

## SYDNEY NORTH PLANNING PANEL

### SUPPLEMENTRY REPORT

<b>Panel Reference</b>	2017SNH040
<b>DA Number</b>	DA2017/0385
<b>LGA</b>	Northern Beaches Council
<b>Proposed Development</b>	Construction of a Health Services Facility (Private Hospital) with associated consulting rooms, car parking, signage and landscaping
<b>Street Address</b>	Lot 2 DP 1145029, Myoora Road, Terrey Hills
<b>Applicant/Owner</b>	Gran-Dia Investments Pty Ltd (Owner) Wyvern Health Pty Ltd (Applicant)
<b>Date of DA Lodgement</b>	28 April 2017
<b>Number of Submissions</b>	Public Exhibition No. 1 (12 May 2017 to 16 June 2017) - 20 submissions received.  Public Exhibition No. 2 (12 January 2018 to 15 February 2017) - 4 additional submissions received.  Total – 24 Submissions received
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>	Schedule 4A Clause Private Infrastructure and Community Facilities over \$5 Million
<b>List of all relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979;</li> <li>• Environmental Planning and Assessment Regulation 2000;</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011;</li> <li>• State Environmental Planning Policy No. 33– Hazardous and Offensive Development;</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land;</li> <li>• State Environmental Planning Policy No. 64– Advertising and Signage;</li> <li>• State Environmental Planning Policy – Infrastructure 2007;</li> <li>• Warringah Local Environmental Plan 2011; and</li> <li>• Warringah Development Control Plan 2011.</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Attachment 1 - Natural Environment and Climate Change Referral Response.</li> <li>• Attachment 2 - Peer Review, as prepared by Keystone Ecological Pty Ltd.</li> <li>• Attachment 3 – Species Impact Statement (SIS), as prepared by Narla Environmental</li> </ul>
<b>Report by</b>	David Kerr – General Manager for Planning Place & Community
<b>Report date</b>	21 March 2018

## PURPOSE OF THIS REPORT

This report provides a brief summary of the assessment undertaken by Council regarding the additional information provided by the applicant (including the SIS) in an attempt to resolve the environmental issues identified within the assessment of the application.

This report does not revisit any matter raised in the previous Assessment Officer's report prepared by Council and considered by the SNPP at its meeting of 20 December 2017, which was not specifically referred to in the minutes of the SNPP meeting.

## RELEVANT BACKGROUND

The Development Application was referred to the Sydney North Planning Panel on 20 December 2017.

At that meeting the Panel resolved to defer the determination of the application to enable Council to assess the Species Impact Statement (SIS), which was submitted to Council on 19 December 2017.

On 21 February 2018, the applicant has provided a letter which proposed the following amendments to the SIS as submitted to Council:

- That the Duffys Forest Conservation Area identified in the SIS to be converted to a "Biodiversity Stewardship Site" pursuant to Part 5 Division 2 of the *Biodiversity Conservation Act 2016*.

The applicant states that the Biodiversity Stewardship Site would only be entered into if approval of the Development Application is granted.

- That the commitments to a one-off payment at the Occupation Certificate stage to the Dundundra Reserve Trust is now amended to comprise two separate payments of 50% at Construction Certificate stage and 50% at Occupation Certificate.
- Confirm that the works of revegetation and crossing structure in the Larool Road reserve are to be funded by the applicant as part of the construction of the hospital.

### Funding For Biodiversity Conservation to Dundundra Falls Reserve

The SIS identifies a proposed one-off payment (\$75,000) to the Dundundra Falls Conservation Trust towards the management of nearby Crown Land by a community volunteer trust. The SIS states that the one off payment is intended to assist in protecting and conserving habitats within the parcel of Crown Land, and should be required a condition of consent prior to the issue of Construction Certificate.

There are no legislative provisions under the Act, for the applicant to be proposing this measure within the SIS. Accordingly, the assessment of the SIS by Council has not considered the \$75,000 commitment to the Dundundra Falls Trust in the absent of any legal mechanism.

## **ASSESSMENT OF THE AMENDED INFORMATION**

### **Relevant clauses within the WDCP 2011**

E2 – Prescribed Vegetation; E3 - Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat; E4 – Wildlife Corridoes; E5 - Native Vegetation; and E6 - Retaining unique environmental features

The Biodiversity section of Council's Natural and Climate Change department has completed a detailed assessment of the SIS which is included in Attachment 1 of this report.

Council's assessment of the SIS has identified the following issues:

- The extent of vegetation clearing and impacts required to establish APZs including within the existing 88b easement;
- Demonstration that the local population of Eastern Pygmy- possum is part of a population located in nearby larger areas including Dundundra Falls Reserve (Crown Land) and Kurring-gai National Park;
- A lack of clarity around compensatory options described in the SIS including either a Conservation Agreement or Biodiversity Stewardship Site established over the residual 0.95ha of vegetation on site (note: subsequent clarification has been provided by the applicant outside of the SIS);
- The feasibility of the effectiveness of proposed mitigation measures including rope bridges over Larool Road, revegetation within the road verge/carriageway and revegetation within already vegetated areas on site; and
- The inconsistency of the proposal with Warringah Development Control Plan 2011 (WDCP 2011) part E – the Natural Environment (as identified above).

In summary, Council does not support the proposed development and SIS due to the significant impact on the Duffys Forest Ecological Community, the Coastal Upland Swamp, and the uncertainty regarding to the extent of vegetation clearing and impact required to establish the required Asset Protection Zone (APZ).

Council has subsequently engaged an independent peer review of the SIS. The review, prepared by Keystone Ecological Pty Ltd concludes that the SIS has not address the direct and indirect impacts for many threatened entities on site and has not explored alternative design.

### Clause E8 – Waterways and Riparian Lands

Council does not support the proposal due to the uncertainties regarding the potential impact on the Coastal Upland Swamp EEC, including the groundwater/surface water management.

The referral response from Council's Natural Environment section is attached to this report (refer to Attachment 1).

Council has engaged an external Engineer to independently review the water management aspects of the proposal and the potential impact on the Coastal Upland Swamp EEC.

Relevantly, the peer review by Civil Certification concludes that *“if the proposed water management system is maintained in its current form we recommend the development be refused as it will cause water quality and quantity related impacts to the identified Coastal Upland Swamp and Kierans Creek”*.

The outcomes of this independent review are consistent with Council’s previous assessments. In this regard, the recommendation of refusal is maintained on the basis that the proposed development will lead to a significant decline in the conditions of the Coastal Upland Swamp EEC due to the impacts on hydrology.

## **PUBLIC EXHIBITION AND ADDITIONAL MATTERS RAISED IN SUBMISSIONS**

### Public Exhibition No. 2

The amended application (including the SIS) was publicly exhibited in accordance with the Environmental Planning & Assessment Regulation 2000 and the WDCP 2011.

The application was notified to adjoining and surrounding land owners and occupiers and those who made submissions under Public Exhibition No. 1 for a period of not less than 30 calendar days which commenced on 12 January 2018 and ended on 15 February 2018. Furthermore, an advertisement was placed in the Manly Daily on 13 January 2018 and notice was placed upon the site.

At the time of completing the Assessment Report (i.e. 9 March 2018), Four (4) submissions had been received.

The following identifies additional issues which have been raised within the submissions which were not raised in the previous public exhibition period:

- **Impact on Bushland and Water Management**

Concerns have been raised that the proposed development of this size and scale will damage the bushland.

#### Comment

This issue has been addressed under various sections of this report.

In summary, the impact of the proposed development on the existing vegetation of the site is found to be unsatisfactory.

These issues have been included as reasons for refusal.

- **Bushfire**

Concern has been raised over the threat of bushfires to the area and the effect that the proposal will have on neighbouring properties, future residents and the environment.

#### Comment

The application was also referred to the NSWRFs (see referral response from the NSWRFs under the ‘Referrals’ section in previous Assessment report), who have also raised no objection to the proposed development based on the bushfire threat.

This matter does not warrant the refusal of the application.

## **CONCLUSION**

This supplementary Report has been considered against the relevant matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979.

This assessment has taken into consideration the plans and all documentation submitted with the application including the Species Impact Statement, all referral responses received from relevant stakeholders and all community submissions received during the public exhibition periods.

The application (including the SIS) has completed its second public exhibition period on 15 February 2018. During that period (i.e. from 12 January 2018 to 15 February inclusive) a total of four (4) additional submissions were received against the proposal.

The issues raised in the submissions against the proposal were predominantly the same as previously raised and have already been addressed in the Assessment Report. Additional issues raised concerns regarding impact of the development on the bushland and the threat of bushfires to the area.

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

As a direct result of the application and the consideration of the matters detailed within this supplementary report it is recommended that the Sydney North Planning Panel, as the consent authority, refuse the application for the reasons outline in the recommendation section of this report.

## **RECOMMENDATION (REFUSAL)**

That the Sydney North Planning Panel, as the consent authority, pursuant to Clause 4.16 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 4.15 (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:

- E2 – Prescribed Vegetation;
- E3 - Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat;
- E4 – Wildlife Corridoes;
- E5 - Native Vegetation;
- E6 - Retaining unique environmental features; and
- E8 - Waterway and Riparian Land.