

SYDNEY NORTH PLANNING PANEL COUNCIL ASSESSMENT REPORT

Panel Reference	2017SNH040
DA Number	DA2017/0385
LGA	Northern Beaches Council
Proposed Development	Construction of a Health Services Facility (Private Hospital) with associated consulting rooms, car parking, signage and landscaping
Street Address	Lot 2 DP 1145029, Myoora Road, Terrey Hills
Applicant/Owner	Gran-Dia Investments Pty Ltd (Owner) Wyvern Health Pty Ltd (Applicant)
Date of DA lodgement	28 April 2017
Number of Submissions	20
Recommendation	Refusal
Regional Development Criteria (Schedule 4A of the EP&A Act)	Schedule 4A Clause Private Infrastructure and Community Facilities over \$5 Million
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2000 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy No. 33– Hazardous and Offensive Development • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy No. 64– Advertising and Signage • State Environmental Planning Policy – Infrastructure 2011 • Draft State Environmental Planning Policy – Infrastructure 2011 • Warringah Local Environmental Plan 2011 • Warringah Development Control Plan 2011
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1: Full Set of Architectural Plans • Attachment 2: Pre-Lodgement Meeting Notes • Attachment 3: Referral Responses from Council's Natural Environment Sections (Biodiversity & Riparian) • Attachment 4: Report by Aquila Ecological Survey (independent peer review, commission by the applicant) • Attachment 5: Report by Keystone Ecological Pty Ltd (independent Peer review, commission by Council) • Attachment 6: Applicant's Clause 4.6 – Building Height
Report by	David Kerr – General Manager for Planning Place & Community
Report date	20 December 2017

Summary of s79C Matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarized, in the Executive Summary of the assessment report? e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **Not Applicable**

Conditions

Have draft conditions been provided to the applicant for comment? **No**
Note: in order to reduce delays in determinations, the Panel prefers that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Executive Summary

This Report is an assessment of a Development Application (DA) for the construction of a Private Hospital on the site known as Lot 2 DP 1145029, Myoora Road, Terrey Hills. The site has an area of approximately 4.32ha.

The site is zoned 'RU4 - Primary Production Small Lots' under the Warringah Local Environmental Plan 2011 (WLEP 2011) in which hospitals are normally prohibited. However, the site is located within Area 18, as identified under Schedule 1 'Additional Permitted Uses' of the WLEP 2011 which permits hospitals.

The development proposes a 2 to 3 storey hospital building that will provide a range of specialist health services including radiology, hydrotherapy, rehabilitation, ICU, operating theatre, associated administrative and front of house services and a total of 84 beds with 99 staff. The final internal fit out of the hospital does not form part of this application. The development also includes 12 consulting rooms that are attached to the hospital building. Primary vehicular access to the site is provided via Myoora Road, with a total of 136 car parking spaces to be provided for the hospital.

The application is referred to the Sydney North Planning Panel (SNPP) for determination pursuant to Schedule 4A of the Environmental Planning and Assessment Act 1979 as the development has a Capital Investment Value (CIV) in excess of \$5 million (\$22 million declared).

Council's Natural Environment Unit has recommended refusal of the application due to the potential for significant impacts on threatened species and communities. In particular, it was considered that the proposal may result in a significant impact on the local population of the Eastern Pygmy Possum as listed in the NSW Threatened Species Conservation Act (TSC Act) and local occurrences of the Duffy's Forest and Coastal Upland Swamp Endangered Ecological Communities as listed in the TSC Act. The Coastal Upland Swamp is also listed on the Commonwealth Environment Protection and Biodiversity Conservation Act.

Council's assessment has concluded that there will be significant effects on these species and therefore, a Species Impact Statement (SIS) should be prepared for the site. The requirement for an SIS was initially highlighted to the applicant at the pre-lodgement stage but was not submitted with the application.

The applicant disagrees with Council's assessment in relation to the need for an SIS and maintains the view that there will not be a significant impact and that the proposal will protect the biodiversity and environmentally sensitive areas of the subject site, and that a SIS is not required. The applicant has provided additional information on a number of occasions, and has also provided an independent peer review, prepared by Aquila Ecological Survey which concludes that a SIS is not required.

In response, Council commissioned an independent peer review, which was prepared by Keystone Ecological Pty Ltd. The peer review concludes that the proposal will have significant impact and that a SIS is required for this site.

The applicant has more recently advised that, whilst they don't agree with Council's assessment on this issue, they have taken the "precautionary principle" and will prepare a SIS for the site and have requested that the determination of the application be deferred until an SIS is prepared and submitted for Council's consideration.

Notwithstanding the Applicant conceding to address the SIS issue, given the age of the application and unknown outcomes that may arise from the assessment of a SIS (i.e. that will require re-assessment and re-notification/re-advertising) this will inevitably result in significant delay. Therefore, Council indicated to the Applicant that it could not commit to holding the application in abeyance and therefore the applicant was informed that they should withdraw the application and work with Council's Natural Environment Unit to resolve this issue. However, the applicant has decided not to withdraw the application.

Accordingly, the application is therefore recommended for refusal on this basis alone. Notwithstanding the above issue and the consequent recommendation for refusal of the application, the remainder of the assessment has found that the proposal is generally acceptable and can be supported subject to conditions.

The application includes breaches to the permitted building height, however the non-compliances are supported when considered against the provisions of Clause 4.6 of the WLEP 2011.

Amenity impacts (such as noise, privacy and visual appearance) have been assessed and are found to be of a minor nature such that the amenity of nearby residential uses and users of other facilities will not be unreasonably or detrimentally affected.

The DA was publicly exhibited in accordance with Warringah Development Control Plan 2011 (WDCP 2011) and a total of 20 submissions were received, all of which objected to the proposal. The issues and concerns raised in the submissions are addressed in this report.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal does not satisfy the appropriate controls that specifically relate to the environmental attributes of the site. All relevant processes and assessments have been satisfactorily addressed.

Accordingly, it is recommended that the SNPP, as the determining authority, refuse this application for the reasons detailed within the "Recommendation" section of this report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/0385
Assessment Officer:	Lashta Haidari – Principal Planner
Land to be developed (Address):	Lot 2 DP 1145029, Myoora Road, Terrey Hills
Proposed Development:	Construction of a Health Services Facility (Private Hospital) with associated consulting rooms, car parking, signage and landscaping.
Zoning:	WLEP 2011 – Land Zoned RU4 Primary Production Small Lots WLEP 2011 – Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP 2011
Development Permissible:	Yes – Permitted with consent under Schedule 1 of WLEP 2011
Existing Use Rights:	No
Consent Authority:	Sydney North Planning Panel (SNPP)
Land and Environment Court Action:	No
Owner:	Gran-Dia Investments Pty Ltd
Applicant:	Wyvern Health Pty Ltd
Application lodged:	28 April 2017
Notified:	12 May 2017 till 16 June 2017
Advertised:	13 May 2017
Submissions:	20
Recommendation:	Refusal
Estimated Cost of Works:	\$ 22,043,000.00

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the EP&A Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the EP&A Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SITE DESCRIPTION

The site consists of a single allotment located on the western side of Myoora Road and is legally described as Lot 2 Deposited Plan 1145029. The site has an area of approximately 4.32ha. The site is an irregular shaped lot with two-street frontages, being Myoora Road (south-eastern alignment) and Larool Road (north-western alignment).



Figure 1 – Site Map

The site is a vacant block of land with a mixture of vegetation in good condition and some areas dominated by weeds. The site contains a Coastal Upland Swamp on the southern portion of the site, adjoining the south-western boundary of the site.

The general vicinity of the site is characterised by a mix of rural land uses, interspersed with large lot rural residential development and other land uses which service the needs of the community.

The adjoining site to the south is occupied by the German International School Sydney campus, and the Asset Protection Zone for the school campus exists along the north-eastern and north-western boundaries, and extends over the subject site to the north-east and north-west.

Further to the south-west to site adjoins the Terrey Hills Swim School. The properties to the north are currently used for residential purposes.

The locality is characterised by its open landscape setting associated with large lots, with a low scale and density of development and substantial setbacks to the public domain.

RELEVANT BACKGROUND

Pre-Lodgement Meeting

A pre-Lodgement meeting was held with the applicant on 24 January 2017 to discuss a proposal for redevelopment of the site for the purposes of a private hospital.

A copy of the notes are attached to this report (refer to Attachment 2).

HISTORY OF THE SUBJECT APPLICATION

The following provides a summarised version of key chronological events that have occurred during the assessment of the application.

Chronology of key events	Dates
Lodgement of the application.	28 April 2017
<p>The applicant sent a letter to Council and revised cost of development. The letter states that the proposed development is to be amended in respect that it does include the fit out of the hospital.</p> <p>A subsequent DA is to be lodged for the fit-out of the Hospital, once the DA for the building, parking and use is established and the final parameters for the building size and location are resolved.</p>	27 July 2017
<p>The applicant submitted the following additional information:</p> <ul style="list-style-type: none"> Updated Noise Impact Assessment report and letter prepared by Acoustic Logic; Updated Stormwater Plan, DRAINS and MUSIC modelling provided by Martens & Associates. 	27 July 2017
<p>A meeting was held between Council staff and the applicant (at the request of the applicant) to discuss the progress of the application.</p> <p>At the meeting, the following matters were discussed:</p> <ul style="list-style-type: none"> The ecological issues associated with the proposed development; and The need to submit the Species Impact Statement. 	14 August 2017
<p>The applicant submitted additional the following information to address the ecological issues associated with the proposed development, and other information to address other referral issues:</p> <ul style="list-style-type: none"> Arborist Revised Report Arborist Appendix 1B Bushfire Response Updated Ecology Flora and Fauna Assessment (amendments highlighted) Ecology Biodiversity Management Plan (amendments highlighted) Ecology Waterways Impact Statement Revised Groundwater Management Plan Architectural Site Plan Revised Landscape Plans Revised Operational Management Plan Revised Survey Plan Traffic Engineers response to Councils Traffic Engineer and matters raised in submissions. Traffic SIDRA Files and Results. 	25 August 2017
The applicant submitted a Peer Review (prepared by Aquila Ecological Surveys) in response to the environmental issues.	October 2017
Council commissioned Independent Peer Review, prepared by Keystone Ecological Pty Ltd.	November 2017

The applicant was given a number of opportunities to address the environmental concerns that have been raised in the assessment of the proposed development. Council's Natural Environmental Section and the peer review commissioned by Council both concluded that the proposal will result in a significant impact and therefore a Species Impact Statement (SIS) is required to be prepared and submitted with the application.

Despite the advice from Council, the applicant continued to hold the view that there will not be a significant impact and that the proposal will protect the biodiversity and environmentally sensitive areas of the subject site.

Notwithstanding the differing opinions between the ecological experts, the applicant agreed to prepare an SIS for the site. However, Council was not in position to hold the application in abeyance for a significant time period to allow the formal process to be followed in relation to the SIS, and having regard to the unknown outcomes associated with an SIS. Therefore the applicant was informed that they should withdraw the application and work with Council's Natural Environment Unit to resolve this issue. However, the applicant has decided not to withdraw the application.

PROPOSED DEVELOPMENT IN DETAIL

Pursuant to Clause 78A (1) of the EP&A 1979 (as amended) this application seeks consent for the development of vacant site for the purpose of a Health Services Facility (Private Hospital).

The Hospital will provide a range of specialist health services including radiology, hydrotherapy, rehab, ICU, operating theatre, associated administrative and front of house services and a total of 84 beds. The development includes 12 consulting rooms that are attached to the Hospital.

The applicant has indicated that the final fit-out of the hospital will be subject of separate DA.

Figure 2 below is provided to assist in the identification of the proposed building footprint within the site.

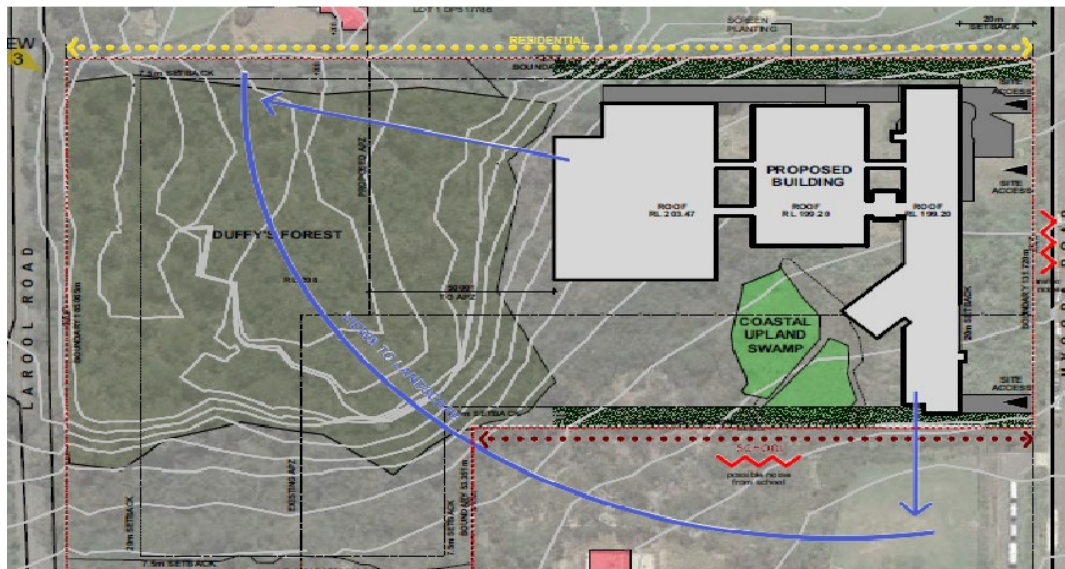


Figure 2: Site Plan (Source: Site Analysis Plan dated 28 April 2017 and prepared by Bureau SRH Architecture)

Access

In terms of vehicle access, the proposal involves:

- Drop-off / pick up zone & short-stay parking fronting Myoora Road
- Loading / Ambulance bay along the northern boundary to the lower ground level
- Primary vehicular access to the site is provided via Myoora Road, at the southern end of the site frontage.

Car parking

A total of 136 car parking spaces will be provided, with the following breakdown:

- Basement Level – 69 spaces including 6 accessible car parking spaces
- Lower Ground Floor – 28 spaces
- Ground Floor – 4 spaces

- Level 02 – 35 spaces

Staff Numbers

Total of 99 Staff, including:

- 22 Doctors
- 69 Nursing Staff
- 8 Administration Staff

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

The relevant matters for consideration under the EP&A Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1)(a)(i) – Provisions of any EPI	See the discussion on "Environmental Planning Instruments" in this report.
Section 79C (1)(a)(ii) – Provisions of any draft EPIs	See discussion of draft "Environmental Planning Instruments"
Section 79C (1)(a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 (WDCP 2011) applies to this proposal.
Section 79C (1)(a)(iia) – Provisions of any planning agreement	No Planning agreement has been entered into or offered to be entered into under Section 93F of the Act.
Section 79C (1)(a)(iv) – Provisions of the EP&A Regulation 2000	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the BCA. This matter has been addressed via a condition of consent.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p><u>Environmental Impacts</u> The environmental impacts of the proposed development on the natural and built environment are addressed under the relevant sections in this report. In summary, the impact on the local population of the Eastern Pygmy Possum as listed in the NSW Threatened Species Conservation Act (TSC Act) and local occurrences of the Duffy's Forest and Coastal Upland Swamp Endangered Ecological Communities are unresolved and in dispute. Council's assessment, which has been peer reviewed, indicates that significant impact will occur and a SIS is required to address this issue. In the absence of an SIS, the environmental impacts have not been fully addressed.</p> <p><u>Social Impacts</u> The proposed development will provide social benefits through the provision of an additional hospital in an area that people may otherwise have to travel outside the area for. The development will improve the social wellbeing of the area through improved and additional medical services and have a positive social outcome.</p> <p><u>Economic Impacts</u> The proposed development will not have a detrimental economic impact on the locality considering the proposal will provide an additional health care facility within the area, and the proposed development will have positive impacts through the creation of employment both in the short term during the construction and long term operation.</p>

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (c) – the suitability of the site for the development	The suitability of the site in terms of likely impacts on the environment and amenity has been discussed in detail in the various section of this report. In summary, the suitability of the site for the development as proposed in its current form remains uncertain, due to the fact that the proposal has not conclusively addressed the environmental impacts on Threatened Species on the site. Therefore, a determination that the site is suitable cannot be made at this stage.
Section 79C (1) (d) – any submissions made in accordance with the EP&A Act 1979 or EP&A Regulations 2000	See the discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public Interest	The public interest has been considered as part of the application process. Overall, the public interest is best served by the consistent application of the requirements of the relevant planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised and/or managed. The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be unacceptable in terms of its impact on the natural environment (specifically the threatened species). On this basis, the proposal is not considered to be in the public interest.

NOTIFICATION & SUBMISSIONS RECEIVED

The DA has been publically exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and WDCP 2011.

The DA was notified to adjoining land owners and occupiers for a minimum period of 30 calendar days commencing on 12 May 2017 and ending on 16 June 2017. Furthermore, an advertisement was placed in the Manly Daily on 13 May 2017 and notices were placed upon the site.

As a result of the public exhibition process, Council is in receipt of total of 20 submissions.

The following issues were raised in the submissions received during the notification of this application. A comment on each issue is provided as follows:

Construction related impacts

Concern is raised regarding the excavation and construction impacts associated with the development, and the potential impact on the operation of the adjoining school (the German International School).

Comment

It is expected that excavation and piling work will have the greatest potential noise and vibration impact on the operation of the school, however detailed acoustic assessments of the individual activities cannot be undertaken prior to knowing the activities/construction methods proposed, their duration and location.

As such, it is recommended that should the application be considered to be worthy of approval, that appropriate conditions should be imposed that requires a Construction/Traffic Management Plan (C/TMP) to be prepared. The C/TMP is to be prepared in consultation with the school and should include “respite periods” for noisy activities during the construction phase to mitigate potential impacts of noise on the school operation.

The issue raised is noted, however can be addressed by way of condition.

Operational Management Plan (OMP)

A submission received from the German International School has requested that the OMP accompanying the application be modified to incorporate provisions and procedures regarding the staging of staff shifts, a smoke-free environment, waste management, complaints reporting and overall management. Additionally, the school has requested that the OMP be reviewed regularly.

Comment

The applicant has submitted a revised OPM for the site which addressed all of the above points. In addition, these matters can also be addressed by way of conditions, if the application should be approved.

Traffic safety and congestion

Concern has been raised that the development will have a detrimental impact on the congestion of surrounding streets and will give rise to greater traffic hazards and risks, particularly upon students and parents of the school.

Comment

This issue is addressed in detail under Council's Traffic Referral Comments.

In summary, the applicant submitted a Traffic Impact Assessment with the application, and a revised traffic report on 25 August 2017, which assessed the likely traffic impacts of the proposal on the adjacent road network due to additional traffic and parking demand generated by the development. The revised traffic report has also addressed the specific concerns raised within the submissions.

The assessment and information provided by the applicant is considered reasonable and adequate and Council's Traffic Section raises no concerns in relation to the proposed development on traffic grounds, recognising that the proposal will be acceptable in relation to traffic impacts.

Overall, the increase in traffic generation associated with the proposed development is not considered to have a significant traffic impact on the adjacent road network and intersections nor on the amenity of adjoining and surrounding sites.

Vehicle Entry Point and Use of Larool Road for vehicles entering the site

A submission received from the German International School requested that access to the proposed development should also be provided from Larool Rd, thereby reducing the impact of traffic on Myoora Rd.

A number of submissions received have also requested that the vehicle entry point be moved to the north of the site, and that an increased setback be provided between the proposed vehicle entry point and the site's common boundary with the school.

Comment

Given the ecological issues associated with the subject site, creating another access from Larool Rd would have a detrimental and unnecessary impact on the natural features and ecological values of the site, which will not be supported by Council.

In relation to the location of the entry point, Council's Traffic Engineer notes that the location of the entry/exist point meets the relevant standards for sight distances and that the entry and exit point at the lowest point of the site is the most appropriate location.

This issue does not warrant the refusal of the application.

Car parking spaces

Concern has been raised that the proposal does provide sufficient number of parking spaces for the proposed development.

Comment

This issue is addressed in detail under the WDCP section of this report. In summary, the application has been amended to achieve full compliance with the car parking requirements.

This issue does not warrant the refusal of the application.

The cumulative impacts of the hospital on existing infrastructure

A submission received has raised concern that the proposed development will put extra strain on the infrastructure, most importantly the supply and pressure of water in the local area.

Comment

The applicant has provided sufficient documentation, including an Infrastructure Report, prepared by ADP Consulting dated 11 April 2017. The report demonstrates that the proposed development will be able to be connected to all essential services without adversely affecting the area.

The report notes that the applicant has liaised with Sydney Water, and advises that there is sufficient capacity in the water and sewer network to cater for the proposed development.

Accordingly, this issue does not warrant the refusal of the application.

INTERNAL REFERRALS

Internal Referral Body	Comments
Development Engineers	Development Engineers have reviewed the proposal and raise no objections to the proposal subject to conditions.
Environmental Investigations (Acid Sulphate)	No objection subject to conditions.
Environmental Investigations (Contaminated Lands)	No objection subject to conditions.
Environmental Investigations (Industrial)	No objection subject to conditions.
Landscape Officer	<p>The plans indicate that the proposed works are located largely over weed dominated areas of the site, i.e. the eastern portion.</p> <p>A significant rock outcrop traverses the site, however the proposed works are forward of the outcrops which are to be retained.</p> <p>The landscape plans proposed for areas around the building are considered satisfactory.</p> <p>No objections are raised in relation to landscape issues, however I would defer to the comments of Natural Environment Unit in relation to other environmental impacts.</p>
Natural Environment (Biodiversity)	<p>Council's Natural Environment and Climate Change - Biodiversity section does not support the proposal in its current form. The referral response from the Natural Environmental (Biodiversity) section is attached to this report (refer to attachment 3).</p> <p>In summary, Council Natural Environment Section has recommended refusal of the application due to the scale of impacts on native vegetation and the associated APZ requirements. The proposal is also considered to be inconsistent with relevant objectives and requirements of Council's Development Control Plan including; Part E2 - Prescribed Vegetation, E4 - Wildlife Corridors, E5 Native Vegetation and E6 – Retaining Unique Environmental Features.</p>
Natural Environment (Riparian Lands/Creeks)	<p>Council's Natural Environment and Climate Change – Riparian section does not support the proposal due to the significant uncertainties regarding the potential impact on the Coastal Upland Swamp EEC, including asset protection zone and groundwater/surface water management.</p> <p>The referral response from the Natural Environmental (Riparian Lands/Creeks) section is attached to this report (refer to attachment 3).</p>
Strategic Planning – Urban Design	The proposal sits well within the surrounding context and functions well as a hospital. The height breach is minor and will not impact negatively on the neighbouring developments. The proposal is acceptable in that respect.

Internal Referral Body	Comments
Traffic Engineer	<p>The proposed application is for a private hospital with 84 beds, 12 consultation rooms, and 99 staff.</p> <p>The Traffic Report submitted with the application outlines the traffic generation using the formula for RMS Guide to Traffic Generating Developments. The determined morning and evening peak hour trips generated for the site was 111 trips during the 8-9am and 123 trips</p>
	<p>during the 5-6pm. The report however did not provide a peak vehicle trip as outlined in the RMS guide which occurs between 3-4pm, where it coincides with staff shift changes. The assessment indicate that Myoora Road will need to bear the peak traffic generated from the hospital as well as the adjacent German International School during the school morning and afternoon peak hours 8-9am and 3-4pm.</p> <p>In this regard, the operational plan should reflect a staff shift changeover time outside of the school zone hours, mainly 8-9.30am, 2.30-4pm Mondays to Fridays.</p> <p>In terms of vehicular access the development has positioned driveway leading to the staff parking away from the school to minimise conflicts during the peak school zone times. Whilst the traffic generation will somewhat conflict with other traffic generated from sites along Myoora Road, this impact is not considered significant to warrant the refusal of this application on traffic grounds.</p> <p>Parking requirements as outlined by the RMS guidelines require 136 spaces. The site is proposed to provide 134 spaces including the provision of 7 disabled parking spaces. Council's preference is to provide 3 disabled spaces and expand the car parking capacity to a total of 136 spaces and this will be conditioned accordingly.</p> <p>There are four vehicular access points within the hospital's frontage, with the northern and southern driveways to be 6.0m maximum width. Due to the close proximity to the adjacent school and for pedestrian and school children safety, it is considered essential to implement a traffic speed control device such as a speed hump on all driveways entering and exiting Myoora Road, and with exiting traffic having clear uninterrupted sight distance triangle in accordance to Australian Standards AS2890.1:2004.</p> <p>A Construction Traffic Management Plan (CTMP) should consider the safety and noise issues raised by the community and also considering the issues raised by the German International School.</p> <p>Generally on-street parking restrictions for the entire site frontage on Myoora Road will not be supported. However for exiting driveways there is scope to introduce a 4m No Stopping zone on each side of the two way driveway servicing building 01, and the single exiting driveway from the main entrance of the hospital and the two way driveway servicing building 02. This will be subject to approval from the Northern Beaches Local Traffic Committee, with all signposting work undertaken at no cost to Council.</p>

Internal Referral Body	Comments
Water Management	Recommended for refusal. Refer to the Riparian referral response.

EXTERNAL REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The application was referred to Ausgrid under clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure).</p> <p>Ausgrid provided their comments on 11 May 2017 in which no objection was raised subject to conditions.</p> <p>The conditions provided by Ausgrid may be included in a consent should this application be approved.</p>
NSW Rural Fire Service (RFS)	<p>The DA was referred to the RFS for assessment as the development is classified as Integrated Development in that it requires authorisation under Section 100B in respect of bushfire safety of land that could lawfully be used for Special Fire Protection purposes pursuant to the Rural Fires Act 1997.</p> <p>The RFS raise no objection to the proposed development subject to General Terms of Approval. Compliance with these GTA's can be incorporated as conditions of consent, should the application be considered worthy of approval.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All EPIs (State Environmental Planning Policies (SEPPs), Regional Environment Plans (REPs) and Local Environment Plans (LEPs)), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each EPI (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs)

A further consideration is required for the following State Policies:

1. SEPP (State and Regional Development) 2011
The proposed development does not constitute State Significant Development under State Environmental Planning Policy (State and Regional Development) 2011.

Of more relevance, Clause 20 of this policy cross-references Schedule 4A of the EP&A Act 1979, which identifies a range of developments that, either due to their nature, scale, value, impact or location, are deemed to be of regional significance and which, as a result, require that the SNPP become the consent authority.

In this regard, Schedule 4A (3) indicates that Development that has a capital investment value of more than \$20 million and Private Infrastructure and Community Facilities over \$5 million are of regional significance. As indicated on the DA form and as confirmed by a quantity surveyors report accompanying the application, the proposed development has a capital investment value of \$22 million. As such, the consent authority for the application will be the SNPP.
2. SEPP 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Contaminated Lands (SEPP 55) establishes State-wide provisions to promote the remediation of contaminated land.

The SEPP 55 states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist councils and developers in determining when land has been at risk.

Clause 7 of the SEPP 55 requires that a consent authority must not grant consent to a development if it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

The Statement of Environmental Effects (dated April 2017 as prepared by Think Planners) notes on page 50 that "given the historical use of the site that does not include any occupation by buildings or any rural activity, land contamination is not likely".

Council records reveal that the site has been used continuously and over a significant period of time vacant land with no known use. However, no indications are provided to suggest that the site may have been used for purposes which may result in contamination.

The application was also referred to Council's Environmental Health Officer who raised no objection to the proposal subject to conditions. Accordingly, the land is considered to be suitable for the development subject to conditions.

3. SEPP 64 – Advertising and Signage

Clause 13 of the SEPP states that a consent authority must not grant development consent to an application to display signage unless the advertisement of advertising structure:

- a) Is consistent with the objectives of this policy as set out in clause 3 (1)(a);
- b) Has been assessed by the consent authority in accordance with the assessment criteria in Schedule 1 and the consent authority is satisfied that the proposal is acceptable in terms of its impact; and
- c) Satisfies any other relevant requirement of this Policy.

The proposal includes a total of four (4) business identification signs, which are as follows:

Sign Details	Size
Basement Car Park Entry Sign	1,900mm x 1,500mm
Main Hospital Entry Sign	1,900mm x 1,500mm
Hospital Identification Sign	1,100mm x 5,000mm
Service Entry Sign	1,900mm x 550mm

The proposed development has been assessed using the assessment criteria in Schedule 1 below and overall, the proposed signage locations and size are considered to be compatible with the desired amenity and visual character of the area. The potential impacts are considered to be acceptable and consistent with the requirement of the SEPP.

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed development includes business (identification) and wayfinding signage. The signage is necessary to help identify and locate the facility. It comprises a coordinated suite of signage which is appropriate in scale and integrated with the development. It is compatible with the existing and future character of the area.	Yes
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Although the signage does not involve any advertising, its design is compatible with other wayfinding and business signage in the area.	Yes
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscape or residential areas?	The signage is low key and integrated into the design of the development. It will not detract from the amenity or visual quality of heritage items in the vicinity.	Yes

Matters for Consideration	Comment	Complies
3. Views and vistas Does the proposal obscure or compromise important views?	No important views are impacted by the proposed signage.	Yes
Does the proposal dominate the skyline and reduce the quality of vistas?	The signage is complementary to the building and does not dominate the skyline.	Yes
Does the proposal respect the viewing rights of other advertisers?	There are no advertising signs in the vicinity of the proposal, therefore there is no impact on the viewing rights of other advertisers.	Yes
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	As noted above, the signage is low key and subservient to the overall building. The scale, proportion and form of the signage are compatible with the streetscape and do not detract from the surrounding setting.	Yes
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The signage will assist in providing visual interest along the Myoora Road frontages. This is particularly important to identify the use and entry points to the facility.	Yes
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	There is currently limited signage on the site. The proposal involves a coordinated suite of signage that is simple, clear and uncluttered. It will not result in excessive signage.	Yes
Does the proposal screen unsightliness?	The signage is not intended to screen unsightliness.	Yes
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No.	Yes
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	As noted above, the signage has been designed as an integral part of the building and its surrounds. The different forms of signs, their location and design are appropriate to the intended message and their relationship to the building and landscape.	Yes
Does the proposal respect important features of the site or building, or both?	As noted above, the signage is subservient to the building and does not impact on important architectural or landscape features.	Yes
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The building itself is innovative and the signage has been designed as a compatible component of the overall facility.	Yes
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Some of the signs will be backlit. In these instances, lighting will be integrated into the sign design.	Yes
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	As noted above, some of the signs will be backlit but the level of illumination will be modest and will not result in unacceptable glare.	Yes
Can the intensity of the illumination be adjusted, if necessary?	The signs have the potential to be adjusted if necessary.	Yes
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	Because of the nature of the signage, it is not expected that the signs will impact on road, pedestrian or bicyclist safety. In particular, the signs will remain static and will not create glare.	Yes
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signs will not impact on sightlines from public areas	Yes

4. SEPP (Infrastructure) 2007

For the purpose of this development, the proposed private hospital is defined as a Health Services Facility which is permissible with consent within the RU4 Primary Production Small Lots zone.

A health services facility is defined as a facility used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes the following:

- (a) Day surgeries and medical centres,
- (b) Community health service facilities,
- (c) Health consulting rooms,
- (d) Facilities for the transport of patients, including helipads and ambulance facilities,
- (e) Hospitals.

The proposed Health Services Facility (Private Hospital and associated Health Consulting rooms) is consistent with the general aims of the SEPP to facilitate the effective delivery of infrastructure across the State by providing greater flexibility in the location infrastructure and service facilities.

Clause 45 – Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any DA (or an application for modification of consent) for any development carried out:

- Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);
- Immediately adjacent to an electricity substation;
- Within 5m of an overhead power line;
- Includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line.

The application was referred to Ausgrid under clause 45(2) of SEPP Infrastructure.

Ausgrid provided their comments on 11 May 2017 in which no objection was raised subject to conditions. The conditions provided by Ausgrid may be included in a consent should this application be approved.

Clause 102

The proposed development does not trigger the provisions of Schedule 3 Traffic Generating Development and does not require a referral to Roads and Maritime Services as it provides less than 100 hospital beds.

5. SEPP 33 – Hazardous and Offensive Development

The SEPP requires Council to assess whether or not the proposed development stores or requires the transport of dangerous goods above its screening thresholds. If any of the SEPP's thresholds are breached, Council must then determine whether or not the proposed development is hazardous or offensive by considering the measures proposed to reduce the impact of the dangerous goods, including setbacks from the site boundaries, in accordance with the SEPP.

The application does not seek approval for the internal fit-out or operation of the hospital or other medical facilities. As such, a detailed assessment under the SEPP is not required to be undertaken at this stage as no hazardous materials are proposed to be stored utilised within the premises. Based on the above, the proposed development is not considered to be hazardous or offensive development as defined by the SEPP.

A further consideration is required of the following Draft State policies: Draft SEPP (Infrastructure) 2007

The SEPP is currently under review as part of the five (5) year statutory review process. Key changes proposed include:

- Supporting health infrastructure to allow delivery of hospital beds more quickly
- Changes to correctional facilities and police services to provide for a safer and more secure community
- Optimising the use of commuter hubs by providing more services and conveniences at transport interchanges
- Enabling councils to manage and maintain their lands better, including their operational lands.

Some of proposed key amendments to Health Services Facilities to help lower costs and reduce timeframes for the delivery of health service facilities include:

- Introduction of a new complying development regime which permits health services facilities, buildings used for training/education of professional, commercial premises, administration buildings, child care centres, and car parks within the boundaries of existing health facilities
- Expanding the permissibility of health services facilities in additional residential and business zones
- Expansion of the use of Schedule 1 exempt provisions within the boundaries of an existing health services facility for public authorities to include private operators
- Amending the definition of 'health services facility' to be consistent with the Standard Instrument LEP

The proposed amendments are not likely to impact on compliance of the development with the Infrastructure SEPP.

STATE REGIONAL ENVIRONMENTAL PLANS

There are no SREPs applicable to the site.

LOCAL ENVIRONMENTAL PLANS

WARRINGAH LOCAL ENVIRONMENT PLAN 2011

The Warringah Local Environment Plan 2011 is applicable to the development.

Is the development permissible with consent?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
Aims of the LEP?	No The proposal in its current is found to be inconsistent with the aims of the LEP, in that Council's assessment, which has been peer reviewed, indicates that significant impact will occur and a SIS is required to address this issue. In the absence of an SIS. Therefore, the proposal, as submitted does not protect, conserve and manage biodiversity and the natural environment of the site.
Zone objectives of the LEP?	No The proposed development is found to be generally consistent with zone objective, with exception to the objective that relates to maintaining the natural vegetation of the site. This issue has been discussed in detail in the various sections of the report and included as reason for refusal.

Principal Development Standards

Relevant Development Standard	Requirement	Proposed	Variation (%)	Compliance
Clause 4.3 Height of Buildings	8.5m	8.5m – 13m	52.9%	No

Compliance Assessment Summary

Relevant Clauses	Compliance with Requirements
Part 1 Preliminary	
1.2 Aims of the Plan	Yes
Part 2 Permitted or Prohibited Development	
2.1 Land Use Zones	Yes
2.7 Demolition requires consent	N/A
Part 4 Principal development standards	
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes

Relevant Clauses	Compliance with Requirements
Part 5 Miscellaneous Provisions	
5.9 Preservation of trees or vegetation	Yes
Part 6 Additional Local Provisions	
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

Zoning and Permissibility

The site is zoned 'RU4 - Primary Production Small Lots' and Hospitals are prohibited within the RU4 Zone. However, the site is located within Area 18 identified in Schedule 1 of the WLEP 2011. Area 18 applies to certain lands in the vicinity of Mona Vale and Myoora Roads, Terrey Hills (which includes the subject site) and permits developments for a range of purposes including hospitals. Accordingly, the proposed development is permissible with consent.

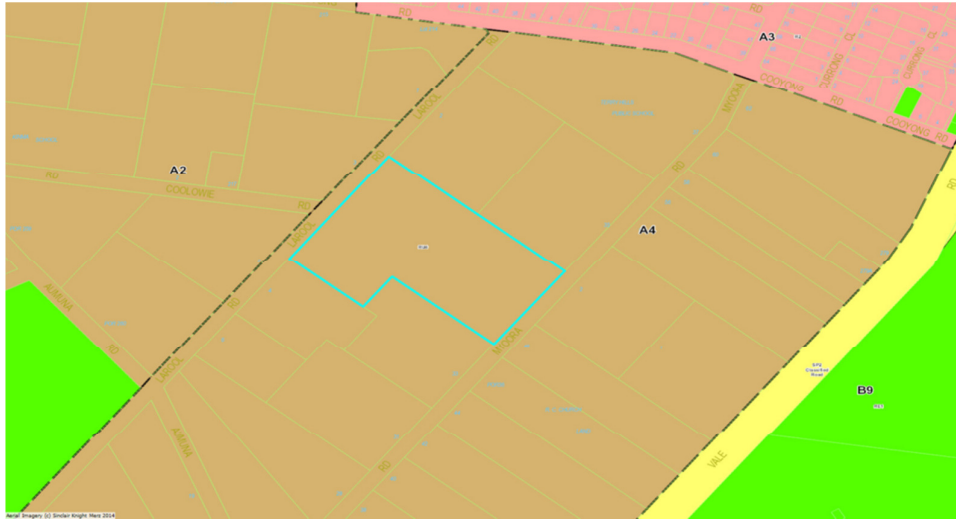


Figure 3 – Site zoning under WLEP 2011 (note: site boundaries shown in blue)

Detailed Assessment

4.6 Exceptions to development standards

The following assessment of the variation to Clause 4.3 – Height of Buildings Development Standard is assessed taking into consideration the questions established in 'Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46'.

Permitted Maximum:	8.5m
Proposed:	Up to 13m
Is the planning control in question a development standard	Yes
Is the non-compliance with to the clause requirement a Numerical and/or Performance	Numerical
If numerical enter a % variation to requirement	52.9%

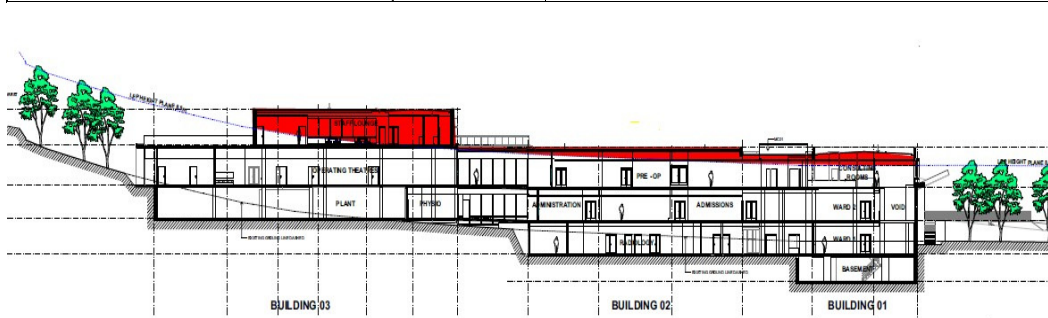


Figure 4: Areas of Building Height Non-Compliance are shown in red (Source: plans, as prepared by Bureau SRH Architecture)

Is the planning control in question a development standard?

The prescribed Height of Buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

The proposed development has a variable height between 8.5m and reaches a maximum of 13m on a portion of the proposed building which includes the lift over run. The variable maximum height reflects the sloping topography of the site, with the majority of the envelope being compliant with the 8.5m building height development standard.

A recent Land and Environment Court Case "Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90", found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of Wehbe V Pittwater [2007] NSW LEC 827 and demonstrate the following:

- Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- The applicant must satisfy the consent authority that **"the objection is well founded,"** and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That there are sufficient environment planning grounds, **particular to the circumstances of the proposed development** (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity); and
- That maintenance of the development **standard is unreasonable and unnecessary** on the basis of planning merit that **goes beyond the consideration of consistency with the objectives of the development standard** and/or the land use zone which applies to site.

Clause 4.3 Objectives

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

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

- a. **To ensure that buildings are compatible with the height and scale of surrounding and nearby development.**

Comment:

The subject development is for the construction of a three storey building on a parcel of land which has been vacant for an extended period of time and is largely vegetated and accordingly, any development of this site will result in changes to the streetscape and the attributes of the site.

The development proposed is of an architecture that incorporates recessive setbacks and articulation in response to the topography of the land which results in each façade of the building not being of a scale that is anticipated to be visually dominant. Notwithstanding the height non-compliance proposed, the development is considered to be compatible with other surrounding developments and is contextually an appropriate fit into the landscape.

Accordingly, it is considered that the proposal satisfies this Objective.

- b. **To minimise visual impact, disruption of views, loss of privacy and loss of solar access.**

Comment:

The visual impact of the development is reduced by virtue of setbacks (given the unique site location), landscaping and architectural treatment. There are no significant water views enjoyed from surrounding sites. The proposed development has been found to be consistent with the applicable planning controls in relation to amenity of the adjoining properties. Shadow diagrams show that the areas of non-compliance will not impact on the solar access of adjoining properties.

Accordingly, it is considered that the proposal satisfies this Objective.

- c. **To minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments.**

Comment:

The development will not have any adverse impact on the scenic quality of Northern Beaches' coastal and bush environments.

The development is considered to satisfy his objective.

- d. **To manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.**

Comment:

The non-compliance is considered to be minor and, because it does not cover a large area of the roof it will not be visually prominent and the non-compliance will not unreasonably impact upon the visual appearance of the development when viewed from nearby public places.

In conclusion, a variation to the Height of Buildings Development Standard under Clause 4.6 of WLEP 2011 can be supported because the proposed height of the development is consistent with the qualitative objectives of the Standard.

What are the underlying objectives of the zone?

The objectives of the RU4 zone are:

- To enable sustainable primary industry and other compatible land uses.
- To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.
- To maintain and enhance the natural landscape including landform and vegetation.
- To ensure low intensity of land use other than land uses that are primary industry enterprises.
- To maintain the rural and scenic character of the land.

Comment:

The proposed development specifically relating to the non-compliance with the height requirement is considered to be generally consistent with the objectives of the zone for the following reasons:

- The proposed development is permissible within the Zone, and is therefore considered to be compatible land use;
- The benefits of providing additional medical facility to service the needs of the community will also result in economic benefits through flow on effects;
- The development is for a Health Facility which provides a facility and service that will meet the day-to-day needs of local and nearby residents;
- The intensity of the development is assessed and found to be generally acceptable; and
- The non-compliance component of the development will not have significant impact on the natural features of the site.
- The design of proposed development will maintain rural character of the area.

Justification for the variation

As per the decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, a request for a variation to a development standard must demonstrate sufficient environmental planning grounds particular to the circumstances of the proposed development and development site rather than grounds that would apply to a similar development on the site or a development in the vicinity.

As such, the applicant's justification has been prepared on the grounds of there being sufficient environmental planning grounds. As such, the grounds for the variation that are particular to the circumstances of the proposed development are that the site is sloping and the proposed height responds to the existing topography. In view of the particular circumstances of this case, strict compliance with Clause 4.3 of the LEP is considered to be both unnecessary and unreasonable on the following environmental planning grounds:

- The proposal is consistent with the intent of Clause 4.3 which is to maintain the character of the area. The proposal achieves this outcome, notwithstanding the proposed numerical variation;

- In this instance, it is considered that removal of the non-complying elements to achieve strict compliance would not result in an improved planning outcome – the additional height does not cause any material impact in terms of privacy or view loss to neighbouring residential areas, or adverse overshadowing to residential properties or the public domain. The minor variation results in an improved internal amenity for the development and a built form in keeping with adjoining development and in essence, would result in a better planning outcome;
- Despite the additional height, the scale of development along Myoora Road will be comparable, thus creating a unified scale in this part of the locality;
- The areas of non-compliance do not have any privacy impacts. Shadow diagrams show that the areas of non-compliance will not impact on the solar access of adjoining properties; and
- It is considered that the proposed height variation will not create such impacts that it would be contrary to the public interest.

Public Benefits

The proposed variation to the height control of the LEP does not result in a loss of amenity to the adjoining properties and is therefore considered to be acceptable particularly when balanced against the benefits of the development which are:

- The development will provide additional medical services and facilities to the area;
- The development is not inconsistent with the aims and objectives of the zone and allows for a land use that provides facilities and services to meet the day to day needs of residents;
- The development is consistent with the aims and objectives of SEPP (Infrastructure) 2007 to facilitate the effective delivery of infrastructure across the State by providing greater flexibility in the location of infrastructure and services facilities;
- The additional building height will not reduce privacy, increase overshadowing or present unacceptable visual impacts to surrounding properties. The shadow diagrams accompanying the application demonstrate that appropriate solar access will be retained to the adjoining properties; and
- It is considered that the proposed height variation will not create such impacts that it would be contrary to the public interest.

The assessment above demonstrates that the proposal is consistent with the objectives of the building height standard.

Concurrence of the Director-General

Clause 4.6(4) (b) requires that the concurrence of the Director-General has been obtained.

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard is assumed.

DEVELOPMENT CONTROL PLANS

WARRINGAH DEVELOPMENT CONTROL PLAN 2011

The Warringah Development Control Plan 2011 is applicable to the development.

Built Form Controls

Part B: Built Form Controls			
Relevant Control	Requirement	Proposed	Compliance
B1 Wall Heights	7.2m	12.15m	No
B4 Site Coverage	30%	16% (6,560m ²)	Yes
B7 Front Setback	20m	Minimum of 20m (Myoora Rd) In excess of 20m (Larool Rd)	Yes
B5 Side Setback	7.5m	7.5m on both northern and southern boundaries	Yes
B9 Rear Setback	7.5m	Not applicable as the site has dual frontage	N/A
D1 Landscaped Open Space and Bushland Setting	50%	84%	Yes

Detailed assessment of listed numeric built form non-compliances

The following provides a merit-based assessment of the above non-compliance against the objectives of the respective clause.

Clause B1 Wall Height

Description of non-compliance

The non-compliance with the wall height built form control is apparent across the entire development and is largely a consequence of the floor to ceiling height requirements for hospitals and the topography of the land.

(Note: In measuring wall height, the clause stipulates that measurement is taken from ground level (existing) to the underside of the ceiling on the uppermost floor of the building).

Merit consideration

The development is considered against the objectives of the control as follows:

- **To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.**

The development has been designed to architecturally respond to its bushland setting. The photo montages submitted with the application shows that, while a new built form will be introduced onto the landscape, the visual impact will not be unreasonably excessive and would not be dominating to the landscape and detracting from the bushland setting of adjacent reserves

It is considered that the development satisfies this objective.

- **To ensure development is generally beneath the existing tree canopy level.**

The vegetation on the site is subject to modification through partial clearing to provide for the Inner and Outer Protection Area for bushfire proposes.

The height of the remaining canopy will be varied throughout the area due to the topography of the site and it would be unreasonable to expect the development to occur beneath the existing (or modified) tree canopy.

It is considered that the development satisfies this objective.

- **To provide a reasonable sharing of views to and from public and private properties.**

The proposed development will not have unreasonable view impact on private or public properties.

It is considered that the development satisfies this objective.

- To minimise the impact of development on adjoining or nearby properties.

Privacy

The non-compliant elements will not have any unreasonable impact upon the privacy of neighbouring residential properties.

Solar Access

The shadow diagrams provided by the applicant indicate that the non-compliant elements of the development will not result in unreasonable overshadowing over the principal private open space areas of the neighbouring residential properties.

It is considered that the development satisfies this objective.

- To provide sufficient scope for innovative roof pitch and variation in roof design.

The development proposes a flat floor over three separate modules which, because of the layout of each building on the site, provide sufficient variation in roof form to maintain architectural and visual interest.

It is considered that the development satisfies this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WDCP 2011 and the objectives specified in s.5 (a) (i) and (ii) of the EP&A Act 1979. Accordingly, this assessment concludes that the variation to the wall height can be supported in this particular circumstance.

Compliance Assessment Summary

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction		
A.5 Objectives	Yes	Yes
Part B Built Form Controls		
B1 Wall Heights	No	Yes
B4 Site Coverage	Yes	Yes
B5 Side Boundary Setback	Yes	Yes
Side Setback – RU4	Yes	Yes
B7 Front Boundary Setback	Yes	Yes
Part C Siting Factors		
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Mixed Use Premises (Residential/Non-Residential)	Yes	Yes
Part D Design		
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment		
E1 Private Property Tree Management	Yes	Yes
E1 Prescribed Vegetation	Yes	Yes
E3 Threatened Species, populations, ecological communities listed under State or Commonwealth legislation or high conservation habitat (see Referral Response Natural Environment Unit (Biodiversity) in attachment section of this report)	No	No
E5 Native vegetation	No	No
E6 Retaining unique environmental features	No	No
E7 Development on land adjoining public open space	Yes	Yes
E8 Waterways and riparian land (see Referral Response – Natural Environment Unit (Riparian) in this report)	No	No
E10 Landslip Risk	Yes	Yes

Detailed Assessment

Clause C3 – Parking Facilities

An assessment of the car parking provisions, having regard to the requirements under WDCP 2011 and the RMS Guide to Traffic Generating Development has been undertaken. In summary, the proposed development provides on-site car parking for 136 vehicles, which meets the parking demand for the proposed development.

Clause D3 – Noise

An Acoustic Assessment of the proposed development has been carried out by Acoustic Logic and accompanies the development application. The assessment has predicted noise impacts at the most sensitive boundary positions, taking into account distance attenuation, building reflections and directivity. The calculations show that all the relevant criteria (as provided for in the WDCP 2011 and EPA NSW Industrial Noise Policy) for noise emissions will be met. In addition, the LAmax sound level generated by activities of the premises in each space is expected to comply with the NSW Industrial Noise Policy.

The assessment concludes that the proposed facility will have no adverse noise impact at the nearest residential receivers or any other receiver subject to implementation of the recommendations in the report.

Clause D9 – Building Bulk

Clause D9 seeks to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

In respect to the requirement of this Clause, Council's Urban Designer has reviewed the proposed development and has raised no objection to the design of the development in relation to building bulk. Accordingly, it is considered that proposal represents good design and innovative architecture and will enhance the urban environment. The visual impact of the building will be positive.

The proposal is found to be satisfactory in relation to the objectives of this Clause.

Clause D18 – Accessibility

An Accessibility Report has been submitted with the application and whilst the report relies on significant detail being provided at the fit-out stage, it concludes that the development has the ability to meet the requirements of the DDA, BCA 2015 including the Australian Standards for people with disability including AS/NZ 2890.6-2009, AS1428.1 Amendment 1, AS/NZ1428.4.1 2009 and elements of Australian Standards for people with disability.

Accordingly, it is considered that the proposal is acceptable in terms of accessibility subject to the imposition of standard conditions of consent.

Clause D23 – Signs

The objectives of D23 are:

- To encourage well designed and suitably located signs that allow for the identification of a land use, business or activity to which the sign relates.
- To achieve well designed and coordinated **signage** that uses high quality materials.
- To ensure that signs do not result in an adverse visual impact on the streetscape or the surrounding locality.
- To ensure the provision of signs does not adversely impact on the amenity of residential properties.
- To protect open space areas and heritage items or conservation areas from the adverse impacts of inappropriate signage.

A detailed assessment of the proposed signage has been provided earlier in the report in relation to SEPP 64 – Advertising and Signage. The assessment indicates that the signage is appropriate and consistent with the provisions under SEPP 64. Similarly, it is considered that the proposed signage is consistent with the objectives of the Warringah DCP Part D23.

Clause E3, Clause E5, Clause E6 and Clause 58

Council's Natural Environment sections (Biodiversity and Riparian) do not support the proposed development due to the significant uncertainties regarding the potential impact on the Coastal Upland Swamp EEC asset including asset protection zone and groundwater/surface water management etc.

As such, the proposal does not satisfy the requirements of the Protection of Waterways and Riparian Lands Policy, Threatened Species Conservation Act 1995, Environment Protection and Biodiversity Conservation Act 1999 and following clauses of the Warringah DCP:

- E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat
- E5 Native Vegetation
- E6 Retaining unique environmental features
- E8 - Waterway and Riparian Land

Based on the assessment provided by Council's Natural Environment Sections, the application is therefore recommended for refusal.

OTHER MATTERS

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

This section requires a range of matters to be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats.

Section 5A of the EPA Act, 1979 contains the relevant provisions for the assessment of biodiversity issues for all applications. The matters for consideration under section 5A include a range of matters that must be considered and Council is required to adopt a conservative approach in its determination of the biodiversity value.

The applicant is required to provide information to satisfy the Consent authority (which includes the assessment of significance) to demonstrate that there is little or no significance or that satisfactory mitigation offsets, harm minimisation or other approved or recognised conservation strategies can be adopted or implemented to achieve satisfactory outcomes, and most importantly avoid significant adverse effects on the biodiversity values of a locality.

In this case, the assessment of this application found that the application was deficient in identifying the relevant environmental impacts associated with this site. Council's Natural Environmental sections and

an external peer review done by Keystone Ecological Pty Ltd concluded that a Species Impact Statement (SIS) is required as to fully and properly determine the impact of the proposed development on the threatened species and communities.

The applicant was advised that a SIS would be required at the pre-lodgement stage, but elected to lodge the DA without an SIS on the basis that they disagreed with Council's position. The applicant was given a number of opportunities to rectify the deficiencies in the application in relation to the environmental issues affecting this site, including two deferrals from the Sydney Planning Panel agenda. Despite the recent decision by the Applicant to prepare and submit a SIS, the significant delay and additional process it must follow render such an undertaking beyond the scope of the current application. Therefore, the application is recommended for refusal on this basis.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention through Environmental Design.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

The proposed is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable.

Warringah Section 94 Development Contributions Plan		
Contributions based on a total development cost of \$ 22,043,000.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 209,408.50
Section 94A Planning and Administration	0.05%	\$ 11,021.50
Total	1%	\$ 220,430.00

CONCLUSION

This report provides a comprehensive assessment of the DA for the construction of a Health Services Facility (Private Hospital) with associated consulting rooms, car parking, signage and landscaping.

The application has been considered against the relevant matters for consideration under Section 79C of the EP&A Act 1979. This assessment has taken into consideration the plans and all documentation submitted with the application, all referral responses received from relevant stakeholders and all community submissions received during the public exhibition periods.

The assessment of this application found that the application is deficient in addressing the primary environmental impact associated within the subject site. Council's Natural Environmental sections and an external peer review done by Keystone Ecological Pty Ltd concluded that the Species Impact Statement (SIS) is required in order to determine the actual impact of the proposed development on the threatened species and endangered ecological communities.

The applicant was advised that an SIS would be required at the pre-lodgement stage, but elected to lodge the DA without an SIS on the basis that they disagreed with Council's position. The applicant was given a number of opportunities to rectify the deficiencies in the application in relation to the environmental issues affecting this site, including two deferrals from the Sydney Planning Panel agenda. Despite the recent decision by the Applicant to prepare and submit a SIS, the significant delay and additional process it must follow render such an undertaking beyond the scope of the current application. Therefore, the application is recommended for refusal on this basis.

Notwithstanding the outstanding ecological issues and the recommendation for refusal of the application, the remainder of the assessment, including planning, urban design, character, landscaping, bushfire, traffic, stormwater, services infrastructure and noise has found that the proposal is generally acceptable and can be supported subject to conditions.

The development includes non-compliances with the 8.5m Height of Buildings Development Standard as prescribed under Clause 4.3 of the WLEP 2011. It is noted that the non-compliance is generally a result of the topography of the site. The variations sought have been assessed under the provisions of Clause 4.6 of the WLEP 2011 where:

- 1) The proposal in relation to the non-compliance component of the development is considered to be consistent with the objectives of the Development Standard and the Ru4 zone in the WLEP 2011.
- 2) The provision of health care facility (private hospital) was considered to be in the public interest and the proposal is considered to be consistent with the objectives of the Development Standard
- 3) That there are sufficient environmental planning grounds to justify contravening the development standard; and
- 4) That compliance with the development standard is both unreasonable (due to the constraints of the site and the required functionality of the use) and unnecessary (in that full compliance would not necessarily result in a better outcome) in the circumstances of the case.

The request to vary the development standard under Clause 4.6 is included in Attachment 6 of this report.

The public exhibition of the DA resulted in a total of 20 individual submissions, all of which raised concerns with the proposed development. The majority of the submissions raised concerns with regards to traffic congestion, conflict with school hours and construction related impacts. The issues raised in the submissions have been addressed in the "Public Notification" section of this report.

As a direct result of the application and the consideration of the matters detailed within this report, it is recommended that the Sydney North Planning Panel (SNPP), as the determining authority, refuse this application for the reasons detailed within the "Recommendation" section of this report.

RECOMMENDATION (REFUSAL)

That the SNPP, as the consent authority, pursuant to Clause 80(1) (a) of the EP&A Act 1979 (as amended), REFUSE Development Consent to Development Application No. DA2017/0385 for the construction of a Health Services Facility (Private Hospital) with associated consulting rooms, car parking, signage and landscaping at Lot 2 DP 1145029, Myoora Road, Terrey Hills subject to the reasons outlined as follows:

- 1) Pursuant to Section 78A (8) (b) and Section 79C (1) (b) of the Environmental Planning and Assessment Act, 1979, the development application was not accompanied by a Species Impact Statement.
- 2) Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the aims and objectives of Warringah Local Environmental Plan 2011 in that there is insufficient information provided with the application to properly assess the environmental impacts on the site.
- 3) Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(1) (a) of Warringah Development Control Plan 2011, the development is inconsistent with the following Clauses as follows:
 - E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat
 - E5 Native Vegetation
 - E6 Retaining unique environmental features
 - E8 - Waterway and Riparian Land