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Ref: DA0418/15

28 April 2016

ANHF
C/O Mark Boffa
7/9 Railway Street
CHATSWOOD NSW 2067

Dear Mr Boffa

Application No.:	DA0418/15
Proposed development:	Demolish structures (except dwelling at 25 Bushlands Avenue), construct a residential aged care facility, basement parking and landscaping works (SEPP Seniors Living). No. 25 Bushlands Avenue is subject to an Interim Heritage Order. The application is Integrated Development (the approval body is Ku-ring-gai Council) as an approval is required under Subdivision 1 Division 3 of the Heritage Act 1977.
Property:	25, 25A and 27 Bushlands Avenue GORDON NSW 2072

We have undertaken an assessment of your application. We advise that legal advice has been obtained from Senior Counsel on whether clause 26 of SEPP (Housing for Seniors or People with a Disability) 2004 operates as a development standard or a prohibition. The legal advice states that clause 26 operates as a prohibition. Accordingly Council maintains the view that was conveyed to you in the Pre DA Meeting Reports that the proposal is prohibited development as it does not comply with the 'location and access to facilities' requirements of the SEPP. Nevertheless, Council will provide you with an opportunity to amend the application to address the following issues regarding the merits of the proposed development.

1. Site compatibility

In accordance with clause 29 of the SEPP Council is required to consider the criteria in clause 25 (5) (b) (i), (iii) and (v). For the reasons of unacceptable impacts on biodiversity significant land and unacceptable bulk and scale relationships with the streetscape, adjacent dwelling houses and the draft heritage item 25

Bushlands Avenue it is considered that the proposal is not compatible with the surrounding land uses.

2. Skylights

The proposed skylights have east and west facing windows with minimal eaves overhang. The skylights increase the building height and lend a warehouse character to the development which is exacerbated by the length of the elevations, selected fenestration and the low roof pitch. Daylight access to the corridors could be provided by an alternative means that would not increase the height of the building such as energy efficient skylights and/or corridors to external walls that would also provide views of the skyline/tree canopy and assist residents and visitors to understand how the internal planning of the development relates to the outdoors.

3. Streetscape and architectural character

The scale of dwellings in the immediate vicinity is single storey and/or with a second storey within the roof space. The architectural styles of these buildings gives an intimate, domestic-scale expression to each building element that coordinates with the internal planning hierarchy and differentiates the treatment between rooms located on the ground or upper storey. Likewise, the application of materials on surrounding dwellings has a horizontality when read with their often quite dominant, steeply pitched roof forms.

The proposed development almost reverses this design strategy with an unsatisfactory result. The horizontal expression of the roof forms (low pitch, deep eaves) has the potential to achieve a positive streetscape character. However they are perched atop a dominant vertical expression of the wall planes that does not achieve a sympathetic engagement of the draft item or achieve a positive compositional effect. This is partly exacerbated by the uniform size of all window openings.

A more successful architectural character is likely to be achieved where the application of materials is used to express the building base (lower ground floor and ground floor) as being differentiated from the first floor. Proportionally, this may be more successfully achieved with a height datum that is at the first floor window sill level rather than floor level.

These amendments will also provide necessary opportunities for a greater level of architectural treatment of the windows so more variety of type and proportion is achieved. As proposed, all windows are identical in proportion. While there is a clear hierarchy to the internal planning strategy, this has not been expressed in the

composition of the elevations (with the exception of some highlight bathroom windows).

The use of low-maintenance, natural materials should dominate the materials palette.

4. Privacy

The number of windows at first floor level facing the side boundaries is considerably greater than that which would ordinarily occur in an area that is zoned R2 Low Density Residential. As the proposed use is a residential aged care facility the private rooms are likely to be occupied for a significant portion of the day. The likely privacy impacts of the rooms are similar to that of a living room in a dwelling house, not a bedroom. The privacy impacts are required to be ameliorated in a manner that reflects the way in which the rooms are likely to be used.

The eastern elevation of the proposed development has bedroom windows oriented to the east towards the neighbouring property at 23 Bushlands Avenue. Windows on the southern end of the first floor level of the eastern elevation will have views of the side garden and hallway/front door and windows on the northern end (south of the lounge) will have views of the rear garden and swimming pool. For the room to the north of the tea room a reduction in overlooking should be achieved by orienting the window(s) towards Bushlands Avenue instead of east towards the neighbouring property. The room to the north of this room should have a privacy screen which prevents views towards the side garden of 23 Bushlands Avenue.

There are two bedroom windows which will overlook the swimming pool at the rear of 23 Bushlands Avenue. It is considered unreasonable and contrary to the planning principles adopted by the Land and Environment Court in *Super Studio v Waverley* for the development to rely on landscaping (particularly landscaping within an adjoining property) to ameliorate overlooking impacts. Overlooking can be reduced by increasing the side setback to match the lounge room and providing sufficient separation distance and opportunities for on-site landscaping.

The first floor communal lounge eastern windows should become secondary openings and provide either directional screening or ensure sills are 1500mm (or greater) above the finished floor level to prevent overlooking into the pool area of 23 Bushlands Avenue.

The first floor level of the western elevation includes seven windows that would result in overlooking of the backyard and rear patio of 29 Bushlands Avenue. The proposed setback of 3m and mix of floor to ceiling and low sill height windows will not prevent unreasonable overlooking impacts. It is not considered that the proposal demonstrates that site planning, and the location and design of the

windows has been satisfactorily considered in the design of the proposal. The proposal is required to be redesigned to minimise impacts on the private open space of 29 Bushlands Avenue.

5. Building bulk

The western elevation adjacent to the side boundary (setback of 3m) is excessively long and results in unacceptable impacts of visual bulk upon the neighbouring property 29 Bushlands Avenue. To reduce the apparent bulk and scale of dwelling houses DCP 2015 (which have a significantly lesser volume/FSR than the proposal) limits the maximum length of an unrelieved wall with a height of more than 4m to 8m. The proposed wall length is more than five times that permitted for a dwelling house and is not supported. The massing of the side elevation is required to be broken down into smaller components which reflect the built form of the low density residential area.

6. Internal Site Amenity

- Lower ground floor communal lounge and terrace has a subterranean character that will impact on views and daylight access. The architectural and landscape treatment of this area is unclear.
- The height and solidity of balcony balustrading to be clarified.
- There is insufficient northern sunlight reaching either the lower ground floor outdoor terrace area or the lounge itself. This must be put in context of the thick tree canopy, which will further reduce the intensity of natural light reaching these spaces, and exacerbated by the Ground Floor level lounge balcony above. Suggestions for addressing this include (but are not limited to) reducing the size of the balcony overhang above, making localized internal planning adjustments, and/or further reducing the building footprint, and/or amending the configuration of the ground floor balcony above so more light reaches the lower ground floor level. (NOTE: the dual aspect of the Lounge/Dining between the external landscape zones and internal courtyard is positive and should be retained.)

7. Overshadowing

The application documentation does not address the overshadowing of the swimming pool solar heating system on the western side of the rear wing of 23 Bushlands Avenue. The application documentation should be amended to include sufficient information to demonstrate that 4 hours solar access to the swimming pool solar heating system will be achieved. The impacts of any overshadowing of existing skylights should also be addressed.

8. Community consultation

In response to the notification of the application a considerable number of submissions objecting to the proposed development have been received. The applicant should review the submissions and provide written responses to the issues identified in the submissions. The access to information form can be downloaded from Council's website at the following link:
http://www.kmc.nsw.gov.au/Your_Council/Organisation/Reports_finances/Access_to_information/Apply_for_access_to_Council_information

9. Inconsistent documentation

- Architectural Section B does not correspond with the landscape plan in the vicinity of Tree 126. A terraced landscape appears on architectural Section B but none appears on the landscape Plan.
- The lower ground floor lounge terrace is located close to Trees 52 and 126 and thus appears to result in insufficient space to batter or terrace the level change to achieve a positive outlook, satisfactory solar access or natural light for the lower ground floor level.
- The balcony balustrading appears to be very high. This may be an operational/BCA issue which should be clarified by the applicant. However, balustrading greater than 1m in height should have a combination of solid and transparent components so there is not a walled in character that would result in a confined space. Resolution of the balustrades is to optimise opportunities for natural light reaching the communal rooms and maximizing the positive landscape outlook while sitting either on the balconies or communal lounges. Further detail of materials and balustrade design is to be submitted.
- RLs for roof ridges, skylight structures and mechanical plant screens should be shown on the elevations.
- The basement floor plan and roof plan do not show any exhaust risers or ducting for the kitchen. The plans should be updated to include this information as the kitchen exhausts ducts may be higher than the roof.
- The development application form nominates 25 Bushlands Avenue as a building that will be demolished.

10. Heritage

Council's Heritage Advisor has reviewed the proposal and advises that it will have an unacceptable impact on the heritage significance of 25 Bushlands Avenue and the St Johns Avenue Heritage Conservation Area. A summary of the issues is provided below:

1. The proposed development will include the demolition of a high proportion of the garden fabric and features that contribute to the heritage significance

- of the property as a good representative example of a substantially intact and aesthetically distinctive house in a garden setting that continues to demonstrate the principal characteristics of healthy living as demonstrated through the early suburban development in Ku-ring-gai.
2. The proposed new building will be of a scale, form and use that is not consistent with the significant pattern of development on the property as an early 20thC Ku-ring-gai home and garden.
 3. Surviving and substantially intact evidence of the integration of native bushland and English influenced domestic garden planning to provide a richly dimensioned landscape setting for the house will be compromised by the removal of the vegetation and construction of an unbroken building across the whole of the site. The wall of the new building will replace the existing and highly contributory vegetated backdrop to views over the item from the public domain with an unbroken urban elevation. Even if the crowns of some of the trees are able to be seen over the roof of the infill development, the aesthetic value of the spatial intimacy of the existing juxtaposition of steeply pitched and angular roof form of Birralelee contrasting with the soft edges of the trees will be lost.
 4. The proposed new building will physically obstruct the historically and aesthetically significant close visual and spatial relationship that exists between the house and its garden and extends over the curtilage of the site from front to rear.
 5. The proposed development will overwrite the surviving original spatial relationship between house and driveway to a modest garage at the rear of the site through the demolition of garage and driveway and construction of an unbroken block of development and commercially-scaled turning circle in the front setback area.
 6. The aesthetic significance of Birralelee as a substantially intact house set in a well-established garden which provides a high quality and appropriate setting for the residence will be compromised by the demolition of contributory vegetation and garden fabric over approximately 50% of the site and through the insertion of a building of siting, scale, form and massing that will dominate the space and compromise the legibility and integrity of the aesthetic significance of the property.
 7. The proposed development will divide the presently well-integrated and spatially complex curtilage of the property into two parts that will no longer be able to demonstrate their historic and aesthetic integrity as traditional garden setting for the house.
 8. The historic and aesthetic heritage values of the house and the retained part of its setting will be compromised by the scale, form and proximity of the aged care building. The development will include the loss of much of the garden fabric, including approximately half of the trees on the site and traditional (but altered) elements such as the original/early garage, defined garden 'rooms' and elements characteristic of early 20thC Ku-ring-gai

gardens such as tennis courts will impact on the historic and aesthetic heritage values of the property.

9. The detailed design of parts of the building, and in particular the middle (main entry) wing will have a significant adverse impact on the aesthetic heritage values of Birralea. It is sited uncomfortably close to the house and extends an unacceptable distance into the original side garden area. Its form and modelling is ungainly and poorly resolved.
10. The easternmost wing also extends into the side setback area adjacent to the house and would have significantly less impact on the setting of the item if set wholly behind the rear building line of the house.
11. The potential for the property to continue to make an important contribution to the streetscape of Bushlands Avenue will be adversely impacted by the proposed development. Views of the house will be set against the unbroken wall of the development and will no longer present as a traditional Ku-ring-gai house in a large garden. No space has been dedicated to allow any effective landscaping in the immediate foreground of the new building that would allow the house to retain a sense of its vegetated backdrop in street views and not be dominated by the wall of the proposed development.

Should you require further information on the above issues a full copy of the Heritage Advisor comments may be requested.

11. Landscaping

The following issues identified by Council's Landscape Officer are required to be addressed:

Insufficient landscape area in front setback

The proposed location for OSD for the eastern part of the site within the front setback is not supported. The preserve the health and condition of existing trees (Tree 7, 8, 76, 77, 78) and provide sufficient landscape area to the front of the development the OSD should be relocated closer to the building and entirely within the circular driveway so that it is further from the front of the site.

Excessive cut and fill within front setback

The proposed filling up to a metre for the entry path to the building directly west of 25 Bushlands is not supported.

The extent of excavation in excess of 1 metre within the front setback of the western building is considered excessive (Refer Section B, Boffa Robertson Group, Dwg DA08, Issue 6, 24/09/15 and South Elevation, Boffa Robertson Group, Dwg

DA07, Issue 6, 24/09/15]. To preserve streetscape character and existing vegetation, existing levels are to be retained within the front setback.

To provide greater opportunity for terraced level change the entry path to the Western RCF building should be relocated to access the site from the approximate location of the existing entry drive to No. 27 Bushlands Avenue and incorporate existing retaining structures and planting in association with the path.

Excessive cut and fill within side setbacks

The proposed excavation within 2 metres of the site boundaries is not supported (Refer Section A, Boffa Robertson Group, Dwg DA08, Issue 6, 24/09/15). This conflicts with the proposed retention of existing boundary plantings and will have a possible impact on neighbouring planting.

Insufficient information

a) Landscape area

A diagram is to be provided indicating the calculated landscape area.

b) Arborist report

The arborist report is considered unsatisfactory for the following reasons,

- The report shall be prepared by an arborist of minimum qualification AQF 5.
- Full reasons for recommending removal, including development impacts, tree condition, relevant structural testing or other relevant arboricultural analysis supporting the conclusions are required. Unsubstantiated observations, analysis or opinion is not acceptable. Outside of the building footprint, further detail of development impacts should be provided.
- The report shall also provide an analysis of the impacts of the proposal on existing trees both on the site and adjacent to the site, including impacts on street trees. The report shall reference and use the standards and principals as set out in AS4970-2009 Protection of Trees on Development Sites. Reference to the British Standard BS5837:2005 is obsolete and should not be relied upon.
- Reference within the report to 'Council's Tree Management Guidelines' and a 'tree significance register' is obsolete and should be deleted.
- The report shall address, the viability of tree retention, and methods by which adverse impacts of the proposal on trees if any may be avoided.

- Trees have not been identified and several have been incorrectly identified including Trees 1, 3, 6, 80, 81 and 89.
- The street trees in front of the subject site form part of an avenue planting. Removal of trees 4, 5, 9 and 41 is not supported without evidence that they are an immediate hazard. The proposed stormwater line to the kerb will adversely impact Tree 41 and 43 and should be relocated.

c) Landscape Plan

The landscape plan is considered unsatisfactory for the following reasons,

- Proposed planting is to be identified in accordance with Council's DA Guide. The plant schedule is to include quantities.
- The proposed entry paths are inconsistent on the landscape plan and stormwater plan.
- The proposed levels of existing external areas including terraces and paths are to be provided. Top of walls are also to be provided.
- Add 'retain' to the notation regarding existing hedges. Hatch to identify existing and proposed plantings.
- The landscape plan is to reflect the recommendations of the vegetation management plan including the 8m bushland restoration zone along the northern boundary and STIF/Landscape Integration Zone.
- The landscape plan is to show all proposed drainage pits and tanks. The proposed rainwater/OSD tank in the centre of the front setback is inconsistent with the stormwater plan

12. Ecology

Council's Ecological Assessment Officer has advised that the proposal cannot be supported for the following reasons:

Tree removal

The removal of the following trees is not supported: T052 - *Pittosporum undulatum* (Sweet Pittosporum), T049 & T046 - *Eucalyptus pilularis* (Blackbutt) & T050 *Syncarpia glomulifera* (Sydney Turpentine) for the following reasons:

- The aforementioned trees form part of an area of biodiversity significance
- Trees are visually significant (V1 or V2)
- Trees have all been assessed as having a safe use life expectancy of 2a.

Vegetation Management Plan

The VMP has not been prepared for the entire area identified as biodiversity significant as is required in accordance with control 4 of part 19.3 of DCP 2015.

Where land within an allotment is identified as Support for core biodiversity lands, works must be consistent with a management plan (eg. vegetation management plan). Where no plan exists, council may require preparation of a plan. This plan must be prepared by a suitably qualified person and must identify ongoing initiatives to preserve, protect and promote the environmental values of the land.

An amended VMP is to be prepared over the entire area identified as biodiversity significant; the VMP should be amended in accordance with the following points below.

- Expand aims and objectives to cover all management zones and label the area "VMP Area"
 - Clearly define who is responsible for ongoing management (Maintenance) of STIF
 - Provide gphant chart/schedule of works
 - Show monitoring/photo points on plans
- Include the number and type of each species to be planted within each of the vegetation management units

Insufficient ecological assessment

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) which has been prepared for the Endangered Sydney Turpentine Ironbark Forest is not in accordance with section 5a of the *Environmental Planning & Assessment Act 1979*. The impact assessment (7-part test) has not been prepared in accordance with the threatened species assessment guidelines. The impact assessment makes references to the removal of trees only not an area (i.e. hectares) of loss of the STIF community which is to be impacted/removed upon as a result of the proposal.

Inconsistent with clause 6.3 'Biodiversity Protection' of the KLEP and the Biodiversity controls in DCP 2015

The proposed development is contrary to the "Biodiversity significance" clause & DCP controls under the KLEP 2015. The proposed development does not properly or adequately consider:

- The extent of any adverse environmental impacts of the development upon the STIF

The proposed development does not satisfy the requirement of clause 6.3 Biodiversity protection of the KLEP. In particular, the proposed development does not satisfy the objectives at subclauses 1(a), (b), (c) and (d) of clause 6.3, in that the proposed development does not:

- Protect, maintain, protect and improve the biological diversity and processes of the native vegetation necessary for their continued existence,
- Encourage the recovery of the STIF, and does not protect biodiversity corridors,
- Result in development that is designed and sited to avoid the adverse impact of removing the STIF.

The proposal does not satisfy the provisions of subclause 4(b)(i) and (iv) and (iv) of clause 6.3 of the LEP. That is because the proposed development does not:

- Minimise disturbance and adverse impacts on the STIF, and
- Include measures to achieve no net loss of significant vegetation.

The proposal to remove the STIF on the site is contrary to the following objectives and controls of the Part 19 Biodiversity Controls of SECTION B of Ku-ring-gai Development Control Plan 2015:

- Part 19.3 at Objectives 1, 2, 3, 4 & 5 and the Controls at 1, 2, 3, 4 and 5,
- Part 19.5 at Objectives 1, 2 & 3 and the Controls at 1, 2, 3, 4 and 5, and
- Part 19.8 at Objectives 1, 2, 3, 4 & 5 and the Controls at 1, 2, 3 and 4(i).

13. Engineering

Councils Development Engineer has reviewed the application and advised that the following additional information is required:

- The re-use of the rainwater in the 40 000 litre tank is to be specified and confirmation provided that a 50% reduction in runoff days (refer Part 25B.3 of Ku-ring-gai DCP) will be achieved.

- Confirmation that all underground services have been located along the route of the street drainage extension so that there is a suitable width available for the stormwater pipe and pits.
- Written advice from at least three waste management providers to demonstrate that they are willing to collect waste from within the basement and the size of vehicle available.

Should you choose to amend your application, you need to provide us with eight (8) sets of plans and written particulars identifying the changes made to the original application.

The submission of amended plans will result in an additional assessment and administrative fee (40% of the statutory DA fee) being \$11,918.58 and a notification fee of \$1,105 if required. These fees must be paid at the time amended plans are lodged. If any of the required information and/or fees are not provided, the amended plans will not be accepted.

Should you elect to submit amended plans these should be submitted within 30 days of the date of this letter.

Should you choose to withdraw your application, this needs to be done in writing within 14 days of the date of this letter.

Should you have any further enquiries I can be contact on 9424 0740.

Regards



Jonathan Goodwill

Executive Assessment Officer