

DETERMINATION AND STATEMENT OF REASONS

SYDNEY NORTH PLANNING PANEL

DATE OF DETERMINATION	16 November 2017
PANEL MEMBERS	Deborah Dearing (Chair), Julie Savet Ward, Stuart McDonald, Sam Ngai, Cedric Spencer
APOLOGIES	John Roseth, Sue Francis
DECLARATIONS OF INTEREST	Concerns were raised that Sue Francis may be conflicted on this matter. Legal advice provided to, and accepted by, the Chair found Ms. Francis to have no conflict of interest in this matter.

Public meeting held at Ku-ring-gai Municipal Council, 818 Pacific Highway Gordon, on 16 November 2017, opened at 5:30pm and closed at 10:15pm.

MATTER DETERMINED

2015SYW189 – Ku-ring-gai – DA00418/15 at 25, 25A and 27 Bushlands Avenue Gordon (AS DESCRIBED IN SCHEDULE 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to refuse the development application as described in Schedule 1 pursuant to section 80 of the *Environmental Planning and Assessment Act 1979*.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel reviewed the council reports and the applicant's clause 4.6 request to vary clause 26 Location and Access to Facilities under *State Environmental Planning Policy (Housing for Seniors or People With a Disability) 2004*. The Panel determined to refuse the application on the grounds that the proposal will result in unacceptable noise impacts.

The majority of the Panel (D Dearing, S McDonald and J Savet Ward) were satisfied that clause 26 of the SEPP (Seniors Housing) is a development standard and considered that the clause 4.6 request to vary the standard was well founded on the grounds that the services and facilities were proposed to be provided either on site or made accessible through the provision of a community bus.

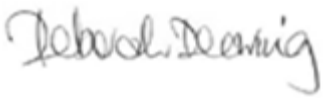




Further they were of the view that the provision of socially appropriate aged care within a residential environment would satisfy the objectives of the residential R2 zone of the *Ku-ring-gai Local Environment Plan 2015* and contributes to satisfying the increasing community need.

The Panel gave considerable consideration to the impact on the heritage item at 25 Bushlands Avenue (Birralee) and was of the view that the retention and adaptive reuse of the structure and its garden setting would be of community benefit.

The minority of Panel members (C Spencer and S Ngai) did not agree to the applicant's clause 4.6 request to vary clause 26 of the SEPP (Seniors Housing) as they were not satisfied by the applicant's submission.

Notwithstanding the above, the Panel unanimously determined, in response to Council's independent acoustic report, that the proposal would result in unacceptable noise impacts, particularly on the immediate neighbours.

The use of the driveway during the night-time period has potential to give rise to sleep disturbance even with the nominated noise controls. The predicted noise levels for the use of the driveway between 11.00pm and 6.00am and the number of vehicle movements is uncertain as to ensuring the residents are not unreasonably disturbed. The extent or efficacy of the provision of additional noise control measures to ensure full compliance with the latest NSW EPA criteria for sleep disturbance is unknown.

PANEL MEMBERS	
 Deborah Dearing (Chair)	 Julie Savet Ward
 Stuart McDonald	 Sam Ngai
 Cedric Spencer	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2015SYW189 – Ku-ring-gai – DA0418/15
2	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.
3	STREET ADDRESS	25, 25A and 27 Bushlands Avenue Gordon
4	APPLICANT/OWNER(s)	Applicant - Australian Nursing Home Foundation C/- Mark Boffa Owners - Ms Mei Mei Tse, Mr Bernard Tse, Ms Monica Chu, Mr Andrew Gock, Ms Ellen Louie
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$20 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> Threatened Species Conservation Act 1995 State Environmental Planning Policy No.55 – Remediation of Land State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP) Ku-ring-gai Local Environmental Plan 2015 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Ku-ring-gai Development Control Plan Ku-ring-gai Contributions Plan 2010 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 7 February 2017 Council supplementary reports: 24 July 2017 and 1 November 2017 Written submissions during public exhibition: <ul style="list-style-type: none"> Original DA – 108 submissions, 1 petition with 227 submission, 1 petition with 8,803 signature Amended DA – 64 submissions in objection, 1 in support Amended DA in response to SNPP deferral – 32 submissions Verbal submissions at the public meeting: <ul style="list-style-type: none"> Object – Margaret Davey on behalf of Bushland Avenue Community Group, Fr. Keith Dalby on behalf of Gordon Killara Action Group, Duncan Gill, Ron Bergin, Lyn Dundas, John Dundas, Kim Gill, Robert Felton, Vanessa Newey, Margaret Davey, David Garnsey on behalf of the State Member for Ku-ring-gai Mr Alister Henskens SC MP, Katrina Ganin, Mark Davies, Amanda Pudney, Greg Fenech, Thi Tran, Malcom Ellis On behalf of the applicant – Tony Robb

8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection: 22 February 2017 and 16 November 2017 (S McDonald) • Briefing meetings: 22 February 2017 • Final briefing meeting to discuss council's recommendation, Thursday 16 November 2017 at 4:30pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Deborah Dearing (Chair), Julie Savet Ward, Stuart McDonald, Sam Ngai, Cedric Spencer ○ <u>Council assessment staff</u>: Jonathan Goodwill, Michael Miocic, Corrie Swanepoel, Selwyn Segall, Steven Cooper (independent acoustic specialist representing council)
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the council assessment report