

australian nursing home foundation  
25, 25a and 27 bushlands avenue gordon  
sydney north planning panel assessment report



RECOMMENDATION		COMMENT
<b>PURSUANT TO SECTION 80(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979</b>		
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 provision 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:		
<b>1. The proposal does not comply with the location and access to facilities requirements in clause 26 of SEPP (Housing for Seniors or 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.</b>		
<b>Particulars:</b>		
i. The subject site is not located within 400m of the services specified in clause 26 (1).		<p>The development standard has been complied with by providing all facilities and services listed at Clause 26 on-site. For details of such compliance refer to the attached Cover Letter to the Clause 4.6 Request, prepared by Evolution Planning, dated 13/1/17, which demonstrates compliance with Clause 26, which does not appear to have been provided to the Panel.</p> <p>In response to the reasons why Council believes compliance has not been achieved we submit:</p> <ul style="list-style-type: none"> <li>• The criteria of "geographic proximity" is better satisfied by providing facilities and services on-site;</li> <li>• Appendix 3 of the DoP Guide to SEPP Seniors provides a list of facilities and services to be used by Councils to advise</li> </ul>

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		<p>applicants what services and facilities should be provided. What the assessment report fails to acknowledge is the caveat that <i>"Not all the information [services] in the list will be relevant to every proposal."</i></p> <ul style="list-style-type: none"> <li>Due to the particular circumstances of this case, we submit that all services and facilities that would be reasonably be required by residents have been provided</li> </ul>
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).	Not relevant as services will be provided on site
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.	<p>The DA is made from a point of compliance and the clause 4.6 variation request is submitted for abundant caution should the consent authority be of the opinion that further services should be provided.</p> <p>In response to the reasons why Council believes compliance with the development standard is not unreasonable or unnecessary (on the basis that Clause 26 is deemed not to be satisfied) we submit:</p> <ul style="list-style-type: none"> <li>The proposed development is purpose built and will operate to accommodate persons who are incapable of independent travel. Residents will not be permitted to leave the site unaccompanied. This does not necessary prohibit able bodied persons being admitted but they will be subject to these restrictions and naturally able bodied persons wishing to travel independently would choose not to reside in a high care facility such as this;</li> </ul>

	<ul style="list-style-type: none"> <li>• We disagree that operational policies cannot be considered when varying a development standard. These "internal policies" may not be a requirement of the SEPP but they are certainly related to the type of development; they are for a planning purpose (in particular ensuring the safety of residents); and, will assist in achieving the key objective of the SEPP which is to provide such specialised housing;</li> <li>• The Newbury Principle, which tests the validity of a consent condition, has three strands:             <ul style="list-style-type: none"> <li>• the condition is imposed for a planning purpose;</li> <li>• the condition fairly and reasonably relates to the development proposed in the application; and,</li> <li>• the condition is reasonable.</li> </ul> </li> </ul> <p>Any condition limiting independent external trips by residents, which could if necessary be encapsulated in a Plan of Management for the development, is for a planning purpose. It relates directly to the management of a high care residential care facility which the SEPP seeks to provide and will ensure the safety of residents.</p> <p>There is no question that such a restriction relates only to the development proposed.</p> <p>The condition is reasonable because the proponent would not object to any such condition and people entering the facility would</p>
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		be entering on the basis of not being able to travel independently.
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.	<p>In response to the reasons why Council believes that there are insufficient environmental planning grounds to vary the standard we submit that:</p> <ul style="list-style-type: none"> <li>• There is no contradiction in our proposal. We believe that all services, noted in clause 26 and those which would reasonably be required by residents, will be provided on site. Our position is that on the occasion where a service or facility is required outside of this range then such services may be called upon to be delivered on-site or that the resident will be escorted on the community bus to such a service;</li> <li>• The community bus is a service available to residents at all other facilities owned and operated by ANHF and regardless of any technical "compliance" with Clause 26 would be provided anyway;</li> <li>• The proposal is not inconsistent with Clause 2(2)(a) of the SEPP (objectives) which seeks to set aside local controls which prevent such housing "<i>that meets the development criteria and standards specified in this Policy</i>" We submit that the proposal meets the related criteria and standards and if deemed otherwise Clause 4.6 is available to the applicant to vary such standards. Council's interpretation of this Clause essentially</li> </ul>

		removes the availability of Clause 4.6 to the proponent.
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.		<p>The objective referred to relates to the provision of housing which is compatible with the existing environment and built character of Ku-Ring-Gai. We submit that this objective is not relevant to Clause 26 of SEPP(Seniors) and that matters related to compatibility and character have not been raised elsewhere by Council.</p> <p>Whilst not specified in the reasons for refusal, but raised in the assessment report, and an issue which the Panel may consider, we believe that if the approval had to rely on the provisions of Clause 4.6 to vary Clause 26 of the SEPP then this would not result in a general change to planning policy.</p> <p>The Clause 4.6 variation request is provided on the basis of the circumstances of this individual case – a development proposal for a high-care residential facility; residents who are incapable/not permitted to travel independently; a proposal which includes all facilities and services which would reasonably be required by residents on-site.</p> <p>The variation does not seek to ignore or dispense with Clause 26 it simply seeks to provide flexibility as to how it should be applied in particular circumstances.</p>
<b>2. The proposal does not satisfy the requirement of Clause 6.3 'Biodiversity protection' of the Ku-ring-gai LEP 2015.</b>		

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<b>Particulars:</b>		
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:		These three trees will be protected and retained as noted below
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)),	Trees will be protected and retained as noted. Refer also report from Travers which elaborates on this.
ii.	The proposal is not designed and sited to avoid adverse impacts on the STIF ecological community (cl 6.4(4)(b)),	The proposal will for the first time allow this part of the conservation zone to achieve perpetual protection of the vegetation and will ultimately achieve the status of significant vegetation.
iii.	The proposal does not minimise disturbance and adverse impacts on the STIF ecological community (cl 6.4(b)(i)), and	See above and further information from Travers Ecology.
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)).	This is not required by council's LEP however measures have been considered to achieve no net loss.
<b>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.</b>		
<b>Particulars</b>		
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 or People with a Disability) 2004.	The impact of the development on heritage items has been considered in detail in conjunction with council, has been kept to a minimum and further limited by changes proposed to the design – refer attached sketches
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	The front setback of the west wing has been increased so that it is located no further forward than number 25 Bushlands Avenue.

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impacts on the St Johns 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 or People with a Disability) 2004.		The east wing has been shortened to increase the setback to the southern boundary to 8 metres
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.		The curtilage of No.25 Bushlands has been increased by the proposed planning changes shown on the attached sketches
<b>4. The Proposal fails to satisfy the Design Principals in Part 3 of SEPP (Housing for Seniors or People with a Disability) 2004 and the Aims of the Policy.</b>		
<b>Particulars:</b>		
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.		The building has been restricted to two storeys on the southern side. Concerns about visual impacts stem from the proposed development's setback from the southern boundary and a perception of impact on trees. Both of these are satisfactorily addressed by an increased setback and tree protective measures in the proposed structure. The courtyard that provides curtilage to the rear of 25 Bushlands has also been increased in size. Other matters such as the west wing setback are addressed above.
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.		Refer above – East wing setback has been increased to 8 metres minimum and the setback measures much more than this for most of the southern boundary. Trees 27 and 30 will be protected and retained.
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.		This has been satisfactorily addressed above. Refer also to attached sketches.

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iv.	The proposal will result in impacts on the health of three significant trees (Trees 27, 30 and 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.		The setback to the southern boundary has been increased and council's recommendation for changes to the tea house and decks have been incorporated. The structure will be piled and tree roots mapped to address this concern. This was noted in the arborist report that was submitted with the application. All three trees are proposed to be retained and will negate the concern raised elsewhere in regards to visual impact to the south.
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.		This lounge/dining room faces south and has a generous outlook onto a landscaped secure garden. The windows referred to here are not essential but were added to increase light into these spaces, which are not the only ones used for activities.
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.		As recommended by council, the tea house shape and the associated walkway have both been modified to overcome this concern.
<b>5. The proposal does not comply with the provisions of the Ku-ring-gai Development Control Plan.</b>			
<b>Particulars:</b>			
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'.		This has been satisfactorily addressed – refer attached sketches.
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.		This DCP control does not apply to Residential Care Facilities, however our preliminary advice suggests that we will be able to comply.



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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'.		These trees will not be impacted upon as the structure is proposed to be piled and tree roots mapped. Setbacks have also been increased to the southern boundary and the tea house design modified.
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'.		This has been addressed above.
<b>6. The submitted Landscape Plan is inadequate.</b>			
<b>Particulars</b>			
i.	Proposed planting has not been identified in accordance with Council's DA Guide. The plant schedule does not include quantities.		Quantities have been added as requested.
ii.	Proposed planting of <i>Corymbia maculata</i> and <i>Eucalyptus mannifera</i> is not sympathetic to the landscape character and needs to be substituted for a medium sized evergreen species.		These tree species have been replaced with medium sized evergreen tree species.
iii.	There is insufficient setback for the proposed <i>Ulmus parvifolia</i> (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).		This species has been replaced with a smaller evergreen species.
iv.	Existing levels across the site and spot levels at the base of trees to be retained must be shown.		These are shown on the survey drawing.
v.	The proposed levels of external areas including terraces, paths and top of wall heights have not been provided.		These are shown on the drawings.
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.		A minimum 8 metre clear restoration zone width is available as a restoration zone along the southern boundary (most of the zone is 20 metres wide)