

818 Pacific Highway, Gordon NSW 2072
Locked Bag 1006 Gordon NSW 2072
T 02 9424 0000 F 02 9424 0001
DX 8703 Gordon TTY 133 677
E krq@krq.nsw.gov.au
W www.krq.nsw.gov.au
ABN 86 408 856 411



Contact: Tahlia Alexander

Ref: CY00349/13

10 January 2024

Panel Chair – Adrian Pilton
Independent Planning Commission
Suite 15.02, Level 15, 135 King Street

Via: ipcn@ipcn.nsw.gov.au

Dear Sir,

RE: SSD-45121248 NERINGAH SENIORS HOUSING & HOSPITAL
Address: 4-12 Neringah Avenue South, Wahroonga

Thank you for the opportunity to meet with the Independent Planning Commission (IPC) on 9 January 2024 to discuss Council's key outstanding concerns with the subject proposal (SSD-45121248) and the Department of Planning and Environment's ("the Department") recommended conditions of consent (Appendix F of Department's assessment report).

As discussed at the meeting, Council upholds all previous outstanding issues as detailed in its submission dated 1 September 2023. It is requested the IPC refer to the detailed comments outlined in Council's submission, however, to assist, the key outstanding issues have been summarised below:

1. Raised Pedestrian Crossing

A raised pedestrian crossing accompanied by kerb blisters is necessary for safe and accessible connection to Archdale Walk, while keeping kerbside parking removal to a minimum. Due to the steep falls along Neringah Avenue South, any crossing point would greatly exceed a 1:40 cross fall on both the verges and the roadway. A raised pedestrian crossing will help level out the crossing points, as the raised portion of the crossing could achieve a flatter crossfall than the existing road. There may also be some manipulation in the verge to improve the kerb ramp crossfall grades. A raised crossing would also give priority to pedestrians and moderate vehicles speeds, rather than pedestrians relying on gaps in traffic and appropriate vehicle speed.

Not constructing the raised crossing defeats the purpose of providing a complete accessible path of travel from the subject site connecting to the Wahroonga village shops, services and train station. To address this matter, the Department have recommended condition (B22), which requires a Road Safety Audit to be carried out to determine whether any '*pedestrian protection measures are necessary to ensure the safety of pedestrian movements across Neringah Avenue South*'. This condition is inadequate in addressing the concerns. The Road Safety Audit will only focus on road safety requirements, whilst important, it will not assess the need for a raised pedestrian crossing in terms of accessibility, which is particularly important given the likely high proportion of mobility impaired persons who will be crossing the road.

If the IPC decides to approve the SSD application, Council strongly requests a condition is included requiring the construction of the raised pedestrian crossing on Neringah Avenue South prior to issue of an Occupation Certificate. A draft condition to this effect is detailed below in Section 5 Recommended conditions of consent.

2. Deep soil, landscaping, setbacks and basement encroachment

Ku-ring-gai local government area has a rich landscape character with significant tree canopy coverage. The Ku-ring-gai Development Control Plan ("the KDCP") contains controls to ensure this landscape character is maintained and enhanced. The proposed development does not comply with a number of controls relating to deep soil, landscaping and setbacks, contrary to these provisions.

Many areas of proposed 'deep soil' areas, as shown on the Applicant's Landscape Plan (No. LA-DG-81-EO, dated 11/07/2023) are not continuous, are disjointed and of relatively small size. Deep soil should, wherever possible, be consolidated to maximise the effectiveness of these areas and to allow for substantial tree planting and layered landscaping in key areas, particularly within the front setback and to adjacent properties.

The substantial encroachment of the basement into the front setback compromises the provision of deep soil and the provision of substantial planting of medium and large trees. Additionally, the OSD tank, walls and other structures within the front setback further restrict the provision of substantial planting within the front setback.

In addition to the above, the proposed service driveway along the northern side boundary does not comply with the KDCP, which requires a 6m landscaped side setback. The driveway compromises deep soil planting and the growth of tall trees within the northern side setback. Screen planting along the side boundary is insufficient. A wider area of deep soil and layered screen planting should be provided. Division 2, Clause 33(a) of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("the SEPP") requires that:

'The proposed development should recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area.'

Given the proposal does not provide for adequate deep soil and tree planting within the front and northern side setbacks, the proposal is not consistent with the landscaped character of the area and will not contribute to the quality and identity of the streetscape. The proposal therefore does not comply with Clause 33(a) of the SEPP. This in part, could be addressed by reducing the excessive on-site parking, as discussed below.

3. Excessive car parking

The proposal includes an excessive number of car parking spaces, which exceeds the minimum requirements of the KDCP and the SEPP. The site is in close proximity to public transport services and the surplus number of car parking spaces is unnecessary. The excessive number of car parking spaces undermines the proposed Green Travel Plan and goal of reducing private car usage.

There is scope to reduce the extent of the basement within the front setback which would achieve two positive outcomes: reducing private car usage and increasing deep soil and substantial tree planting within the front setback.

4. Deferred commencement

The upgrade of Archdale Walk is required in order to comply with Clause 26 of the SEPP and the conditions of the Site Compatibility Certificate. Separate approval is required for these works under Section 138 of the Roads Act 1993. Works are also required to the Australia Post site, which will require a separate development application.

Certainty is required to ensure that these works will occur as compliance with Clause 26 of the SEPP is a pre-condition to granting consent. Given separate approvals are required, especially the separate DA relying on works to private land, Council recommends that if the SSDA is approved, that a deferred commencement consent is issued. The deferred commencement must require that all necessary approvals are obtained for the upgrade of Archdale Walk prior to the consent becoming operative.

Council notes that the Land and Environment Court approved a DA (DA0394/18) for seniors housing, which relied on upgrades to the public domain and private property in order to comply with Clause 26 of the SEPP (*Gelder Architects v Ku-ring-gai Council* [2020] NSWLEC 1308). A deferred commencement consent was issued for DA0394/18 requiring all necessary approvals to be obtained for the public domain upgrade works and associated works to private property prior to the consent becoming operable.

In response to Council's recommendation for a deferred commencement consent, DPE's assessment report (pg. 74) states:

"The Department notes that under section 4.42(f) Council cannot refuse to grant consent to an application for upgrade works to Archdale Walk under section 138 of the Roads Act 1993 where is it substantially consistent with an SSD consent."

The response does not address the uncertainty of the outcome of a DA on the Australia Post site. While Australia Post has provided indicative consent for the proposed works, formal landowner's consent will still be required for the separate DA. As such there is still risk that a DA may not be approved for the works if landowner's consent is withheld by Australia Post.

5. Recommended conditions of consent

Should the IPC decide to approve the SSD application, Council recommends that the following amendments to the Department's recommended conditions are incorporated into the consent (as shown in **red text** or ~~struck-out~~):

ADD:

DEFERRED COMMENCEMENT TERMS TO BE SATISFIED PRIOR TO THE CONSENT BECOMING OPERABLE:

Evidence required to satisfy the following condition(s) must be submitted to Council within the timeframe specified in this consent. This consent will lapse if all deferred commencement conditions are not satisfied within this timeframe.

The following deferred commencement term(s) must be complied with to the satisfaction of Council within 5 years of the date of issue of this deferred commencement development consent:

1. DESIGN AND CONSTRUCTION OF WORKS FOR UPGRADE OF ARCHDALE WALK

Prior to the operation of the consent, the necessary separate approval/s must be obtained for the upgrade of Archdale Walk designed to comply with Clause 26 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. Construction of the works must proceed only in accordance with any conditions attached to the approval issued by Council pursuant to the *Roads Act 1993* (Roads Act Approval) and Development Application for works on private land.

LIMITS ON CONSENT

A6. This consent does not approve the following:

- (a) the detailed fitout and operation of the café;
- (b) the installation of signage other than signage shown on the approved drawings; and
- (c) works on public land; and
- (d) works on the Australia Post site.

Where required, separate approvals must be obtained from the relevant consent authority (except where exempt and/or complying development applies).

DESIGN AMENDMENTS

B1. Prior to the issue of a Construction Certificate for above ground works, the Applicant must submit revised plans to the Planning Secretary for approval. The revised plans must detail the following:

(a) Privacy screens on the western edge of the balconies of the self-contained dwellings on the north-western corner of Levels 1 and 2 in the North Building. The privacy screen shall have a minimum height of 1.6 metres above the finished floor level and be fixed to prevent crossward and downward overlooking of the private open space of 15-17 Woonona Avenue. The privacy screen shall be constructed of powder-coated aluminium similar to those approved for use elsewhere in the development.

(b) Amendment of the privacy screens for Level 1 as shown in the south-west elevation plan DG-20-S1 Rev P4 of the South Building to provide a series of three or four panels which can stack and slide along the length of the terraces to provide greater control of sunlight and privacy to the occupants.

(c) Deletion of the privacy screens for the balconies of the south-west units on Levels 3, 4 and 5 of the South Building shown in the south elevation on plan DA-20-S2 Rev P4.

(d) The signage plan DG-02-02 Rev P2 dated Oct 2023 is to be amended so that the sizes of the external wall mounted signage on the location plan matches the dimensions in the elevational signage details on the right-hand side of the plan.

(e) The proposed facebrick work of the new buildings shall be amended to a red/orange tone similar to the adjoining Heritage Item (Sydney Water Reservoir) details to be submitted to Council's Heritage Advisor for written approval.

ROAD SAFETY AUDIT - DELETE (Refer to new condition B28)

~~**B22.** Prior to the issue of a Construction Certificate for above ground works, a Road Safety Audit (RSA), which considers whether any pedestrian protection measures are necessary to ensure the safety of pedestrian movements across Neringah Avenue South shall be prepared by an independent registered road safety auditor and submitted to the Planning Secretary.~~

~~Should the RSA recommend the installation of pedestrian safety measures within Neringah Avenue South, the Applicant must seek and obtain approval for these works under the Roads Act 1993 in accordance with Condition~~

~~**B28.** The Applicant must implement all recommendations of the RSA in accordance with Condition E18.~~

ROADS ACT APPROVAL

~~**B28.** Prior to issue of the first Construction Certificate, approval must be obtained from Ku-ring-gai Council as the road authority under Section 138 Roads Act 1993 for any proposed works in the public road.~~

NEW CONDITION B28:

Prior to issue of any Construction Certificate, full design engineering plans and specifications prepared by a suitably qualified and experienced civil engineer for the following infrastructure works shall be submitted to Council and approved by Council's Director of Operations on behalf of Council as a road authority:

- Construction of a new kerb inlet pit and associated 375mm RCP pipe within the Neringah Avenue South
- Raised pedestrian crossing accompanied by kerb blisters (in accordance with the relevant Transport for NSW Technical Direction) is to be provided to link across the Archdale Walk to the development site in Neringah Avenue South.
- The raised crossing design is to address drainage so water is not able to pond in the high side of Neringah Avenue nor flow over the travel lanes of the crossing.
- Construction of a new concrete footpath with kerbs and handrails on both sides of the Post Office ramp.
- The footpath remediation works to be generally in accordance with Post Office Ramp Alignment -Plan LA-DG-80-A0, 81-A0 and 82-A0 dated 17 October 2022 prepared by Arterra Design Pty Ltd
- The location of all underground services as well as drainage, including levels and any adjustments to existing underground services are to be shown for setting out for construction.
- Ensure compliance with Ausgrid requirements with setback requirements from light pole.
- new raised pedestrian crossing it to be illuminated in accordance with AS1158 and Ausgrid requirements, additional lighting is installed at no cost to Council.
- Any ground anchors that extend from the property into the public road are to be temporary during the basement construction phase only and are to be destressed or removed once the floor plates have cured for 28 days. Submitted designs are to meet the requirements of the Design and Building Practitioners Regulation and are to be submitted to Council for assessment under the Roads Act.

The required plans and specifications are to be designed in accordance with the *General Specification for the Construction of Road and Drainage Works in Ku-ring-gai Council*, dated

November 2014. The drawings must detail the location of existing utility services, (mains and house connections) both alignment and depth/level and also trees and/or tree roots likely to be affected by the works. The designer is responsible for ensuring the design is clear of all existing services, or shows relocations of services that don't have sufficient clearance from their design. Construction of the works must proceed only in accordance with any conditions attached to the Roads Act approval issued by Council.

A minimum of three weeks will be required for Council to assess the *Roads Act 1993* applications. Early submission is recommended to avoid delays in obtaining a Construction Certificate. For the purpose of assessment of plans and inspections of works carried out by Council Engineers, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council prior to release of approved plans required for issue of any Construction Certificate.

Approval must be obtained from Ku-ring-gai Council as the road authority under Section 139 *Roads Act 1993* for any proposed works in the public road prior to the issue of any Construction Certificate.

PROTECTION OF PUBLIC INFRASTRUCTURE AND STREET TREES

C7. Prior to the commencement of works, the Applicant must:

(a) consult with the relevant owner and provider of services that are likely to be affected by the development to make suitable arrangements for access to, diversion, protection and support of the affected infrastructure

(b) prepare a dilapidation report identifying the condition of all public infrastructure in the vicinity of the site (including roads, gutters and footpaths) and submit a copy of the dilapidation report to the Certifier, Planning Secretary and Council

(c) ensure all street trees directly outside the site, **and in the vicinity of the works covered by the Roads Act approval**, not approved for removal are retained and protected in accordance with the applicable Australian Standards.

~~DIAL BEFORE YOU DIG SERVICE~~ BEFORE YOU DIG AUSTRALIA

C11. Prior to the commencement of any excavation on or near the site, the Applicant must submit to the satisfaction of the Certifier written confirmation from NSW Dial Before You Dig Service that the proposed excavation will not conflict with any underground utility services.

AMEND:

Update wording to reflect current name Before You Dig Australia, it is now a national service rather than NSW Dial Before You Dig Service and the applicant is required to locate the services on site to show they do not conflict with existing services. BYDA provide information related to the services of members, they do not provide confirmation that the proposed work is clear of services.

COMPLIANCE WITH SUBMITTED GEOTECHNICAL REPORT

D24. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation.

Geotechnical aspects of the development work, namely:

- (a) appropriate excavation method and vibration control
- (b) support and retention of excavated faces
- (c) hydro-geological considerations

must be undertaken in accordance with the recommendations of the Geotechnical Assessment prepared by JK Geotechnics Ref No. 35321Brpt and dated 2 November 2022. Prior approval must be obtained from all affected property owners, including Council, where rock ground anchors (both temporary and permanent) are proposed below adjoining properties. Submitted designs are to meet the requirements of the Design and Building Practitioners Regulation covering ground anchors.

~~**ROAD SAFETY AUDIT - DELETE (Refer to new condition B28)**~~

~~**B22.** Prior to the issue of a Construction Certificate for above ground works, a Road Safety Audit (RSA), which considers whether any pedestrian protection measures are necessary to ensure the safety of pedestrian movements across Neringah Avenue South shall be prepared by an independent registered road safety auditor and submitted to the Planning Secretary.~~

~~Should the RSA recommend the installation of pedestrian safety measures within Neringah Avenue South, the Applicant must seek and obtain approval for these works under the Roads Act 1993 in accordance with Condition B28. The Applicant must implement all recommendations of the RSA in accordance with Condition E18.~~

~~**UPGRADE OF ARCHDALE WALK - DELETE (refer to deferred commencement condition)**~~

~~**B29.** Prior to the issue of the first Construction Certificate, the Applicant must obtain approval under the Roads Act 1993 for the upgrade of Archdale Walk designed to comply with Clause 26 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.~~

~~The Archdale Walk upgrade works are to be generally in accordance with the Post Office Ramp Alignment Plan and Sections LA-DG-80-A0 Rev B, LA-DG-81-A0 Rev B and LA-DG-82-A0 Rev B all dated 17 October 2022 by Arterra Design Pty Ltd provided with the EIS. Construction of the works must proceed only in accordance with any conditions attached to the approval issued by the relevant consent authority pursuant to the Roads Act 1993 (Roads Act Approval).~~

CONSTRUCTION PEDESTRIAN AND TRAFFIC MANAGEMENT PLAN SUB-PLAN

C24. Prior to the commencement of any earthwork or construction, the Applicant must submit to the satisfaction of the Certifier a final Construction Pedestrian and Traffic Management Plan Sub-Plan (CPTMP), prepared in consultation with the Sydney Coordination Office within TfNSW and Council. The CPTMP needs to specify matters including, but not limited to, the following:

- (a) a description of the development;
- (b) location of any proposed work zone(s);

- (c) details of crane arrangements including location of any crane(s) and crane movement plan;
- (d) haulage routes;
- (e) proposed construction hours;
- (f) predicted number of construction vehicle movements, detail of vehicle types and demonstrate that proposed construction vehicle movements can work within the context of road changes in the surrounding area, noting that construction vehicle movements are to be minimised during peak periods;
- (g) construction vehicle access arrangements;
- (h) construction program and construction methodology, including any construction staging, including separate staging traffic control plans for demolition, excavation, concrete pours, construction of vehicular crossings and reinstatement of footpaths, and for vehicles reversing from the site;
- (i) a detailed plan of any proposed hoarding and/or scaffolding;
- (j) measures to avoid construction worker vehicle movements within the precinct;
- (k) potential impacts and mitigation measures during school zones, prepared in consultation with Abbotsleigh Junior School
- (l) consultation strategy for liaison with surrounding stakeholders, including Abbotsleigh Junior School and other developments under construction;
- (m) identify any potential impacts to general traffic, cyclists, pedestrians, bus services within the vicinity of the site from construction vehicles during the construction of the proposed works. Proposed mitigation measures must be clearly identified and included in the CPTMP;
- (n) identify the cumulative construction activities of the development and other projects within or around the development site. Proposed measures to minimise the cumulative impacts on the surrounding road network must be clearly identified and included in the CPTMP;
- (o) assessment of cumulative impacts associated with other construction activities (if any);
- (p) an assessment of road safety at key intersection and locations subject to heavy vehicle construction traffic movements and high pedestrian activity;
- (q) details of construction program detailing the anticipated construction duration and highlighting significant and milestone stages and events during the construction process;
- (r) details of anticipated peak hour and daily construction vehicle movements to and from the site;
- (s) details of on-site car parking and access arrangements of construction vehicles, construction workers to and from the site, emergency vehicles and service vehicle;

(t) details of temporary cycling and pedestrian access during construction;

(u) swept path analysis plans demonstrating the existing trees required for retention and their protective fencing requirements can be achieved; **and**

(v) specify that no construction vehicle movements are to occur in Neringah Avenue South during school drop-off (8.00am to 9.30am) and pick up (2.30pm to 4.00pm) times on school days.

CUTTING OF TREE ROOTS AND BRANCHES

D33. No tree roots of 50mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s shall be severed or injured in the process of any works during the construction period. All pruning of roots less than 50mm in diameter shall be undertaken by an experienced arborist/horticulturalist, with a minimum AQF Level 3 qualification.

Tree/location	Radius in metres
Trees 1,2,6,22,32	Within nominated Tree Protection Zones within as indicated in the Arboricultural Impact Assessment LT-A1-01-E0 4/05/23 by Arterra design

Where it is unavoidable, tree roots and branches severed for the purposes of constructing the approved works shall be cut cleanly by hand, by an experienced arborist/horticulturalist with a minimum AQF Level 3 qualification. All pruning works shall be undertaken as specified in current version of Australian Standard AS 4373 – Pruning of amenity trees. The arborist/horticulturalist shall provide a report to the Certifier confirming compliance with this condition.

~~TRAFFIC CONTROL AND PEDESTRIAN SAFETY~~ **DELETE (Refer to new condition B28)**

~~E18. The recommendations of the Road Safety Audit (RSA) required under Condition B22, including any pedestrian protection measures, shall be implemented and installed to Council's satisfaction prior to the issue of any occupation certificate.~~

EASEMENT FOR WASTE COLLECTION

ADD NEW CONDITION:

E63. Prior to the issue of an Occupation Certificate, an easement for waste collection is to be created under Section 88B of the Conveyancing Act 1919. The terms of the easement are to be generally in accordance with Council's draft terms for an easement for waste collection and shall be to the satisfaction of Council's Development Engineer.

BASEMENT PUMP-OUT MAINTENANCE

ADD NEW CONDITION:

E64. Prior to issue of an Occupation Certificate, the Principal Certifier shall be satisfied that a maintenance regime has been prepared for the basement stormwater pump-out system. A maintenance regime specifying that the system is to be regularly inspected and checked by qualified practitioners is to be prepared by a suitable qualified professional and provided to the Principal Certifier.

Should you have any further enquiries, please contact Tahlia Alexander, Executive Assessment Officer on 02 9424 0000.

Yours sincerely,

Shaun Garland
Manager – Development Assessment Services