KLEP 2015 and KLEP (Local Centres) 2012</p>	<p>Refer to Development Engineer comments</p>	<p>YES</p>
25 Notification		
<p>Notification is required to be undertaken in accordance with the provisions in this part of the DCP</p>	<p>The application has been notified in accordance with the requirements of the DCP. The submissions received are addressed above.</p>	<p>YES</p>

Ku-ring-gai Contributions Plan 2010

If approval of the application were recommended section 94 contributions would not be payable as the proponent is a 'social housing provider'.

LIKELY IMPACTS

The development is likely to have detrimental impacts on the heritage significance of No. 25 Bushlands Avenue and the St Johns Avenue Heritage Conservation Area and unacceptable impacts on the health of three Sydney Turpentine Ironbark Forest trees identified as biodiversity significant land. The proposal also fails to demonstrate the appropriate application of Ecologically Sustainable Development principles by failing to submit a report demonstrating that the proposal will achieve a 4

star Green Star rating. The proposal will have unacceptable impacts on the streetscape of Bushlands Avenue due to an inadequate street setback for the West Wing and does not demonstrate that the aims of the SEPP to achieve good design have been achieved as the 'Tea House' introduced in the amended DA will dominate the outlook from and reduce solar access to bedrooms within the facility located behind the 'Tea House' structure.

SUITABILITY OF THE SITE

The site is not suitable for the proposed development as the proposal will have unacceptable impacts on the Sydney Turpentine Ironbark Forest ecological community which does not comply with the requirements of clause 6.3 Biodiversity Protection of the Ku-ring-gai LEP 2015, does not comply with the location and access to facilities requirements specified in clause 26 of SEPP (Housing for Seniors of People with a disability) 2004 and will have unacceptable impacts on the heritage significance of the heritage item 'Birralelee' and the adjacent St Johns Heritage Conservation Area which does not comply with the objectives of clause 5.10 'Heritage conservation' of Ku-ring-gai LEP 2015.

PUBLIC INTEREST

The proposal is not considered to be in the public interest as is not consistent with the planning controls, will have unacceptable environmental impacts and is not a suitable form of development for the site.

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 North Planning Panel, as the consent authority, refuse development consent to DA0418/15 for, 'Demolition of structures (except dwelling at 25 Bushlands Avenue) and construction of a residential care facility, basement parking and landscaping works under the provisions of SEPP (Housing for Seniors or People with a Disability) 2004' on land at 25, 25A and 27 Bushlands Avenue, Gordon for the following reasons:

1. **The proposal does not comply with the location and access to facilities requirements in clause 26 of SEPP (Housing for Seniors of People with a Disability) 2004 and the variation to these requirements does not satisfy the provisions of clause 4.6 'Exceptions to development standards' of Ku-ring-gai Local Environmental Plan 2015.**

Particulars:

- i. The subject site is not located within 400m of the services specified in clause 26 (1).
- ii. The subject site is not located within 400m of a public transport service that would provide residents access to the services specified in clause 26 (1).
- iii. The variation to the development standard does not satisfy clause 4.6 (3) (a) as compliance with the development is not unreasonable or unnecessary in the circumstances of the case.
- iv. The variation to the development standard does not satisfy clause 4.6 (3) (b) as the environmental planning grounds provided by the applicant to justify contravening the development standard are not sufficient.
- v. The variation to the development standard does not satisfy clause 4.6 (4) (a) (ii) as the development will not be in the public interest as it is not consistent with the objective of the development standard and the third objective of the zone in which the development is proposed to be carried out.

2. **The proposal does not satisfy the requirement of Clause 6.3 ‘Biodiversity protection’ of the Ku-ring-gai LEP 2015.**

Particulars

The impacts of the proposal of three Sydney Turpentine Ironbark Forest Trees (Trees 27, 30 and 50) which are proposed to be retained does not satisfy the following requirements of Clause 6.3:

- i. The objectives of Clause 6.3 are not satisfied as the impacts on the trees does not protect, maintain and improve the diversity of native vegetation, does not encourage the recovery of STIF, and does not protect biodiversity corridors (cl 6.4(4)(a)),
- ii. The proposal is not designed and sited to avoid adverse impacts on the STIF ecological community (cl 6.4(4)(b)),
- iii. The proposal does not minimise disturbance and adverse impacts on the STIF ecological community (cl 6.4(b)(i)), and
- iv. The proposal does not include measures to achieve no net loss of significant vegetation as the proposed works will result in a significant impact on the health of three STIF trees which are proposed to be retained (cl 6.4(b)(iv)).

3. **The Proposal will have adverse impacts on the heritage item at No. 25 Bushlands Avenue (Birralelee) and the St Johns Avenue Heritage Conservation Area.**

Particulars

- i. The site contains a heritage item and the northern boundary adjoins the St Johns Avenue Heritage Conservation Area. The impact of development on heritage items and heritage conservation areas is subject to the provisions of clause 5.10 ‘Heritage conservation’ of Ku-ring-gai LEP 2015 and clause 33 (b) of SEPP (Housing for Seniors of People with a Disability) 2004.
- ii. For the reasons of inadequate street setback for the West Wing which results in the southern elevation being located forward of No. 25 Bushlands Avenue and inadequate rear setback for the East Wing which results in unacceptable visual impacts on the St John Avenue Heritage Conservation Area the proposal is not consistent with objectives (a) and (b) of clause 5.10 ‘Heritage conservation’ or Ku-ring-gai LEP 2015 and clause 33 (b) of SEPP (Housing for Seniors of People with a Disability) 2004..
- iii. For the reason of excessive encroachments into the curtilage of No. 25 Bushlands Avenue the proposal will have an unacceptable impact on the heritage significance of the heritage item.

4. **The proposal fails to satisfy the Design Principles in Part 3 of SEPP (Housing for Seniors of People with a Disability) 2004 and the Aims of the Policy.**

Particulars

- i. The proposal does not sensitively harmonise with the adjacent St Johns Avenue Heritage Conservation Area and the heritage item No. 25 Bushlands Avenue. The proposal does not provide an adequate rear setback for the East Wing which results in unacceptable visual impacts on the Heritage Conservation Area. The street setback of the West Wing is less than the heritage item and the proposal results in a substantial encroachment into the curtilage of the heritage item.
- ii. The proposal does not provide building setbacks to reduce bulk as the 6.5m rear setback of the two storey East Wing is insufficient to protect existing Trees 27 and 30 which would screen the elevation. The proposal does not demonstrate that desirable elements of the locality character (i.e. generous rear setbacks) have been incorporated into the design of the proposal.
- iii. The 14.3m street setback of the West Wing is significantly less than the 19.2m setback of the heritage item No. 25 Bushlands Avenue, the 18.5m setback of No. 23 Bushlands Avenue and the 18.9m setback of No. 29 Bushlands Avenue. The front building line of the

- proposal is not set back in sympathy with the existing building line.
- iv. The proposal will result in impacts on the health of three significant trees (Trees 27, 30 & 50) that are part of the endangered ecological community Sydney Turpentine Ironbark Forest and which are also located on land identified by Ku-ring-gai LEP 2015 as being of biodiversity significance.
 - v. The proposal does not provide adequate solar access for residents of the lower ground floor level of the West Wing as the north facing windows of the lounge/dining room will not receive any direct solar access.
 - vi. The 'Tea House' introduced in the amended plans will dominate the outlook from and reduce solar access to the bedrooms located behind this structure.
5. **The proposal does not comply with the provisions of the Ku-ring-gai Development Control Plan.**

Particulars

- i. The number of accessible car spaces in the car park does not comply with the requirement specified in design control 6 of Part 22.5 'Parking for People with a Disability'.
 - ii. The proposal does not comply with design controls 3 and 4 of Part 23.2 'Green Buildings' as a report demonstrating that the facility will achieve a 4 Star Green Star Rating has not been provided.
 - iii. The proposal results in impacts on Trees 27, 30 and 50 which are not consistent with objectives and design controls in Part 18 'Biodiversity' and Part 21.1 'Landscape Design'.
 - iv. The proposal results in unacceptable impacts on the heritage significance of No. 25 Bushlands Avenue Gordon and the St Johns Avenue Heritage Conservation Area. The proposal does not comply with design controls and objectives in Part 19A.2 'Subdivision and site consolidation of a heritage item', Part 19E 'Heritage Items' and Part 19F 'Development in the Vicinity of Heritage Items or Heritage Conservation Areas'.
6. **The submitted Landscape Plan is inadequate.**

Particulars

- i. Proposed planting has not been identified in accordance with Council's DA Guide. The plant schedule does not include quantities.
- ii. Proposed planting of *Corymbia maculata* and *Eucalyptus mannifera* is not sympathetic to the landscape character and needs to be substituted for a medium sized evergreen species.
- iii. There is insufficient setback for the proposed *Ulmus parvifolia* (Chinese Elm) at the north-east corner of the building that is shown with an incorrect mature spread of 6m (actual mature spread of >12m).
- iv. Existing levels across the site and spot levels at the base of trees to be retained must be shown.
- v. The proposed levels of external areas including terraces, paths and top of wall heights have not been provided.
- vi. The landscape plan does not reflect the recommendations of the vegetation management plan including the 8m minimum width bushland restoration zone along the northern boundary and STIF/Landscape Integration Zone.

<p><i>Jonathan Goodwill</i> Executive Assessment Officer</p>	<p><i>Michael Miocic</i> Director Development & Regulation</p>
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