

SYDNEY NORTH PLANNING PANEL SUPPLEMENTARY ASSESSMENT REPORT

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| 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 | Ms 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 |
| | Amended DA in response to SNPP deferral: 32 submissions |
| 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 been considered by council in the assessment report? | The application is recommended for refusal, accordingly conditions have not been provided to the applicant. |
| List all documents submitted with this report for the Panel's | Attachment A – Plans and Elevations Attachment B – TAG review of the acoustic assessments prepared by RSA Attachment C – Acoustic Review for Development Application prepared by |

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|---------------------------|--|
| consideration | ARUP Attachment D – TAG Review of the ARUP Acoustic Review Attachment E – ARUP response to the TAG Review Attachment F – TAG response to the ARUP response Attachment G – Without Prejudice Conditions for Panel meeting on 16/11/2017 |
| Recommendation | Refusal |
| Report prepared by | Jonathan Goodwill – Executive Assessment Officer |
| Report date | 2 November 2017 |

BACKGROUND

The JRPP considered an assessment report which recommended refusal of the application on 8 March 2017. The resolution of the JRPP was:

REASONS FOR DEFERRAL

The Panel has visited the site and considered the report of Council staff as well as the submissions of local residents and the applicant.

In relation to the reason for refusal in respect of location and access (reason 1) the Panel notes cl.26 of the Seniors SEPP is a development standard and able to be varied pursuant to cl.4.6 (which has been submitted by the applicant). Having regard to the recent judgement of Justice Robson, the Panel considers the proposal for the provision of services on site, visiting professionals and the provision and operation of a bus for the use of the residents addresses the objective of the provisions to provide development in a manner suited to residents who are both mobile, independent, active and frail. The Panel considers that the site specific circumstances and facilities proposed would be a better planning outcome in the circumstances of this case and therefore is minded to accept the clause 4.6 variation to clause 26 of the SEPP.

In relation to concerns regarding heritage and streetscape, the Panel considers that the proposal does have merit but considers it needs further detail and amendments as follows:

- 1. The western building should be set back to the predominant alignment of the existing heritage dwelling on the site.*
- 2. Courtyard 1 at the rear of the existing heritage item should be increased in size and allow deep soil to allow the growth of large, centrally located (15m plus) trees to maintain the backdrop to the heritage item. This may require the design of the basements to be amended.*
- 3. The vegetation management plan should describe how the Sydney Turpentine Ironbark forest will be managed for its long term viability. The vegetation management plan should require retention of the Himalayan Cedar.*
- 4. The skillion roof over the lift is to be a traditional hip to match the remainder of the development.*
- 5. The rear setback is to be increased to 12 metres minimum to reduce the adverse impact on the St Johns Avenue Conservation Area.*
- 6. Review and resubmit traffic report to consider the impact of service vehicles and community bus in terms of traffic generation and the adequacy of Bushlands Avenue to safely accommodate the anticipated vehicle movements.*
- 7. Review and resubmit acoustic report to consider the impact from service vehicles*

- and community bus on immediate adjoining residents, particularly from 9pm to 6am.*
- 8. The development should comply with controls 3 and 4 of CI 23.2 of the Ku-ring-gai Development Control Plan to achieve a 4 star Green Star rating.*
 - 9. Increase the disabled / accessible car parking spaces by 2 plus one additional ordinary space.*
 - 10. The wall opening to the ramp on the southern end of the western elevation is to be fully enclosed.*
 - 11. A Plan of Management is to be prepared to establish operational practices of the facility including but not limited to the operation of the community bus, and the loading and unloading of service vehicles. All loading and unloading of service vehicles, waste services and the community bus is to be undertaken in the basement. The community bus should also provide transport for staff to Gordon Station at the time when working shifts change.*

Accordingly the Panel defers determination of the proposal and seeks amended plans to be submitted to Council by 5 June 2017 addressing the above matters. The Panel requests the amended plans to be assessed by Council staff and a supplementary report to be submitted to the panel one month after receipt of the amended plans after which time the panel will consider the proposal.

The application was scheduled to be considered by the Panel on 15 August 2017, however on the afternoon of that day the Panel advised that the meeting had been postponed so that a further assessment of acoustic issues raised in a submission could be undertaken. The specific direction issued by the Panel was:

Council is asked to provide comment on the issues raised in the Acoustic Logic submission on each of the matters raised in the Acoustic Logic submission including, but not limited to, the following:

- i. Whether Acoustic Logic's concerns are critical to the achievement of a satisfactory outcome on site*
- ii. Whether the response from applicant's acoustic engineer adequately clarifies the concerns*
- iii. Whether the acoustics environment is likely to be adequate for the purposes of an aged care facility.*

The Applicant should be given the opportunity to respond and address the issues raised and for Council to provide comment on this.

This report includes the results of the independent acoustic assessment.

PURPOSE FOR 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 30 vehicles and landscaping works under the provisions of SEPP (Housing for Seniors or People with a Disability) 2004 (hereafter referred to as 'SEPP Seniors').

THE AMENDED DA

The amended DA was submitted on 1 June 2017. The following plans and documents were provided:

- i. cover letter prepared by Evolution Planning
- ii. amended Architectural Drawings, prepared by Boffa Robertson Group
- iii. Concept Vegetation Management Plan, prepared by Travers Bushfire and Ecology
- iv. amended Landscape Plan and Landscape Details, prepared by Site Image
- v. revised Traffic Report, prepared by The Transport Planning Partnership
- vi. revised Acoustic Assessment, prepared by Rodney Stevens Acoustics
- vii. Green Star Report, prepared by Application Solutions
- viii. Plan of Management, prepared by Evolution Planning

In response to the without prejudice conditions set requested by the Panel prior to the first Panel meeting on 8 March 2017, the applicant also incorporated the following amendments into the architectural and landscape drawings:

- i. retention of Tree 38
- ii. changes to proposed planting
- iii. the side setback of the southern end of the retaining wall adjacent to the eastern side boundary was increased from 2.1m to 3.6m
- iv. a raised deck at the northern end of the eastern wing was added in the location of the 'quiet room' which has been deleted
- v. decks 1 to 3 have been reduced in size and the shape of the Tea House has been changed from a square to a hexagon to improve the outlook from the west facing rooms in the east wing and reduce impacts on Tree 50
- vi. deletion of the skylight to the lift lobby on the lower ground floor level
- vii. the floor area of the 'activity room' has been reduced and a balcony has been added to its northern aspect
- viii. an excavated courtyard has been added to the western side of the theatre and the western wall of the theatre has been amended to include windows that open onto the courtyard
- ix. a tea station, bathrooms and storage rooms have been added to the northern side of the theatre
- x. the floor plan of the laundry has been amended to include plant rooms and storage

The reasons for refusal have been amended in response to the amendments identified above.

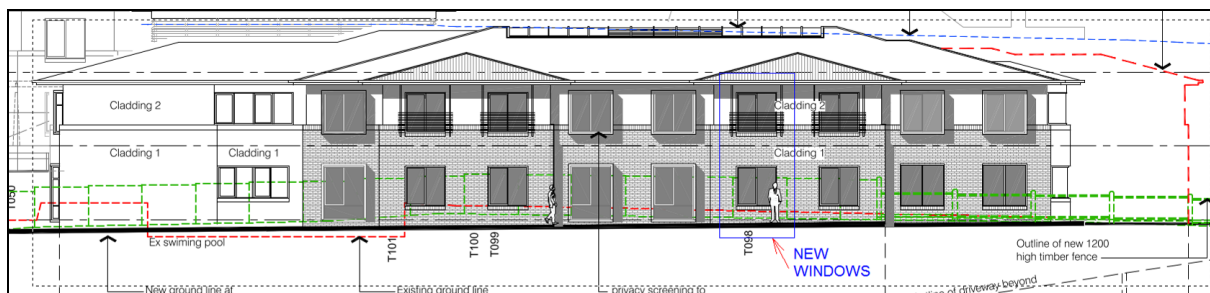
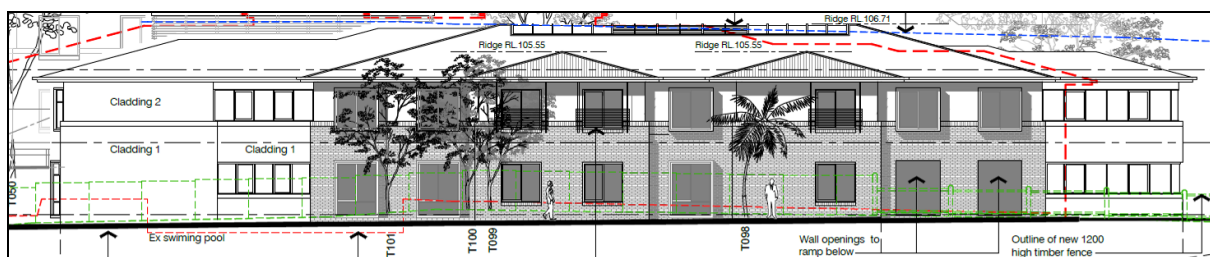
RESPONSE TO DEFERRAL

As requested by the Panel, the amended plans have been assessed against each of the deferral reasons.

1. The western building should be set back to the predominant alignment of the existing heritage dwelling on the site.

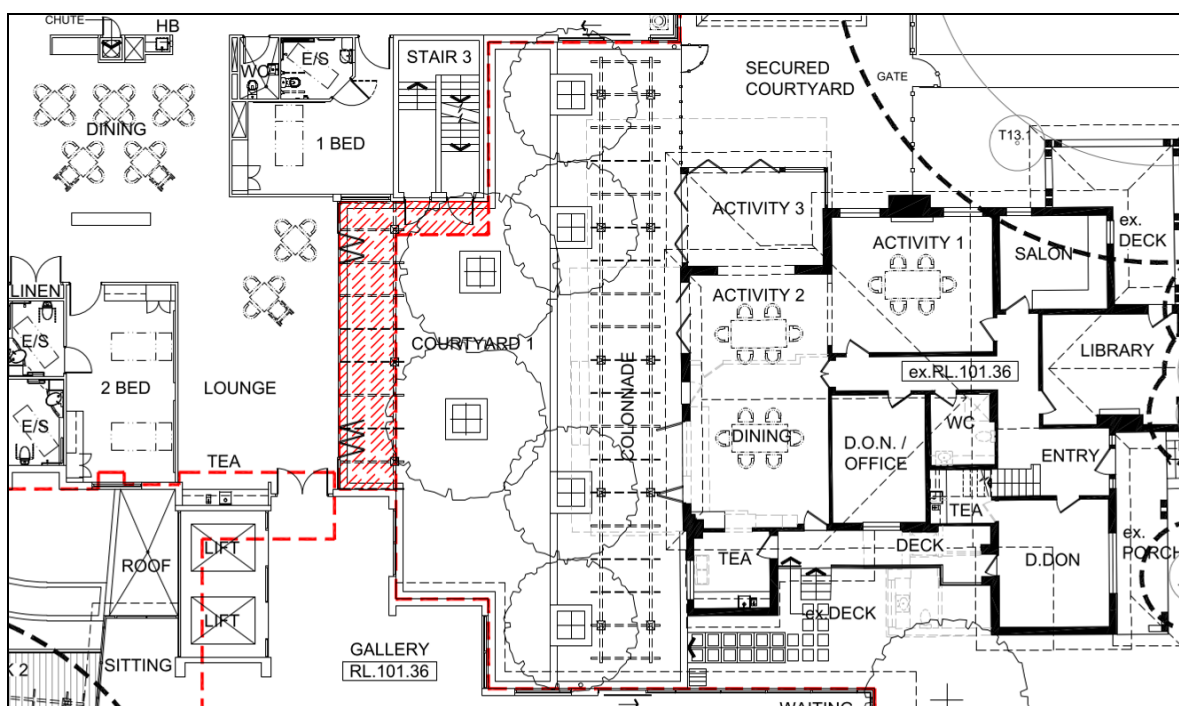
The street setback of the western building has been increased by 5.31m, from 14.6m to 19.91m. The street setback of the heritage item No. 25 Bushlands Avenue is 19.2m.

The number of beds in the West Wing has been reduced by four. One window (with a privacy screen) has been added to the western elevation at the first floor level and one window has been added to the western elevation at the ground floor level. The projecting bay at the northern end of the elevation has been moved 3m north. There is no change to the minimum side setback of 3.5m.



2. Courtyard 1 at the rear of the existing heritage item should be increased in size and allow deep soil to allow the growth of large, centrally located (15m plus) trees to maintain the backdrop to the heritage item. This may require the design of the basements to be amended.

Courtyard 1 has been widened by 2m to a total of 11.7m in a north-south direction by reducing the depth of the lounge room and by 1.3m in an east-west direction by moving Stair 3. A glass roof pergola has been added to the northern side of the courtyard in the area previously occupied by the lounge room and the stairs. The area of the courtyard has been increased by 25m², however 21m² of the additional area is covered by the pergola.



At the basement level below the courtyard, the external wall has been moved 1m further back from the rear wall of the heritage item.

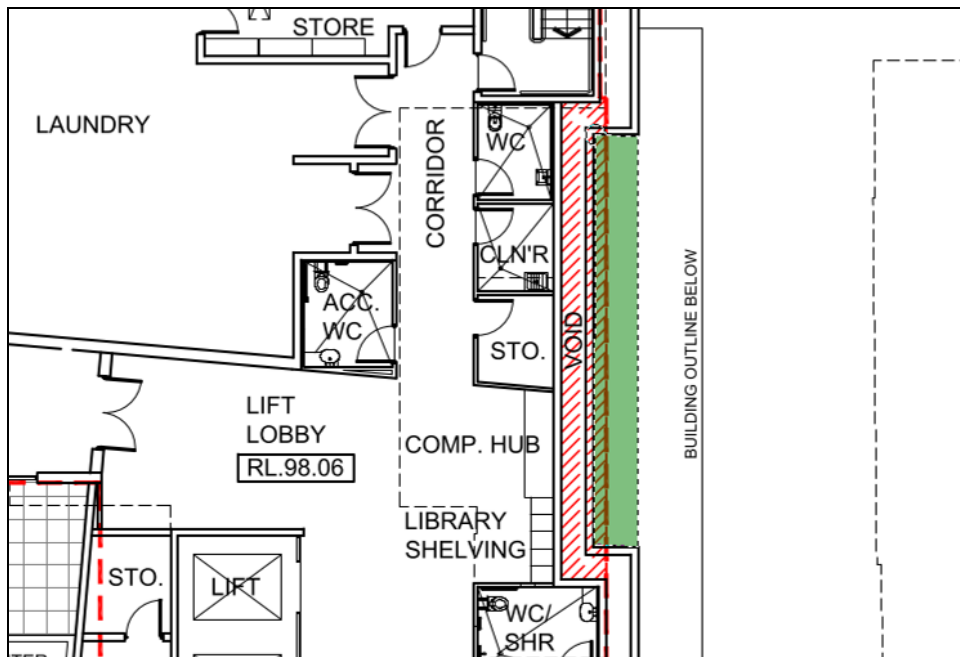


Figure 4 – the green shading represents the increased setback from the rear wall of the heritage item

The landscape plan has been amended to include the construction of two tree pits with dimensions of 4m x 4m x 1.8m in the courtyard. Each tree pit is to accommodate an Angophora Costata (Sydney Redgum) with a 75 litres container size at the time of planting. The landscape plan nominates a mature height of 20m and canopy spread of 6m for the selected tree species.

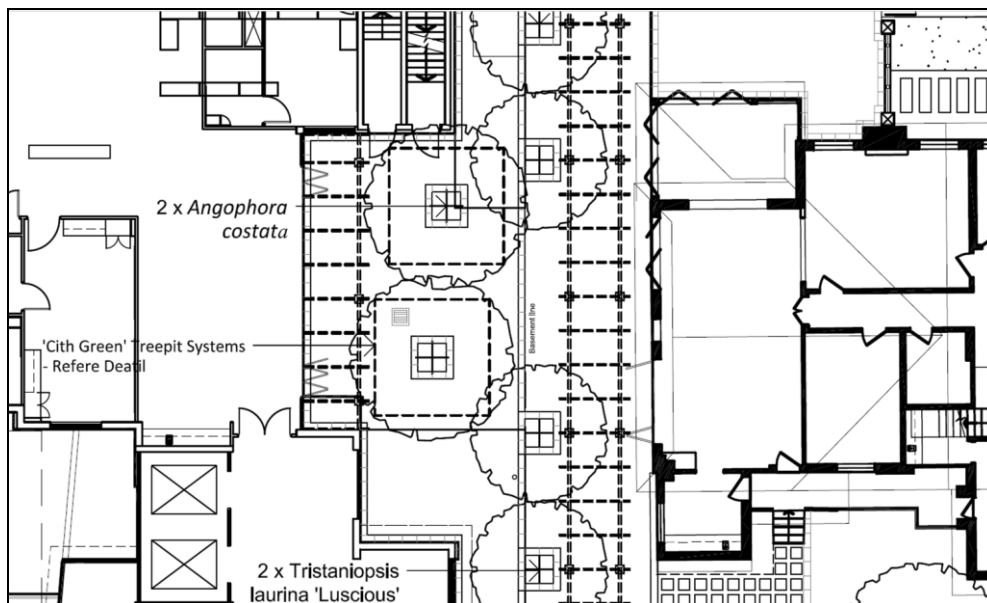


Figure 5 – extract from amended landscape plan

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

The proposed courtyard at the rear of the heritage residence is considered of inadequate size to support the two proposed canopy trees. The building setbacks (approx. 2.6m and 3.5m) from the rear two storey building are insufficient as the mature spread of the proposed Angophora costata (Sydney Red Gum) is approximately 15-20 metres diameter (6 metres

diameter shown). To ensure long term viability of the proposed trees, a minimum 5 metres setback from buildings is recommended. If the *Tristania* plantings were removed, it would provide space for greater setbacks for two canopy trees of a different species and with a more upright form. Alternatively, one canopy tree at the rear of the heritage dwelling centrally located as a specimen within a slightly larger rectangle of garden would achieve the desired visual outcomes. Similarly, the removal of the *Tristania* would also benefit the viability of a single taller canopy tree.

The Tree Pit Detail is not supported for the following reasons:

- i. The proposed root barrier as part of the tree pit is considered unnecessary on the western side and beneath the planter considering the proximity of concrete basement walls. The proposed dimensions of the root barrier are likely to compromise the long term viability of the proposed tree planting.
- ii. The proposed drainage medium should be associated with the basement slab to achieve minimum soil volumes to support proposed mature tree (refer Control 7(i) Part 23.5, KDCP in regards to soil volumes of large trees on slab).
- iii. Crushed granite is unsuitable for locally occurring vegetation and would be preferable to be substituted with drainage cells.

The above issues can be addressed by **Condition 27** in the without prejudice conditions set.

3. The vegetation management plan should describe how the Sydney Turpentine Ironbark forest will be managed for its long term viability. The vegetation management plan should require retention of the Himalayan Cedar.

Council's Ecological Assessment Officer has advised:

The amended VMP responds to the deferral reason, however, unlike the previous VMP it is a conceptual document that does not contain sufficient detail regarding the restoration and enhancement of the onsite area of biodiversity which contains endangered Sydney Turpentine Ironbark Forest.

To satisfy design control 4 in Part 18.3 'Category - Support for Core Biodiversity Lands' an adequate VMP should have been submitted with the development application, nevertheless, included in the without prejudice conditions set is a deferred commencement condition which requires the submission of a final VMP prior to the issue of an operative consent.

4. The skillion roof over the lift is to be a traditional hip to match the remainder of the development.

The roof over the lift has been changed to a hipped roof form.

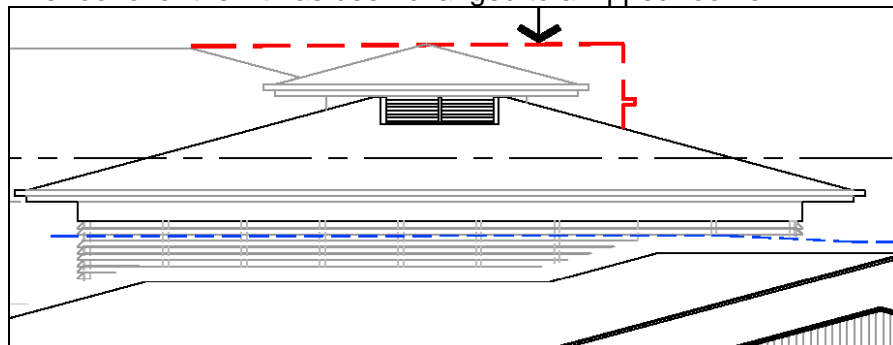


Figure 6 - west elevation of amended roof form – original roof shown as a red dashed line

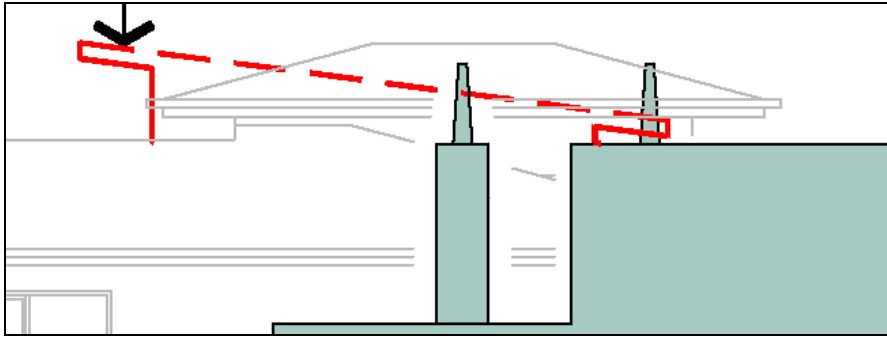


Figure 7 - south elevation of amended roof form - original roof shown as a red dashed line

5. The rear setback is to be increased to 12 metres minimum to reduce the adverse impact on the St Johns Avenue Conservation Area.

The rear setback has been increased by 5.56m, to 12.1m and a raised deck has been added. The rear setback is greater than 12m. The number of beds in the East Wing has been increased by four (from 46 to 50) through changes to the internal layout.

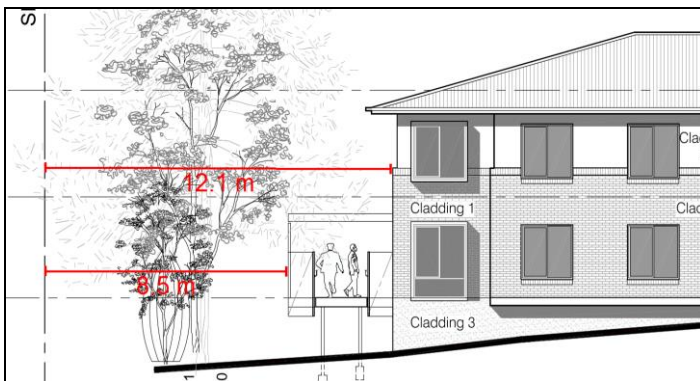


Figure 8 - setbacks of the East Wing at the rear boundary

6. Review and resubmit traffic report to consider the impact of service vehicles and community bus in terms of traffic generation and the adequacy of Bushlands Avenue to safely accommodate the anticipated vehicle movements.

An amended Traffic Report has been submitted. The report includes swept path diagrams for a bus entering and exiting the basement. The swept path diagrams show that the bus will need to cross the centre line of Bushlands Avenue in order to enter or exit the basement.

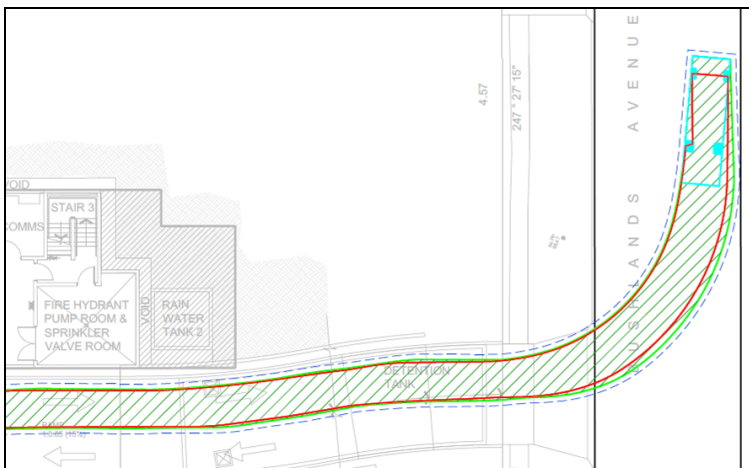


Figure 9 - bus exiting

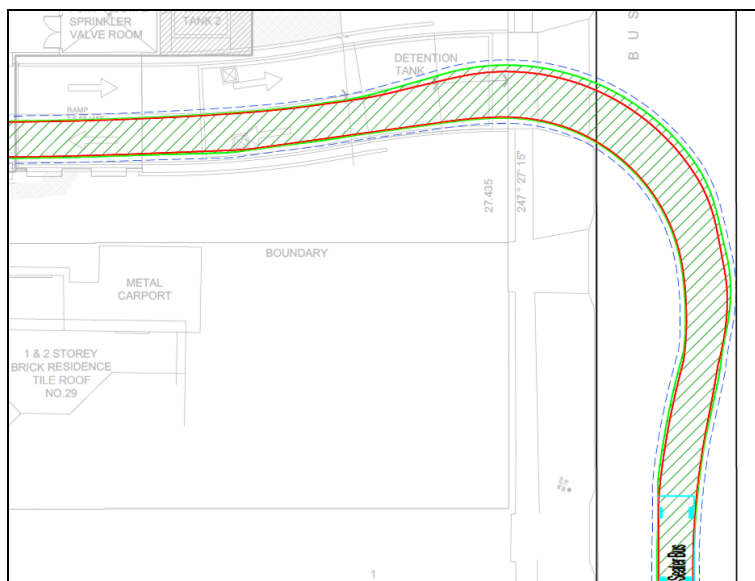


Figure 10 - bus entering

Council's Development Engineer has provided the following comments:

The traffic report has been updated to include peak period trips generated by the community bus as well as service vehicle trips, and intersection analysis which demonstrates that the level of service of the surrounding traffic network will not be affected by the proposed development.

The traffic report contains turning paths for these vehicles entering and leaving the basement. These manoeuvres can be accommodated within the roadway without encroachment onto the grass verge opposite. Parking of vehicles opposite the site entry is considered to be unlikely to impede access due to the layout of driveways and the low incidence of parking on the verge, however, for abundant caution, a condition is recommended that the applicant approach the traffic committee with a request for parking restrictions prior to occupation of the development. If the traffic committee is minded to approve the request, the length of the restriction can be determined at that time.

Reference is made to AS2890.2:2002 Off-street commercial vehicle facilities. The bus service is defined as a Regular service – Minor road. Section 3.2.4b) of the Standard states "The swept path of the maximum size design vehicle using the facility may be allowed to occupy the entire width (less specified clearances) of a two-way access driveway when the vehicle is entering or leaving the minor road".

A template of the bus path was shifted over on the plans of the bus swept path entering and exiting (painted median). If the bus uses the entire width of the driveway at the entry it can avoid crossing the centreline of Bushlands Avenue. (Note the Standard also allows reversing onto or off the street if permitted by the relevant authority).

The relatively gentle entry ramp gradient will allow for the bus driver and any driver entering or leaving in the opposite direction to see each other. Keeping in mind that the overall traffic generation will be low.

On the basis of the above it is considered that the proposal will safely accommodate the anticipated vehicle movements.

7. Review and resubmit acoustic report to consider the impact from service vehicles and community bus on immediate adjoining residents, particularly from 9pm to 6am.

The acoustic report prepared by Rodney Stevens Acoustics was revised to include an assessment of the potential noise impacts of service vehicles and the community bus and submitted to Council on 4/07/2017.

8. The development should comply with controls 3 and 4 of CI 23.2 of the Ku-ring-gai Development Control Plan to achieve a 4 star Green Star rating.

A report prepared by a Green Star accredited professional which sets out the commitments required to achieve a 4 star Green Star rating has been provided.

9. Increase the disabled / accessible car parking spaces by 2 plus one additional ordinary space.

The number of accessible car spaces has been increased from 1 to 3. One additional standard car space has been provided.

10. The wall opening to the ramp on the southern end of the western elevation is to be fully enclosed.

Windows have been provided in the wall openings.

11. A Plan of Management is to be prepared to establish operational practices of the facility including but not limited to the operation of the community bus, and the loading and unloading of service vehicles. All loading and unloading of service vehicles, waste services and the community bus is to be undertaken in the basement. The community bus should also provide transport for staff to Gordon Station at the time when working shifts change.

A Plan of Management (POM) which addresses these matters has been provided. The POM advises that the community bus will operate from 6.45am to 11pm on an hourly basis, except between the hours of 2.30pm to 4pm when the frequency of the bus will be half hourly when the main shift changes occur. The bus will be available for staff, visitors to residents and visiting service providers. All deliveries and waste collection is to occur within the basement during the hours of 8am to 6pm Monday to Friday.

INDEPENDENT ACOUSTIC ASSESSMENT

In accordance with the direction issued by the Panel, Steven Cooper of The Acoustic Group (TAG) was engaged to review the Acoustic Logic submission and the Acoustic Report prepared for the applicant by Rodney Stevens Acoustics. The review (**Attachment B**) was provided to Council on 25 October 2017. The review generally concurred with the issues identified in the Acoustic Logic submission and advised that the following issues were required to be addressed in a revised acoustic report:

- i. insufficient information regarding ambient noise data
- ii. inappropriate noise emission criteria
- iii. likely non-compliance with sleep disturbance criteria due to vehicles entering and leaving the basement
- iv. failure to assess basement roller shutter noise
- v. inadequate assessment of noise from the activity room and balcony on the first floor level

The results of this review were provided to the applicant on 27 September 2017. The applicant responded to the independent acoustic assessment by providing an 'Acoustic Review for Development Application' report prepared by ARUP (**Attachment C**). The ARUP report was forwarded to Council's acoustic consultant who carried out a review (**Attachment D**) and provided the following summary advice:

At the present time the proposed residential care facility to be located at 25, 25A and 27 Bushlands Avenue, Gordon will give rise to excessive noise during the night time period as a result of the use of the driveway.

The extent of disturbance and number of occasions of such disturbance require further clarification, together with additional noise control measures.

The review prepared by TAG was provided to the applicant on 26 October 2017. On the following day the applicant provided a letter prepared by ARUP (**Attachment E**) which disputed the findings of Council's acoustic consultant and re-stated their position that the acoustic impacts of the proposal were acceptable. Council's acoustic consultant reviewed the letter and provided a report (**Attachment F**) with his findings on 31 October 2017.

Summary of potential noise impacts

The table below summaries the assessment of noise levels from car and bus movements against sleep disturbance criteria for the night time period.

| Assessment location | Predicted noise level, $L_{A1-1min}$ | | Sleep disturbance criteria, $L_{A1,1min}$, dB(A) | | |
|---------------------|--------------------------------------|---------------|---|-----------------------------|-------------|
| | Car – up ramp | Bus – up ramp | Time period | Screening $L_{A90} + 15$ dB | Upper level |
| 29 Bushlands Avenue | 50 | 58 | 10 pm to 11 pm | 51 | 60 |
| | | | 11 pm to 6 am | 46 | 60 |
| | | | 6 am to 7 am | 53 | 60 |
| 32 Bushlands Avenue | 52 | 59 | 10 pm to 11 pm | 51 | 60 |
| | | | 11 pm to 6 am | 46 | 60 |
| | | | 6 am to 7 am | 53 | 60 |

Table 1 - (Source ARUP Report dated 11/10/2017)

The above assessment relies upon acoustic shielding in the form of a 1.8m high barrier on the western boundary of the site or a 1.6m high barrier on the western edge of the driveway ramp. Both barriers could be reduced to a height of 1.2m for a distance of 3m from the front boundary. The barrier could be constructed of aerated concrete, fibre cement sheeting or polycarbonate. The applicant has requested that a condition be imposed regarding the design and certification of the acoustic barrier. The condition (**Condition 39**) has been included in the without prejudice conditions set.

Bus noise

The disagreement between the acoustic consultants relates to the sleep disturbance criteria for the periods between 10pm to 11pm and 6am to 7am. The background noise level between 10pm to 11pm is 37dB(A) and 44dB(A) between 6am and 7am. The predicted sound level of a bus moving up the basement ramp is 58 dB(A) at 29 Bushlands Avenue and 59 dB(A) at 32 Bushlands Avenue. The applicant acknowledges that the predicted sound

levels exceed the screening criteria of 51dB(A) between 10pm to 11pm and 53dB(A) from 6am to 7am but is of the opinion that the proposal is acceptable as compliance with the upper level criteria of 60dB(A) is achieved. To calculate the upper level criteria the applicant has applied a section of the NSW Road Noise Policy which states:

One or two noise events per night, with maximum internal noise levels of 65–70 dB(A) are not likely to affect health and wellbeing significantly.

By applying a 5dB(A) noise reduction through the façade of the receiver, the applicants consultant concludes that a maximum noise level of 60 dB(A) from the bus would be acceptable. Council's acoustic consultant does not agree that it is appropriate to apply the upper level criteria as its intended application is for the assessment of traffic noise for vehicles travelling along a public road which give rise to a build up of sound to a maximum level and then a reduction in sound as a vehicle goes past the assessment location. Council's acoustic consultant advises that the use of the upper level criteria is not appropriate for the situation and that the Land and Environment Court have applied the background + 15DBA sleep arousal criteria for commercial operations with intermittent traffic at night such as convenience stores and service stations, aged care facilities and motels.

Car noise

A non compliance with screening criteria for noise from cars moving up the ramp for the periods of 10pm to 11pm and 11pm to 6am was also identified. The exceedance of the criteria for 10pm to 11pm is 1dB(A) at 32 Bushlands Avenue. The exceedance of the criteria for 11pm to 6am is 6dB(A) at 32 Bushlands Avenue and 4dB(A) at 29 Bushlands Avenue. Council's acoustic consultant advises that the vehicle movements up the ramp between 11pm and 6am are 19 to 21dB(A) above the background level and that the claim of minimal movements during this period has not been quantified in the Traffic Report or Plan of Management. Council's acoustic consultant concludes by stating:

Such level of disturbance are unlikely to be "appropriate" for the two affected residential dwellings that have been assessed, bearing in mind the development is a commercial operation in a residential area and the unspecified "minimal" occurrence are occurrences that can occur every night. For such a commercial operation the development must be amended to satisfy the sleep arousal criterion of background + 15dB(A).

Alternate controls

Council's acoustic consultant has advised that improved/additional acoustic barriers have the potential to address the acoustic concerns but have not been considered in the ARUP response. In the event that the application is approved Council's acoustic consultant has advised that conditions which restrict the use of the basement ramp should be imposed, these conditions (**Conditions 94 & 95**) have been included in the without prejudice conditions set.

The acoustic reports and correspondence prepared by both acoustic consultants are attached to this report.

CONSULTATION

In accordance with the requirements of Part 25 Notification of the DCP the amended plans were notified for 14 days. In response submissions from the following were received:

- 1) Angela Hu, 26 Bushlands Avenue Gordon

- 2) Leah Chen, 26 Bushlands Avenue Gordon
- 3) Katrina Ganin, 37 Warwick Street Killara
- 4) Stuart Nevison, 45 St Johns Avenue Gordon
- 5) Margaret and Peter Davey, 23 Bushlands Avenue Gordon
- 6) John Dundas, 29 Bushlands Avenue Gordon
- 7) Lyn Dundas, 29 Bushlands Avenue Gordon
- 8) Hoon Keong Teoh, 58 Bushlands Avenue Gordon
- 9) Deborah Coates, 15 Bushlands Avenue Gordon
- 10) Michael Coates, 15 Bushlands Avenue Gordon
- 11) Ursula Eddie, 31 Bushlands Avenue Gordon
- 12) Chao-Hsiang Wang, 3 Bushlands Avenue Gordon
- 13) Nancy Gao, 1 Bushlands Avenue Gordon
- 14) Yibin Luo, 7 Bushlands Avenue Gordon
- 15) Jiadan You, 9A Bushlands Avenue Gordon
- 16) Hock Chong Lee, 60 Bushlands Avenue Gordon
- 17) Jennifer McLaren, 25 Browns Road Gordon
- 18) Robert and Helen Felton, 28 Bushlands Avenue Gordon
- 19) Thomas Tse, 39 Bushlands Avenue Gordon
- 20) Nicholas Aroney, 16 Bushlands Avenue Gordon
- 21) Duncan Gill, 32 Bushlands Avenue Gordon
- 22) Richard McLaren, 25 Browns Road Gordon
- 23) Sandy Tuttiett, 15 Browns Road Gordon
- 24) Warren Tuttiett, 15 Browns Road Gordon
- 25) Mark and Cathy Davies, 34 Bushlands Avenue Gordon
- 26) Lisa Geiger, 46 Norfolk Street Killara
- 27) Greg Fenech, 22 Bushlands Avenue Gordon
- 28) Andrew Gunst, 9 Browns Road Gordon
- 29) Kim Gill, 32 Bushlands Avenue Gordon
- 30) Amanda Pudney, 31A Bushlands Avenue Gordon
- 31) Francis Choy, 18 Bushlands Avenue Gordon
- 32) Laraine Gray, 5 Oberon Crescent Gordon

Increased traffic

The amended Traffic Report estimates that the proposal will result in an additional 19 vehicle trips in the road network peak hours, which represents an increase of 50% above the existing traffic levels in Bushlands Avenue. Of the 19 additional vehicle trips, 5 are attributed to the provision of on site services. 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 amended plans have reduced the size of the car spaces in the basement

The number of car spaces has been increased by extending the basement towards the northern boundary. The size of the car spaces has not changed.

The amended traffic report states that vehicles wishing to travel south on the Pacific Highway can do so by using the signalised intersection of St Johns Avenue, this is not possible as it would require a vehicle to make a U turn on the Pacific Highway, which is illegal

The traffic report suggests that motorists wishing to travel south on the Pacific Highway can access the intersection of the Pacific Highway and St Johns Avenue via Lynn Ridge Avenue. The traffic signals at the intersection include a right turn arrow. The traffic report does not suggest that vehicles make a U turn on the Pacific Highway.

The Plan of Management does not mention the second bus used for outings, visitors' cars (other than those collecting or dropping off residents), patient transport vehicles (other than emergency), maintenance staff/contractors and the provision of respite day care

The Plan of Management states that all parking is to occur at basement level. The number of car spaces exceeds the minimum specified by the SEPP. It is expected that there will be adequate on site parking for visitors, patient transport vehicles, staff and contractors. Whilst one formal bus parking space has been provided, there is adequate space opposite the waste and maintenance rooms for parking the second bus used for schedule outings. The application may not be refused on the grounds of insufficient car parking as the number of car spaces exceeds the minimum specified by the SEPP.

The relocated Tea House has a raised floor and will result in overlooking of 31A Bushlands Avenue

The floor level of the Tea House is approximately 700mm higher than the western wing of the existing dwelling house that occupies the land in which the Tea House is proposed. The separation distance between the tea house and the side boundary of 31A Bushlands Avenue is a minimum of 44m. The separation distance of 44m, boundary fencing and landscaping will minimise overlooking of 31A Bushlands Avenue.

As the Plan of Management states that staff will not be permitted to smoke on site, staff smoking on the street will impact upon pedestrians

The Plan of Management states that smoking inside the nursing home of its grounds is prohibited under the Smoke Free Environment Act. The applicant was asked to specify which section of the Act prohibited smoking in the outdoor areas of the site but was unable to do so. It is agreed that it would be inappropriate for force smokers onto the street where they will be in close proximity to pedestrians.

Excessive building bulk is not compatible with neighbourhood character

The previous assessment report contained the following comment:

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 encroachments into the curtilage of the heritage item have not been significantly changed, however the minimum setback from the rear boundary has been increased from 6.5m to 12.2m and the front setback of the western wing has been increased from 14.6m to 19.9m. Council maintains its position that the proposal will have an unacceptable impact on the heritage significance of No. 25 Bushlands Avenue.

Overshadowing of neighbouring properties

The original proposal would not have resulted in significant overshadowing of the private open space or windows of adjoining dwellings. The amended proposal does not result in additional overshadowing.

Excessive tree removal

The previous assessment report contained the following comment:

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.

The amended proposal retains Tree 38 and reduces impacts on Trees 27, 30 and 50. In the context of the development standards in SEPP Seniors the proposed tree removal is not considered excessive.

The side setbacks are inadequate, they should be a minimum of 6m

The amendments do not reduce the side setbacks. The previous assessment report contained the following comment regarding the side setbacks:

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.

Whilst greater side setbacks would be desirable, the proposed setbacks are considered acceptable as the landscaped area of the proposal substantially exceeds the requirement of the SEPP, the floor space ratio of the proposal is significantly less than the FSR standard set by the SEPP of 1:1 and the setbacks are consistent with the streetscape character.

Whilst the length of the side elevations is greater than the streetscape character, appropriate modulation of the built form has been achieved. The height of the side walls has also been minimised by retaining walls adjacent to the side boundaries which allow for finished floor levels that are below the existing ground levels. Despite the two storey height of the building, the retaining walls allow for side walls that have a maximum height of less than 6m.

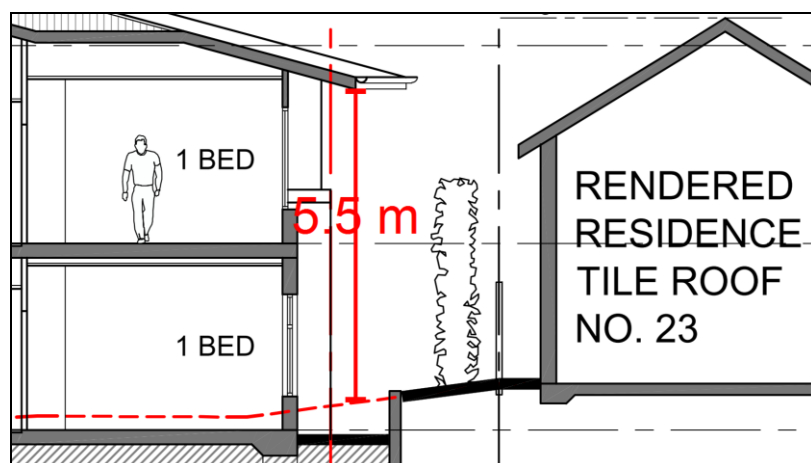


Figure 11 - Wall height at western elevation. The red dashed line is the existing ground line.

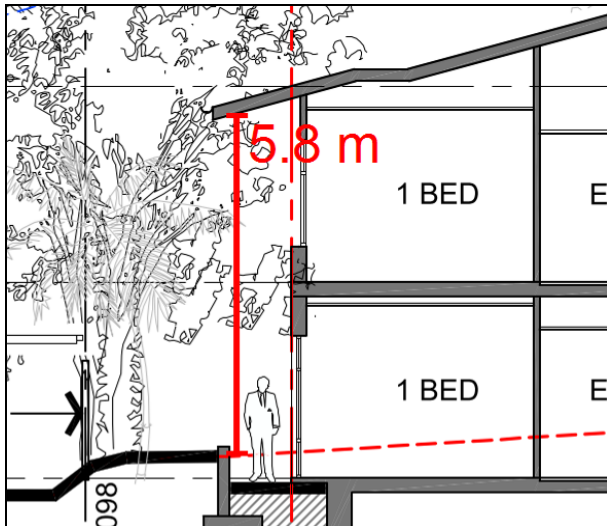


Figure 12 - wall height at eastern elevation. The red dashed line is the existing ground line

Overlooking

The previous assessment report contained the following comments in response to the overlooking impacts identified in submissions from No. 23 and 29 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 23 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 23 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 amended plans do not propose any changes to the eight windows on the first floor level of the eastern elevation.

The amended plans include two new windows on the western elevation, one at ground floor level and another at first floor level. The window at the first floor level has a privacy screen. The amended plans have deleted the privacy screen from one of the first floor windows. The

windows in the centre of the elevation should have privacy screens as they are opposite the courtyard at the rear of 29 Bushlands Avenue.

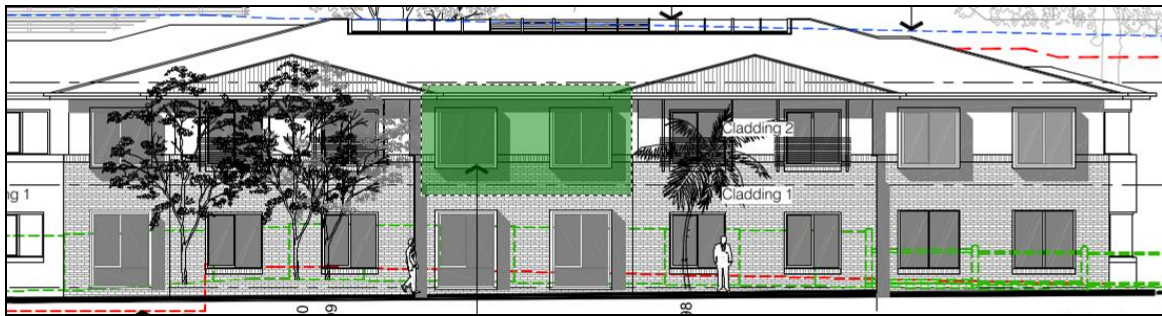


Figure 13 - windows with green shading should have privacy screens

Condition 40 in the without prejudice conditions set requires the additional privacy screens mentioned above.

Failure to comply with clause 26 of SEPP Seniors

This issue was addressed in the previous assessment report which recommended that the clause 4.6 variation to the development standard in clause 26 of SEPP Seniors not be supported.

The basement needs to be designed to accommodate all service vehicles and ambulances

The basement has been designed to accommodate all the service vehicles. As an ambulance is no taller than a small garbage truck, it will also be able to access the premises via the basement.

The proposed planting of 15m high trees in the courtyard behind the heritage item is not supported by an independent arborist report

Council's Landscape and Tree Assessment Officer has advised that the courtyard is of insufficient size for the proposed trees.

An ecologist and other experts should be on site during the tree removal

Condition 24 in the without prejudice conditions set requires that all trees be inspected for fauna occupation prior to the commencement of works/tree removal and that an appropriately licensed ecologist supervise the relocation of any fauna found within the trees approved for removal.

The traffic report states that the carriageway in Bushlands Avenue is 7m wide but the plans used to demonstrate the adequacy of the access and exit paths are based on a carriageway 7.8m wide

The carriageway in Bushlands Avenue is 7.8m wide.

Increased noise

Council's acoustic consultant has advised that the proposal does not comply with the sleep disturbance criteria, accordingly the reasons for refusal include this reason.

The acoustic report does not address potential noise impacts from motor bikes

Council's acoustic consultant did not identify any concerns with the acoustic reports not including separate assessments for noise from motor bikes.

Sleep disturbance impacts as a result of vehicle movements have not been adequately addressed

Council's acoustic consultant has advised that the proposal does not comply with the sleep disturbance criteria.

No. 29 Bushlands Avenue has not been considered in the amended Acoustic Report

Impacts to No. 29 Bushlands Avenue were considered in the acoustic report, however Council's acoustic consultant has advised that the impacts are unacceptable.

To reduce noise made by residents who may be suffering from dementia, windows on the western elevation should be double glazed

The applicant has advised that such a condition is unnecessary as less than 10% of dementia sufferers exhibit behavioural symptoms associated with excessive noise. If the Panel forms the view that double glazing is required, the applicant has recommended the following conditions:

Glazing

*The five windows closest to the rear of the building at the upper floor western elevation shall be double glazed. Details of compliance with this requirement must be provided to the PCA or Council prior to the issue of a Construction Certificate
Reason: To ensure that the amenity of the neighbouring properties are not adversely affected*

or

Glazing

*The eight windows at the upper floor western elevation shall be double glazed. Details of compliance with this requirement must be provided to the PCA or Council prior to the issue of a Construction Certificate
Reason: To ensure that the amenity of the neighbouring properties are not adversely affected*

Note: The above conditions have not been included in the without prejudice conditions set.

To reduce light spill pathway lighting should be at ground level and not overhead

The without prejudice conditions set provided to the Panel includes a condition which requires all outdoor lighting to be compliant with AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting.

The openings in the side wall adjacent to the basement ramp should be bricked in, not filled in by windows

The acoustic report advises that 6.38mm thick glass for the windows in the side wall of the basement ramp will be required to achieve the noise criteria.

It is unclear whether Trees 104 and 106, which are an environmental weed species, are to be removed or retained

Condition 78 in the without prejudice conditions set requires the removal of all environmental weed species prior to the issue of the Occupation Certificate.

The planting of 12 tall trees adjacent to the boundary with No. 29 Bushlands Avenue will result in additional overshadowing

The landscape plan shows the planting of five trees with a mature height of 10m (Water Gum) adjacent to the boundary with No. 29 Bushlands Avenue. The landscape plan shows numerous other plantings adjacent to the boundary but does not indicate the species. In the absence of suitably detailed plans compliance with Part 21.2 Landscape Design of the DCP cannot be determined. The landscape plan contains inadequate detail and is not supported by Council's Landscape Assessment Officer.

A condition restricting the occupation of the facility to residents with high care needs should be imposed

The previous assessment report considered whether it would be appropriate to impose more onerous occupancy restrictions than those required by clause 18 of the SEPP. The following comments were made:

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.

The number of car spaces identified in the traffic report is inconsistent with the number of spaces shown on the plans

The number of proposed spaces is determined by the plans, not the traffic report. The number of car spaces exceeds the requirements specified by the SEPP.

The traffic report states that the number of additional vehicles per hour will be 19 on page ten and 10 on page nine

The Traffic Consultant has advised that the correct number of additional vehicles per hour is 19 and that the SIDRA analysis of intersection performance was based on this number.

A condition requiring that the fit out of the hair salon comply with the Local Government (General) Regulation 2005 and Public Health Regulation 2012 should be imposed

These conditions are not required for a hair salon that does not offer procedures involving skin penetration.

Impacts of odours from kitchen and laundry exhaust have not been adequately addressed

The mechanical exhaust louvres are set back more than 6m from the side boundaries. As the proposed building is 2 storeys in height and the louvres are at roof level, it is considered unlikely that odours from the kitchen and laundry will have a negative impact on the amenity of adjoining properties.

CONCLUSION

This amended application has been assessed under the heads of consideration of Section 79C of the *Environmental Planning and Assessment Act 1979* and all relevant instruments and policies. The proposal does not achieve compliance with the requirements of the relevant instruments and policies and refusal is recommended.

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 Development Application No. 0418/15 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 will have adverse impacts on the heritage item at No. 25 Bushlands Avenue (Birralee).**

Particulars

- i. The impact of development on heritage items 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 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 heritage item No. 25 Bushlands Avenue as it results in a substantial encroachment into the curtilage of the heritage item.
 - ii. 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.
5. **The proposal does not comply with the provisions of the Ku-ring-gai Development Control Plan.**

Particulars

- i. The proposal results in unacceptable impacts on the heritage significance of No. 25 Bushlands Avenue Gordon. 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'.
 - ii. The Vegetation Management Plan does not satisfy the requirements of control 4 in Part 18.3 'Category - Support for Core Biodiversity Lands'.
6. **The submitted landscape plan is inadequate.**

Particulars

- i. Proposed planting has not been identified in accordance with Council's DA Guide.
 - ii. Existing levels across the site and spot levels at the base of trees to be retained must be shown.
 - iii. The proposed levels of external areas including terraces, paths and top of wall heights have not been provided.
 - iv. The landscape plan does not reflect the recommendations of the vegetation management plan including bushland restoration zone along the northern boundary and STIF/Landscape Integration Zone.
7. **The proposal will result in unacceptable noise impacts**

Particulars

- i. The use of the car park between the hours of 10pm and 7am does not comply with the Environmental Protection Authority's sleep arousal criterion of background + 15dB(A).
- ii. As the development is likely to result in unacceptable impacts on the amenity of adjacent and nearby dwellings it does not satisfy the assessment criteria in section 79C(1)(b)&(c) of the Environmental Planning and Assessment Act 1979.

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