

Analysis of proposed Aged Care Residential Facility
Headland Preservation Group, Inc.
August 3, 2014

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Executive Summary

This is a summary of our main findings as researched by HPG members and as provided by professional consultants.

1. The proposal is contrary to the Sydney Harbour Federation Trust Act 2001 (SHFT)

- Not consistent with SHFT Act or Comprehensive Plan (CP)
 - Excludes vast majority of public both present and future from public land and public use of building
 - Large scale in size and value (around \$30m)
 - Is not adaptive re-use and will not protect, conserve or interpret environmental or heritage values
 - Is highly prominent and will detract from the amenity of the Sydney Harbour region
 - Residential use for 25 years renewable? akin to a sale
 - Will need Ministerial approval
 - Pressure to extend lease
 - Scale of investment
- Not consistent with Middle Head Management Plan (MHMP) even if amended
- The commercial benefits clearly outweigh the public benefits
- The Trust does not have power to approve DA and would be acting ultra vires
- Approval would be appealable in Court

2. The proposal does not meet the required standards in the event of a bushfire emergency for SFPP development (Special Fire Protection Purpose)

- Earthen berms proposed by “Travers” report as shielding solution not verifiable
 - Berms suggested because Asset Protection Zone not achievable
 - There is no methodology for assessing the efficacy of berms
 - Travers shielding calculation questionable
 - Therefore Likely proposed shielding solution incorrect
 - Adjacent bushland not directly managed by Trust adds more risk
- Unacceptable access and egress in bushfire
 - Middle Head Road ONLY access
 - HMAS Penguin fence a potential trap for stranded pedestrians
 - Fire in roadside vegetation would cause road blockage
 - Middle Head Road too narrow
- Adjacent ASOPA wooden construction
- The “Travers” bushfire report is unacceptable – proponent has not sought their own bushfire consultant
- The proposal does not meet bushfire standards

3. The proposal would constitute an action on Commonwealth land that would have a significant impact on the environment

- Significant impact on Heritage Values
 - The proposal is not “adaptive re-use”
 - Demolition of most of the buildings
 - Construction of 2 new linked buildings exceeding footprint
 - This is not reversible

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- It is a Commonwealth Listed Heritage Place
- Is not in accordance with the SHFT MHMP or Conservation Management Plan (CMP)
- The heritage impact is extensive, severe and permanent and the proposal should not be approved
- Significant Impact on Ecology
 - There was no Flora and Fauna study for this proposal
 - The locality is a habitat for many threatened species
 - Sunshine Wattle
 - Barking Owl
 - Grey-headed Flying Fox
 - Eastern Bentwing-bat
 - It also contains Critically Endangered (EPBC Act) Littoral Rainforest Ecological Community
 - These species and community are protected by the EPBC Act
 - The proposal will remove 2 areas of Littoral Rainforest and remove/disturb habitat for at least 4 Threatened Species
 - The proposed berm will act as a dam and will change the hydrology into the adjacent Littoral Rainforest. This will significantly impact the Community and the Endangered Species
- Aboriginal Significance
 - There was no Aboriginal archeological assessment and the proposal is NOT confined to existing building footprints
 - There are numerous middens scattered around the foreshore at Middle Head
 - There are rock carvings on Middle Head
 - It is likely Middle Head was an important ceremonial site
 - There are stories of significant first encounters in the journals of the first fleet
 - It is part of the site of King Bungaree's Farm
- The proponent's traffic report is misleading and there will be significant impacts on the local road system.

4. The Trust does not meet probity requirements

- Accountability
 - There was no public community consultation prior to the release of the proposal on October 31, 2013
 - There was only one Trust public information session on November 26, 2013
 - The Trust has not fully explained its processes by which it has selected for sole consideration the aged care proposal and the proponent, despite requests from us
 - The Executive Director, Geoff Bailey, or any other representative, has attended only 1 of 6 our public meetings
- Transparency
 - The Trust advertised in China and unknown to the public other sites for development
 - The Trust has rejected 2 FOI requests from us on seeming technicalities
 - The Trust has failed to provide adequate answers to our requests about the EOI process for aged care
 - The Trust's website is sometimes incorrect, misleading or biased
- Impartiality
 - It is claimed by the "At One" bid team that the Trust did not receive fair treatment

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- The multiple (three) community consultation processes have been inefficient and confusing to the public

5. The proponent's documents are flawed - there are errors, omissions, and misleading statements in the proponent's documents

6. The proposal is contrary to intent of previous governments – refer to ATTACHMENT B: Statements by MPs

7. There is widespread opposition to the proposal including Mosman Council, National Trust NSW, RSL NSW, and ICOMOS Australia

8. In January, 2014, a petition of 2,400 signatures was submitted to and accepted by the Petitions Committee federal Parliament.

Incorrect or Misleading Statements in the Preliminary Documentation Submission made in Support of the Aged Care Proposal on Middle Head

Issues for the attention of the Department of Environment - extracts taken directly from the report are followed by comment:

The Department of Environment required the Proponent to assess their proposal against the EPBC Act Criteria and to provide additional information

Response under the Act to assess the impact the proposal would have on *the relevant Commonwealth Heritage values of*

- The Former DEFENCE Site – Georges Heights and Middle Head **and of**
- 10 TERMINAL Regiment Headquarters and AusAid Training Centre

The assessment was against nine criteria. The proponent's assessment is covered on pages 1 through 14 of their submission EPBC-PD-final-with-attachments-010714-3.pdf.

These responses have been addressed by the Graham Brooks in his reports to the Department and to the Trust. We cannot add to these comments from a professional heritage architect.

As "lay persons" intimately familiar with the site and now the MHHC proposal we wish to comment of the other questions raised by the Department of Environment.

A) ALTERNATIVE DESIGN OPTIONS CONSIDERED, PAGE 15:

1. ***The area between the garages (buildings 6 and 7) and the other Ten Terminal buildings to become open public space.***

COMMENT: This is misleading since the only reason it is not currently public open space is because the Trust chose to fence off the entire 10 Terminal complex rather than maintain the buildings (which were in good condition when the Army vacated). The Trust's own Management Plan- Mosman no 7, 7 June 2007, states that: "the adaptive reuse of the site must ensure ongoing public access...." and "The courtyard by building 3 will be landscaped to improve amenity".

2. ***.... in the new proposal it was no longer possible to retain some of the walls of building 3 that were retained in the original proposal. Only the partially retained east wall of the east wing of building 3 would have been visible from outside the complex. The other partly retained wall faced into the central courtyard.***

COMMENT: The current proposal does more damage to the fabric of these Commonwealth Heritage buildings than the original proposal.

It is misleading to trivialise the demolition of walls on a heritage-listed building by claiming they would for the most part not have been visible from outside the complex. Firstly, it is still destruction of the original fabric of the building and, secondly the only reason they would not have been visible is because the buildings have been fenced off. The Trust had planned to adaptively reuse the buildings and open the courtyard area and between the buildings for the public.

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3. ***Building 6 will also now be demolished and a rebuilt new structure will replace it with a slightly larger footprint.***

COMMENT: Reference to the Boffa Robertson site plan will show that this is a misleading statement. It represents a large, not a “slight” increase in footprint, with infill between buildings 6 and 7 alienating public access.

4. ***Whilst the loss of the portions of original fabric of Building 3, previously retained, will have an additional impact on the heritage values, that impact will be minimal as the retained walls would have not been obvious to the public.***

COMMENT: This is again deceptive because it relies on the artificial device of the buildings being fenced off to the public. Clearly this doesn’t make any difference to the fact that heritage fabric would be destroyed. *The argument is that, because the public can’t currently see it, it doesn’t matter!*

5. ***“The loss of building 6 will have a minor impact on heritage values as it has been assessed as only having moderate level of significance.....”***

COMMENT: The very comprehensive Robertson Hindmarsh Pty Ltd Conservation Management Plan 2007 commissioned by the Sydney Harbour Federation Trust rated Building 6 as “Rare and Exceptional”.

6. ***“ This minor increase in impact is balanced against the significant positive benefits to be obtained, as a result of the change. The SHFT will be able to create opportunities for improved public access and enhancement of the park like setting on the north side of Middle Head Road.”***

COMMENT: This is a curious argument. It suggests that because the original proposal was withdrawn the public will have a benefit from, presumably, the mooted demolition of the barracks buildings on the north side of Middle Head Road by the SHFT. This is a fallacious proposition since the SHFT could have done this at any time. In fact it was foreshadowed as a possibility in the Trust’s Comprehensive Plan (2003). It is not a benefit derived from this development.

7. ***“ In addition the area between the main Ten Terminal group of buildings and the former transport depot (buildings 6 and 7) will also be publicly accessible for community use compared to being fenced off as it is at present and in the original proposal.”***

COMMENT: This again relies on the 10 Terminal Buildings being currently fenced off to the public. Genuine adaptive reuse retaining the heritage fabric, as prescribed in the Burra Charter (which the Trust has adopted as policy) would greatly increase public access, not only between buildings 6 and 7 but also between buildings 1 and 3 and into building 3’s courtyard area. The fence should NOT be used to justify what is proposed. It would not be there now if the Trust had implemented its vision for the site outlined in its Management Plan.

Page 16:

8. ***“The second story addition to the middle part of the main building, however, the additions have been kept to a height underneath the existing ridgeline of building 7 again minimising the impact of views to the site (criterion E).***

COMMENT: The second story addition is not just to the “middle part of the main building” (building 3) it covers all but the small southern section i.e. about 80%, and the footprint of the building is greatly increased.

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The fact that the height of the second story is kept to a height underneath the ridgeline of building 7 does not alter the fact the views to the site will be impacted. The argument seems to be it could be higher so there is a benefit in the proposed height!

CONCLUSIONS:

The remainder of the comments on page 16 are simply a regurgitation of arguments previously put. These are:

- Ten Terminal buildings are fenced off therefore, as the public don't currently have access, the developer can claim to be facilitating increased public access by allowing public passage between the main buildings and buildings 6 and 7. As pointed out this is a fallacious argument because the fence would be totally removed if, as originally planned by the Trust, the buildings were genuinely adaptively reused with public access around each building.
- It is true that Commonwealth Heritage building fabric will be destroyed but it is of no consequence since the public can't currently see into the building 3 courtyard area because of the fence. A totally new second story is not adaptive reuse.
- The second story is kept to a height underneath the ridgeline of building 7 so it is not as intrusive as it might have been. It is still intrusive, will impact on bush views from Middle Harbour and is not adaptive reuse as defined by the Burra Charter.

B) A DESCRIPTION OF MEASURES PROPOSED FOR EACH ALTERNATIVE DESIGN TO RETAIN THE FABRIC/BUILDINGS/ORIGINAL LAYOUT, IN ORDER TO PRESERVE THE COMMONWEALTH HERITAGE VALUES OF THE SITES (AVOIDANCE MEASURES) – PAGE 16:

COMMENT: The response to the above does not actually address the issue of retention of the fabric/buildings/original layout, to preserve Commonwealth Heritage values.

It talks about "overall form" but does not address the fact that more of the heritage fabric would be destroyed than even in the first proposal. Criterion cited in the report are commented on below:

- a. **Criterion (a)** - The place's importance in the course, or pattern, of Australia's natural or cultural history.

There will be adverse impacts on the natural and cultural landscape of the place. Apart from the loss of cultural/heritage value, the opportunity for enhancing the park by landscaping and providing public access around every building would be lost forever. Not mentioned in this report is the impact of 2 to 3m high 145m long radiation retardant earth mounds (berms) proposed for the south – eastern boundary with the Sydney Harbour National Park. These would obscure the current view of National Park bushland with unknown impact on the National Park's flora and fauna due to changed water run-off conditions

The Trust's own Management Plan (2007) for the precinct states against Criterion (a): "The site is important as it contains building complexes constructed in the early days of WW11 in the Pacific which are tangible reminders of the rapid construction of defence facilities when Australia was under the threat of invasion."

- b. **Criterion (b):** The place's possession of uncommon, rare, or endangered aspects of Australia's natural or cultural history.

The report does not address this criterion.

The Trust's Management Plan for the precinct says in relation to this criterion that: The 10 Terminal buildings are a RARE surviving complex and probably the only permanent school of engineering erected in NSW during WW11."

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The Conservation Management Plan classifies the building as Rare and Exceptional

The proposal would destroy the heritage integrity of this historically important complex

- c. **Criterion (c):** The place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history.

Again, the report does not address this criterion.

The Trust's Management Plan states in relation to this criterion that: "The 10 terminal site provides evidence of the standard of permanent training facilities erected in war time."

The proposed development would render the site unrecognisable from its wartime appearance and function. The significant impact on the built forms and fabric of 10 Terminal precinct would mean the loss of future generations understanding of the wider evolution of the place and the range of military activities and usage.

(C) A DESCRIPTION OF MEASURES TO SYMPATHETICALLY INCORPORATE NEW ADDITIONS IN TERMS OF BUILDING MATERIAL, SCALE AND MASS TO THE ORIGINAL BUILDINGS IN ORDER TO PRESERVE THE COMMONWEALTH HERITAGE VALUES OF THE SITES (MITIGATION MEASURES).

The report does not address scale and mass.

The full connection of buildings 1 and 3, the connection of building 7 with the proposed replacement to building 6 plus the second storey and the enlarged footprint cannot be described as "sympathetic". The development would dominate the single story ASOPA buildings, the nearest buildings being a mere 15m away and would have an intrusive mass and scale quite out of keeping with the maintenance of a park setting. It would clearly NOT preserve the Commonwealth Heritage values of the existing 10 Terminal precinct.

(D) A DISCUSSION OF THE LIKELY EFFECTIVENESS OF THE AVOIDANCE AND MITIGATION MEASURES PROPOSED IN REDUCING THE IMPACT TO COMMONWEALTH HERITAGE VALUES.

COMMENT: The proposed development pays token lip service to the Commonwealth Heritage values by making a virtue out of retaining some sections relatively small sections of the existing heritage fabric.

The design is claimed to "moderate" the effect of an additional story. However, reference to the elevation drawings shown on the Boffa Robertson Drawing # DA 108 will leave no doubt as to the actual intrusive, overbearing impact this proposal would have in the Headland Park.

It would be totally out of context and scale with anything else in the Middle Head precinct, dwarfing the adjacent sensitively adaptively reused ASOPA buildings.

Comparison with the scale and separation of the existing buildings to the bulk and scale of the proposal will leave no doubt that the heritage value of this site would be lost for ever.

(E) AN EXPLANATION AS TO WHY THE FINAL PROPOSAL WAS CHOSEN.

The report notes the "high degree of consultation between Biffa Robertson and the heritage CCG Architects". CCG

COMMENT: The proponent's appointed heritage consultants, CCG, downgraded the heritage significance of the buildings. Their report discusses the assessment by Godden Mackay Logan in 1998 rating the Ten Terminal Buildings as having "some" significance. It needs to be borne in mind that this study was commissioned by the Department of Defence at a time when they were seeking to sell surplus military land for residential development.

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The much later very comprehensive Conservation Management Plan (Roberson & Hindmarsh 2007) commissioned by the Trust rated the 10 terminal buildings as “Rare & Exceptional”. Robertson & Hindmarsh say the Godden Mackay Logan “gradings of significance appear to have been derived from a lack of detailed historical research which lead to factual errors regarding the construction dates of various buildings. These errors, in turn, lead to incorrect conclusions which the 2007 study corrected.

Clearly CCG had a different (much lower) appreciation of the heritage value of 10 Terminal than the Trust’s Consultants. This would certainly have influenced their approach and advice to Boffa Robertson. It is reasonable to expect there would have been a radically different approach to this proposal if the Trust’s consultants were involved.

The response to the Department of Environment comments that there were meetings with staff of SHFT as the design evolved. It goes onto say: “These meetings have been valuable in providing guidelines for the design and feedback to identify issues for further consideration and development.”

COMMENT: It is extraordinary and, disappointing, that the SHFT’s staff did not object to the proposal as it evolved on the grounds that it was contrary to their own consultant’s heritage assessment and the statements of heritage significance documented in their own Management Plan 2007 for Middle Head. Proper consideration by the SHFT staff of the provisions of the SHFT Act, the Comprehensive Plan and the Management Plan-No 7 is as should apply to this proposal is conspicuously absent from the outcome.

The report’s “Main Outcomes” simply catalogue cosmetic lip service to the protection of the heritage value of the Commonwealth Heritage listed buildings which clearly has not had any meaningful impact on the overall design and by the report’s own admission has degraded the heritage fabric of the buildings even more than the original proposal.

PAGE 20, DETAILS OF ANY PROPOSED COMPREHENSIVE ARCHIVAL RECORDING, INCLUDING METHODS OF RECORDING, STORAGE AND PUBLIC ACCESS.

In response to the tacit acknowledgement that the proposed development would render the 10 Ten Terminal complex unrecognisable, it is proposed to lodge plans, photographs and a brief historic background etc. with the SHFT “where it can be made publicly available in consultation with the SHFT”.

COMMENT: Not only would the 10 Terminal complex become unrecognisable, requiring archival record, but this record would NOT be on public display, but stored away by the Trust, only to emerge if someone happens to know it exists and takes the trouble to go to the Trust’s office to ask to see it!

This is simply a token gesture to try to mitigate the physical destruction of heritage value.

PAGE 20, DETAILS OF ANY PROPOSED HERITAGE INTERPRETATION ACTIVITIES THROUGH THE PROVISION OF A HERITAGE INTERPRETATION STRATEGY.

COMMENT: The proposals do not address how the wider public and visitors to Headland Park would actually benefit from the proposals outlined. It is improbable that the facility would publicise and encourage large numbers of visitors view the “west wall of the entry foyer of building 1”.

A “timeline” and “interpretive devices of artistic merit and limited text” really cannot provide more than a very superficial impression of the history of the former complex and the men and the service personnel who served there.

This is but a poor attempt to mitigate the loss of the heritage value and history of 10 Terminal with a very limited provision of relevant heritage and historic information, the main part of which would be located in the foyer of the facility. This relatively small space could not do justice to the list of

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possibilities for it outlined in the report. It would greatly sadden many service personnel who served in 10 Terminal that their history was to be compressed into the foyer of an aged care facility.

PAGE 20, PLEASE PROVIDE INFORMATION ABOUT THE FIRE –RETARDANT STRUCTURE PROPOSED INCLUDING ITS LOCATION ON A MAP, THE DESIGN INCLUDING THE MATERIALS AND AN ASSESSMENT OF THE VISUAL IMPACT OF THE FIRE- RETARDANT STRUCTURE ON THE AESTHETIC QUALITY OF THE ENVIRONMENT

The report states that: “The radiant heat barrier solution will not read as a structure but as a subtle remodelling of the landform at the interface between the bush land edge and public open space and car park. The shallow regrading of the continuous low mound as perceived from the public open space will continue to read as lawn surface.”

COMMENT: This is not an accurate description of how the proposed mounds would look.

It would not be a “subtle remodelling of the landform”. The ‘mound’ would be approximately 145m long and would vary in height above current upper ground level by between 2.05 and 3.14m. Reference to the Public Open Space Public Pathways drawings, Sections 1 to 5 (see Boffa Roberson drawing numbers 009 through 0013) will show that Sections 1, 2 and 3 are not “shallow regrading”. They are steep mounds with 1: 2 slopes. It is only Sections 4 and 5 that depict a relatively shallow rise from the existing lawn area to the south of building 3.

It is not accurate to class the mound as “A subtle remodelling “ from the car park or from the public space adjacent to the proposed lookout (Section 3).

PAGE 20, ASSESSMENT OF VISUAL IMPACT ON THE AESTHETIC QUALITY OF THE ENVIRONMENT.

COMMENTS: The report glosses over the fact that the proposed lookout will block views to the S.E from the public area adjacent to the car park. It is also inaccurate to say only “views may be impeded” from a small section of the car park. Views will be impeded from all of the car park.

The mound from the vicinity of the proposed lookout through to its end along the edge of the car park will be visually intrusive. It will block the views of the bush in the NSW National Park and currently available harbour glimpses through the trees currently available from the car park and adjacent park area.

The proponent has not provided an environmental impact report on the effect of the proposed mounds on the NSW National Park. The mounds will adversely affect rainwater run-offs to the bush area with unstudied consequences. The mounds would be located on the land boundary between the Trust and the National Park. It would be inevitable that imported soil would contaminate the National Park’s land particularly in heavy rain conditions during the construction phase. The impact on the Park’s flora is unknown.

PAGE 21, PLEASE PROVIDE A COMPARISON OF THE PUBLIC SITE ACCESS BEFORE AND AFTER CONSTRUCTION AND DISCUSS THE IMPACTS OF THE PROPOSAL ON PUBLIC OPEN SPACE, THE SOCIAL CHARACTERISTICS OF THE SITE AND THE CULTURAL VALUES OF THE SITE.

COMMENT: The first paragraph of the report’s response is misleading. This part of Middle Head is not “a commercial precinct” in the normal sense of the term. It comprises SMALL businesses working out of sensitively adaptively reused buildings. These businesses don’t fall into the category of “industry”. The proposed development is in stark contrast a very large commercial business, totally unlike the adjacent small businesses, it would operate 24hours per day 365 days a year with associated frequent commercial deliveries and services to sustain its operation. The Trust currently precludes its leased cafes and restaurants from operating in the evenings.

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Again, the report relies on its assertion that public access would be increased. This is incorrect. Public access is currently limited because the Trust is not maintaining the buildings while empty and has them fenced off. This a false comparison because genuine adaptive reuse of the existing buildings would open up this whole area to public access. Thus the proposal actually REDUCES the public space that could, and should, be returned to the public.

Reference to the Boffa Robertson drawing Area Comparison, drawing # DA 110, will show that if the self imposed red dotted line is removed from the "existing" footprint the amount of public space is dramatically increased compared to the current proposal.

The fact that the original proposal took even more public land is immaterial.

The report talks about aged care facilities being an important and growing part of society. No one would dispute this but the issue is that it is not appropriate to establish such a facility in a Public Park, which is classed as bush fire prone land, and, in the process, to destroy the fabric and heritage value of the Commonwealth heritage listed buildings on this this historic site.

We should not lose sight of the fact this proposal is for a large commercial operation with primary aim of generating profit to its owners.

The bed shortfall figures quoted in the report are from the proponents own website. No source information has been provided as to their accuracy. In any event the issue remains the permanent (it defies probability that the lease would not be extended after the first 25 years) alienation of public parkland to serve a tiny minority of Australians at the expense of the many.

MAIN POINTS:

1. The proposal is not adaptive reuse
2. The fabric and character of Heritage listed buildings would be destroyed
3. Public access would be reduced not increased. The fence is simply a device to try to justify the opposite.
4. The archival and heritage interpretation proposals are inadequate
5. The buildings would be intrusive and out of scale with the adjacent ASOPS buildings
6. The bushland view from Middle Harbour would be adversely impacted'
7. The heat retardant mound, for much of its length, would be intrusive and block bush views from the car park and adjacent public area
8. It is not appropriate to locate an aged care facility on public, bushfire prone land at the expense of heritage value and public access.
9. The Trust staff in advising on and supporting this proposal have disregarded the aims, aspirations and plans contained in the SHFT Act, the Trust's Comprehensive Plan, and the Management Plan-Mosman No. 7.

RECOMMENDATION:

For all the reasons given in the main body of this response and summarised above, we believe the Minister for Environment and the Trust's Board should reject this aged care proposal.

Headland Preservation Group Inc.

2 August 2014

Non Compliance with Sydney Harbour Federation Trust Act 2001

Proposed Residential Aged Care Development Middle Head, Mosman

SHFT Act, Part 2- ESTABLISHMENT OF THE TRUST. Para. 6, OBJECTS:

- (a) To ensure that management of Trust land contributes to enhancing the amenity of the Sydney Harbour region.**

COMMENT:

The proposed development would not enhance the “amenity of the Sydney Harbour region”.

The aims of the Trust, as defined in the Act must be used to interpret the meaning of “amenity” i.e. to conserve and interpret heritage values and manage Trust land as a park.

The Residential Aged Care development (RACD) would destroy heritage value and hence not enhance Middle Head amenity as a park.

- (b) To protect, conserve and interpret the environmental and heritage values of Trust land.**

COMMENT:

Should the Trust approve the RACD it would not have adhered to the above specific objective, namely, “to protect, conserve and interpret heritage values”.

The Trust’s own Heritage Consultants, Robertson & Hindmarsh Pty Ltd in their report of May 2007 concluded that the 10 Terminal Buildings were “**Rare**” and had “**Exceptional**” heritage value.

The RACD would have an extensive, severe and permanent significant impact on the heritage values if the 10 Terminal Buildings. This is because there would be:

- Major partial demolition of Building 1, including all interior walls and features.
- Total demolition of Building 2.
- Major partial demolition of Building 3, including all interior walls and features.
- Major alterations and additions to Building 7 including roof level dormers.
- Total demolition of Building 6.

If the Trust were to approve the RACD it would be sanctioning the exact opposite to its objectives as specified in its Act. It would not have protected or conserved the heritage values of 10 Terminal buildings and any meaningful interpretation of what was once there and its military history would be lost to future generations.

(c) To maximise public access to Trust land.

COMMENT:

The RACD would reduce public access by the increased footprint of the RACD and by permanently closing off the existing access between buildings 1 and 3 and into the courtyard area.

It would also close off public access between buildings 7 and 8.

It is misleading and deceptive for the proponent or the Trust to claim public access would be increased simply because the 10 Terminal area is currently fenced off. If the buildings had been properly maintained since 2001 this would not have been necessary and the entire area would now be open for public access as the Trust originally planned.

(f) To establish and manage suitable Trust land as a park on behalf of the Commonwealth as the national government.

COMMENT:

The building of a major commercial enterprise in the park would be contrary to the objective of the Act and the published vision of the Trust: *“To provide a lasting legacy for the people of Australia by helping to create one of the finest foreshore parks in the world and provide places that will greatly enrich the cultural life of the city and the nation.”*

(g) To co-operate with New South Wales, affected councils and the community in furthering the above objectives.

COMMENT:

The Mosman Council is opposed to this development as are a large numbers of concerned citizens in the community in Mosman and the wider Sydney area. Apart from the statutory periods for public comment on formal development proposals, the Trust has not consulted with the community at all.

SHFT Act, Part 2, ESTABLISHMENT OF THE TRUST, Para. 7, FUNCTIONS:

(h) To promote appreciation of Trust land, in particular its environmental and heritage values.

COMMENT:

The RACD would lead to destruction rather than an appreciation of heritage values.

SUMMARY

If the Trust were to approve the RACD proposal it would not comply with the Sydney Harbour Federation Trust Act 2001 because it would not:

- Enhance the amenity of the Sydney Harbour region.
- Protect, conserve and interpret the heritage values of the 10 Terminal buildings.
- Maximise public access to Trust land.
- Fit with the Trust's published vision of creating "one of the finest foreshore parks in the world".

Headland Preservation Group Inc.

3 August 2104

Non Compliance with the Sydney Harbour Federation Trust Comprehensive Plan (2003) - Proposed Aged Care Development

COMPREHENSIVE PLAN PRE-AMBLE:

1. CHAPTER 1, INTRODUCTION:

The Prime Minister, the Hon. John Howard MP, reminded Australians that Sydney Harbour is ‘...probably the world’s greatest harbour. It is one of the great natural beauty spots of our nation. It is the cradle of European settlement in Australia and it is one of those parts of our country which gives immense pride and immense pleasure, not only to the residents of Sydney, but also to all Australians because it wins such wide acclaim around the world.’

The Government decided to establish the Trust to devise a long-term plan to return the vacated land to the People of Australia, “..... not just to the people of Sydney, not just to the people of the suburbs around Sydney Harbour but to all of the people of Australia.”

The Hon. John Howard: “...(the establishment of the Trust) will prevent any ad-hoc treatment of the return of the land to the people and it will ensure that there is maximum weight given to the desire of all Australians that the maximum advantage be derived in open space and recreational purposes in relation to the land.”

The vision of the Trust is:

To provide a lasting legacy for the people of Australia by helping to create the finest foreshore park in the world and to provide places that will greatly enrich the cultural life of the city and the nation.

COMMENT: The above statements, incorporated in the Trust’s Comprehensive Plan, define the intent of the Australian Government in creating the Trust, which in turn is reflected in the Trust’s own vision.

It is clear from the vision for the Trust lands outlined above that the intent was to enhance them as a National asset for all Australians, to maximise open space for recreational purposes, enrich the cultural life of the city and create a world class foreshore park.

The proposed development of a Residential Age Care facility (RACF) is inconsistent with these aspirations. It would diminish the open space available to the public, would not contribute to the creation of “the finest foreshore park in the world” and it would diminish the cultural significance of Middle Head by destroying to the heritage value of former military buildings.

2. CHAPTER 1, THE TRUST APPROACH TO PLANNING, PAGE 12:

In many planning initiatives, there is an underlying intent, to redevelop or facilitate development for a pre-conceived purpose. In such circumstances, planning seeks to make the new development fit in, minimise the negative impacts, ameliorate unavoidable adverse effects and provide trade offs to compensate.

The Trust, by contrast, is seeking the most appropriate outcome, inspired by the intrinsic values of the lands, one that will be of most benefit to all Australians now and for the future.

COMMENT: The proposed Aged Care Facility has no connection with the “intrinsic values of the land”, seeped as they are in military history. It would benefit the developers and only cater for a

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small number of residents from the local area. It would not be preserve heritage values or benefit all Australians.

3. CHAPTER 3, OBJECTIVES AND POLICIES, CULTURAL HERITAGE, PAGE 39:

- Heritage is of great importance to the people of Sydney.
- The Trust WILL: “Adopt the Burra Charter of Australia ICOMOS (1993)...”
- The Trust WILL: Respect the existing fabric and setting of a place and undertake the LEAST POSSIBLE INTERVENTION when undertaking any work involving an important item of environmental heritage.

COMMENT: The proposed development does not conform to the definition of “Adaption “in the Burra Charter. The Charter, Article 7, Use, para. 7.2 states: A place should have a **compatible** use.

The Explanatory Note states:

The policy should identify a use or combination of uses or constraints on uses that retain the cultural significance of the place. New use of a place should involve minimal change to significant fabric and use; should respect associations and meanings; and where appropriate should provide for continuation of activities and practices which contribute to the cultural significance of the place.

The Charter, Article 24, Retaining associations and meanings, para. 24.1 states that:

*Significant **associations** between people and a **place** should be respected, retained and not obscured. Opportunities for the **interpretation**, communication and celebration of these associations should be investigated and implemented.*

COMMENT: The proposed development would destroy “significant fabric” and “associations”. The associations and meanings of the place would be lost.

This conflict with the Burra Charter formally adopted by the Trust and its commitment to “respect the existing fabric and setting of a place and undertake the least possible intervention” is reason enough for the development to be rejected.

4. CHAPTER 3, OBJECTIVES AND POLICIES, ADAPTIVE RE-USE OF PLACES AND BUILDINGS, PAGE 40 STATES NEW USES WILL NEED TO:

- Enhance the character and HERITAGE VALUE of each place and its context. Whilst the heritage values may pose significant constraints they also contribute to the IDENTITY of each site.
- Be compatible with the objective of maximising public access.
- In assessing future adaptive re-use of places or buildings, the suitability of potential uses for each site will be considered prior to the consideration of cost and REVENUE IMPLICATIONS.

COMMENT: The Trust is committed to reviewing possible uses for its heritage buildings on their merits without considering REVENUE IMPLICATIONS.

If the Trust were to approve the proposed development it would be contrary to very specific new use objectives and policies incorporated in the Comprehensive Plan.

Specifically, it would not be adaptive re-use, it would destroy rather than enhance heritage value and it would not maximise public access. Given these contradictions to the aims of the Plan, it would be reasonable to conclude that revenue was the overriding consideration.

5. CHAPTER 3, OBJECTIVES AND POLICIES, DESIGN APPROACH, PAGE 42 STATES:

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The Trust's design approach to pathways and tracks is to recognise these intrinsic qualities and then articulate them further, for example by making the opening out of a view more dramatic or if a feeling of bush land is disrupted by intrusive elements by their removal.

Likewise, *"the weaving of the Trust lands back into the life of the city does not mean simply extending the typical pattern of the surrounding development because this could destroy some of the most distinguishing characteristics of the sites. For example, to provide car parking immediately adjacent to buildings that it serves may destroy much of the aesthetic appeal and character of the place."*

COMMENT: The proposed development includes the installation of approx. 145m of continuous heat retardant mound (berms), which will disrupt the feeling of bush land contrary to the Trust's policy of removing intrusive elements.

The development also includes additional parking down the western side of the building, which is euphemistically described as *"open public access"*.

6. CHAPTER 3, OBJECTIVES AND POLICIES, CONSULTATION AND COMMUNICATION, PAGE 44 STATES THAT:

"Community consultation and communication is integral to the development of the Plan. Importantly it is also critical to the future implementation of the Plan."

The community includes the broad community and special interest groups,....."

The objective of the Trust is to develop an understanding of community expectations and concerns and to work closely with the community to ensure that the sites are planned and managed appropriately for the benefit of future generations.

The Trust will:

- Actively seek the involvement of all stakeholders and communities of interest.
- Communicate frequently through public meetings, events, news letters and media with regard to the planning process.
- Ensure that all individuals and organisations with an interest in these sites will be encouraged to participate in the planning and management process.

COMMENT: The Trust did not follow ANY of the above Consultation and Communication commitments in relation to this development proposal. The Executive Director would have known, or should have known, that this proposal would create severe community concern, given its departure from any previous actions by the Trust and its disregard for heritage values. The initial, fully developed proposal was only made public when it was formally published for public comment for the statutory period. The Trust has not "worked closely" with the community and certainly did not encourage participation in the planning process.

Members of the Community Advisory Committee have said publically that they received little more than cursory advance notice of the Aged Care proposal.

7. CHAPTER 3, TOURISM, PAGE 47 STATES THAT:

Tourism NSW has identified Sydney Harbour as vital to Sydney's role as an international tourist destination.

The Trust lands are of interest to both residents and visitors because of their rich colonial, maritime and defence history....."

In addressing the Tourist potential of the sites the Trust will:

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- Develop a cultural tourism strategy that is consistent with the International Cultural Tourism Charter: Managing Tourism at Places of Heritage Significance (1999) and the Australian Heritage Commission's 'Successful Tourism at Heritage Places (2001).
- The Successful Tourism at Heritage Places (2001) guideline, Understanding Heritage Significance, makes the point: "The market appeal of heritage places is related to, and can be closely linked to, their recognised heritage significance".

COMMENT: Should this Aged Care development be approved, it will sanction the destruction of the heritage value of 10 Terminal and substitute the Military History of this site with a suburban Aged Care Facility. This would not enhance Middle Head as a cultural tourism destination. An Aged Care facility could not remotely be classed as a tourist attraction.

This is another illustration of the development proposal not fitting the Comprehensive Plan aims.

8. CHAPTER 7, MIDDLE HEAD, GEORGES HEIGHTS, CHOWDER BAY, CONSULTATION OUTCOMES SUMMARY, PAGE 109:

Consultation over the past two years has identified that at Middle Head and Georges Heights the:

- *Protection of bush land biodiversity and open space and*
- *Conservation and interpretation of Aboriginal and Defence heritage is very important to the community.*

Matters that the community would like the Trust to consider include the restoration, conservation and interpretation of existing buildings, improving the natural ecosystem through re-vegetation and allowing for open space, recreational and sporting facilities.

COMMENT: The proposed Aged Care Development fails community expectations by not restoring, conserving or interpreting the history of the 10 Terminal Buildings. Despite misleading claims to the contrary, it would significantly reduce the open space available to the public by enclosing the whole footprint of the current Buildings 1 and 3 for private use, and the area between Buildings 6 and 7.

9. CHAPTER 7, A PLACE TO EXPERIENCE THE WONDER OF THE LAND AND WATER, PAGE 116:

"Under the plan, the establishment of an Aboriginal Cultural Centre to explain the indigenous history of the Sydney region and to mark Bungaree's farm, Governor Macquarie's model farm experiment, would be investigated in collaboration with the Aboriginal community.

"The adaptive re-use of facilities and buildings for formal and informal education, and recreational and community uses will enrich and extend the experience of the Headland Park."

COMMENT: The Aboriginal Cultural Centre has not been created. The proposed treatment of 10 Terminal Buildings is not an adaptive re-use as defined under the Burra Charter the Trust is committed to follow. Aboriginal groups have expressed great interest in setting up a Cultural Centre on Middle Head in conjunction with all other past and present users of the site. The true adaptive re-use of the 10 Terminal Buildings to include an Aboriginal Cultural Centre and, separately, the history of 10 Terminal and ASOPA would comply with the stated aims of the Comprehensive Plan and enhance the cultural richness, and tourist appeal of Middle Head Park.

10. CHAPTER 7, ADAPTIVE RE-USE OF BUILDINGS, PAGE 119:

The adaptive re-use of former defence buildings will assist in the conservation and interpretation of their heritage values. The primary objective is to find uses that:

- Complement the Headland Park
- Enhance our understanding and appreciation of the natural and cultural heritage of the area and each former base

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- Provide exceptional venues for people to appreciate the park, the headland and the harbour
- Suit the basic and simple character of buildings, i.e. do not require extensive additional services or amenities that would inevitably alter and diminish the heritage value and character of the places
- Are compatible with public access through the areas around the buildings and will open significant heritage items to occasional public access.
- Are compatible with the campus-like setting and provide an interface with the public domain that is welcoming and invites interaction
- Are able to operate within constraints of limited parking on existing disturbed areas that are not required for bush regeneration
- Have minimum reliance on private vehicle use at times of peak traffic flow in the neighbouring areas and are compatible with development of public transport, shuttle services or water transport,
- Uses that would fulfil the above requirements may include a range of leisure, recreational, cultural, and informal educational and community uses. Other uses (such as residential IN EXISTING DWELLINGS) may be acceptable subject to their compatibility with the primary objectives of creating a Headland Park.

COMMENT: The Comprehensive plan does not endorse the use of buildings for residential purposes except in existing dwellings. The proposed development does not meet the Comprehensive Plan's aims in terms of:

- Adaptive re-use (using the Burra Charter's definition of the term)
- Being compatible with public access through the areas
- Complementing the Park
- Enhancing our understanding and appreciation of the cultural heritage of 10 Terminal
- Providing exceptional venues for people to appreciate the Park
- Suiting the basic and simple character of buildings

11. CHAPTER 7, OUTCOMES FOR SPECIFIC PRECINCTS, 10 TERMINAL AND FORMER SCHOOL OF PACIFIC ADMINISTRATION, PAGE 122:

- Removal of demountable buildings at 10 Terminal and in the longer-term removal or modification of the 3 northern barracks.
- Improve drainage and envelop the precinct with bush land
- Create a sense of permeable access through the building clusters
- Potential uses that suit the buildings' character and location in the Headland Park include visitor facilities, places for refreshment, education and cultural studies and accommodation for visiting school groups.
- Are compatible with public access through the area around the buildings
- Are compatible with the campus-like setting (**comment:** the sheer bulk of the proposed complex would destroy the campus-like setting defined by the ASOPA buildings.
- Are able to operate within constraints of limited parking
- Have minimum reliance on private vehicle use at times of peak traffic flow in neighbouring areas.

COMMENT: The proposed development would permanently close off almost all access through and around the 10 Terminal buildings. It is misleading to claim that public access would not be diminished because the area is currently fenced off. **This would not be the case if the buildings were adaptively reused for purposes consistent with the visions and objectives of the Comprehensive Plan.**

The development is inconsistent with outcomes envisaged in the Plan.

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SUMMARY:

If the Trust were to approve the RACD development proposal it would not comply with its Comprehensive Plan because it would not have:

1. Honoured its vision.
2. Supported a use for the 10 Terminal, which “will be of most benefit to all Australians now, and for the future.”
3. Applied the principles of adaptive re-use described in the Burra Charter and adopted by the Trust as policy in the plan.
4. Have considered the suitability of use independently of Revenue Considerations.
5. Protected the “feeling of bush land” by installing a 145m long 2m to 3m high “intrusive element” (mound/berm).
6. Communicated fully and openly to the community prior to the first proposal being made public regarding the community’s “expectations and concerns”
7. Considered how 10 Terminal could enhance a “cultural tourism strategy”.
8. Accepted the community’s priorities of, protection of bushland biodiversity, open space, conservation and interpretation of Aboriginal and defence heritage written into its Comprehensive Plan.
9. Taken the opportunity to develop an Aboriginal Cultural Centre as foreshadowed in the Plan.
10. Insisted on a genuine adaptive re-use of 10 Terminal in line with its own Burra Charter policy.
11. Opened up access by the public into the 10 Terminal courtyard areas and between the buildings. (To claim public access will be increased is deceptive, relying on the fact that the Trust has fenced the area off. Clearly this could, and should be, removed to maximise public access).
12. Adhered to the Plan’s restriction on residential use to “**EXISTING DWELLINGS**”.

CONCLUSION: The above extracts from the Trust’s Comprehensive Plan clearly demonstrate that the Aged Care Proposal does not fit with any of the criteria.

The proposal should be rejected by the Minister for Environment and by the Trust’s Board on these grounds alone. Approval would render the Comprehensive Plan worthless and demonstrate to the general public that “anything goes” for the sake of revenue.

Headland Preservation Group Inc.

1 August 2104

Non-Compliance with Sydney Harbour Federation Trust Management Plan – Mosman No 7 Middle Head (2007)

Proposed Residential Aged Care Development on Middle Head, Mosman

INTRODUCTION:

The vision for the park is a place where the area's rich natural and cultural heritage including its early Aboriginal and military occupation will be protected..."

The Trust has identified the creation of the Headland Park as one its highest priorities. Its goals are to ensure that:

- The natural and cultural assets of Middle Head, Georges Heights and Chowder Bay are conserved
- Existing facilities are adaptively reused for appropriate educational, community, recreational and commercial uses.

COMMENT:

The proposed development is falsely claimed to be an adaptive reuse. The reality is that some buildings would be demolished with others being partially demolished with major alterations and additions to building 7 including a second story.

The Trust has committed to adhering to the Burra Charter. The Charter states that: "Adaption should involve minimal change to significant fabric, achieved only after considering alternatives". The proposed development **does not comply**.

The development of a 24/7 Residential Care Home in the Headland Park is not an appropriate use. It comprises a very large commercial enterprise very different in size and use to the small businesses already established in sensitively adaptively reused heritage buildings.

AIMS OF THE PLAN, page 5:

- Conserve and interpret the Commonwealth Heritage Values of Middle Head.
- Maximise public access.
- Facilitate the adaptive re-use of the precinct's buildings for appropriate uses; and
- Integrate the precinct with adjoining lands as part of a unified Headland Park and network of open space.
- Be consistent with Commonwealth Heritage Management Principles.
- **Conserve and interpret the whole site as an historic precinct.**
- Provide opportunities and site interpretation for visitors to understand and appreciate the totality of the site's heritage
- Ensure that traffic generated by the site's re-use has a minimal impact on the surrounding residential areas.

COMMENT:

The heritage values of Commonwealth listed heritage buildings would not be conserved through large-scale demolition of the existing fabric.

Not opening up the existing 10 Terminal Building courtyards, the access between the buildings and enlarging the footprint of the development would lose public space.

The proposal **is not adaptive re-use** as defined in the Burra Charter, which the Trust states it has adopted as policy.

The proposed development would not promote the feeling of a unified Headland Park. Its sheer bulk would dwarf the immediately adjacent ASOPA buildings and detract from a Park like feeling.

The development would be a permanently lost opportunity to reuse the 10 Terminal buildings for visitors to “understand and appreciate the totality of the site’s heritage.

Traffic generated during the afternoon shift change will lead to traffic on Middle Head Road exceeding the “Environmental Maximum” movements west of Effingham Street.

STORMWATER, page 31:

Stormwater management at the site is particularly important due to its proximity to Sydney Harbour National Park, down slope of the Trust site.

COMMENT:

The proposed radiant heat earth mounds would alter stormwater runoff to the Sydney Harbour National Park bush to the S-E of the proposed development with unknown consequences for the bush area. No information has been made public on this issue.

Additionally, the proponents Site Plan drawing (HDA01) depicts a single storm water discharge to the NSW National Park Bushland. No study has been produced assessing the impact on flora and fauna due to erosion and contamination with garden fertilisers.

SERVICES, page 33:

Upgrades will be required for all major services to the precinct.

COMMENT:

The Trust has not made public its assessment of the magnitude of upgrades it would itself have to undertake to water, electricity or sewerage services required to service the proposed development.

COMMONWEALTH HERITAGE VALUES, page 35:

The Management Plan makes the following comments against the Commonwealth Heritage Criteria:

- Criterion a: The site is important as it contains building complexes constructed in the early days of WW11 in the Pacific which are tangible reminders of the rapid construction of defence facilities when Australia was under threat of invasion.
- Criterion b: The 10 Terminal buildings are a rare surviving complex and probably the only permanent school of engineering erected in NSW during WW 11.
- Criterion c: The 10 Terminal site provides evidence of the standard of permanent training facilities erected during wartime.
- Criterion e: The deliberate austerity of the 10 Terminal buildings is typical of permanent military buildings of the late 1930's and early 1940's.

COMMENT:

If the Trust approved the proposed development, in disregard for adaptive re-use as defined in the Burra Charter, it would be acting to destroy the values attributed to the 10 Terminal buildings clearly stated in its own Management Plan.

It would sanction the irreversible change and heritage loss to the buildings which its own plan recognised as “a rare surviving complex and probably the only permanent school of engineering erected in NSW during WW11”.

OUTCOMES, page 38 and Figure 15:

- Adaptively re-use the buildings of ASOPA and 10 Terminal in a manner that retains and conveys their heritage values and contributes positively to the experience of visitors to Headland Park
- See Fig 15, buildings 6 & 7 notation: “Adaptive reuse as space that draw people to the park, for e.g. dining, gallery functions etc”.
- See Fig 15, 10 Terminal notation: “Adaptive reuse for uses such as visitor accommodation, dining, functions, offices, studios, education or similar”.

COMMENT:

The proposed development is not an adaptive re-use as defined by the Burra Charter. It does not retain and convey the 10 Terminal heritage values. It would not contribute positively to the experience of visitors to Headland Park. It would simply cater for the exclusive use of 89 aged care residents.

Buildings 6&7 would not be available for uses that would “draw people to the park”

The proposed development is not adaptive reuse and would permanently deny the opportunity for the various uses noted on Fig 15.

ACCESS AND CIRCULATION, ROADWAYS, page39:

Beyond the intersection with Chowder Bay Road, Middle Head Road will be treated as a shared pedestrian, cyclist and vehicle zone.

COMMENT:

A good idea that has unfortunately not been implemented by the Trust. The traffic associated with the proposed development would make this possibility untenable in the future.

CAR PARKING, page 40:

However, the formal parking and vehicle wash down areas to the east and south of 10 Terminal will be reduced to expand the public landscaped areas.

COMMENT:

The proposed development eliminates possibility of the expansion of public landscaped areas. An opportunity to enhance the amenity of the park would be forgone.

10 TERMINAL, page 42:

The brick buildings on the south side of the road will be conserved and adaptively reused in a manner that facilitates the conservation and interpretation of the heritage values and that enhances the visitor experience of the park, e.g. visitor accommodation, dining, functions, offices, studios, education or similar.

The adaptive reuse of the site must ensure ongoing public access and enhance the visitor experience to the headland.

Back of house uses (such as storage or depot buildings) are not encouraged as this area is at a prominent location along the public pathways where the plateau narrows affording places to pause, picnic and enjoy the views towards the harbour and the fortification walls of Middle Head. The garages at the eastern end provide opportunities for uses that serve visitors to the park, such as cafe/restaurant or cultural uses.

The courtyard by Building 3 will be landscaped to improve amenity. The Boiler House (Building 2) may be removed. There may be additional building constructed within this courtyard, and also within the smaller courtyards between the building wings. This would provide: improved amenity and functionality of the existing building; additional shade and shelter; and improved connections between the separate wings of the compound. Any additional building or structure in the courtyards is to be designed in a manner that is compatible with the scale, form and character of the existing building and retain its character as a courtyard.

COMMENT:

The proposed development does not meet any of the Trust's criteria:

- It is not adaptive reuse. The proposed development is not designed in a manner that is compatible with the scale, form and character of the existing buildings.
- It would not enhance the visitor experience of the park.
- It does not ensure ongoing public access.
- It would detract from, rather than enhance, amenity.

LANDSCAPE, page 45:

The open, institutional park-like setting of ASOPA and 10 Terminal will be retained and enhanced, as it is an important characteristic of the former bases and provides the ingredients for creating a public park.

COMMENT:

The open park-like setting would be lost by the proposed dominating development which would eliminate public access to the existing 10 Terminal building's courtyard which is considered important by the Trust itself (par 9 above).

INTERPRETATION, page 49:

At Middle Head, all phases of the site's previous occupation and use will be interpreted... In addition, the planned Headland Park Visitor's Centre will incorporate interpretive materials relating to Middle Head in the context of providing an overview of the entire Headland Park.

COMMENT:

The planned Headland Park Visitor's Centre has not been established by the Trust. The true adaptive reuse of one or more of the 10 Terminal Buildings would provide an appropriate place for such a Centre. There is an obvious need for such a Centre to inform visitors of the historic past of Middle Head.

FUTURE CONSULTATION, page 53:

Community consultation and communication is critical to the implementation of this plan. The community includes the broad community, special interest groups, non-government organisations and Local, State and Commonwealth Governments.

"The Trust has been consulting with these groups since its inception and will continue this process in accordance with the Consultation and Communications Objectives and Policies set out in Part 3 of the Trust's Comprehensive Plan"

COMMENT:

The Trust did not consult or communicate with the local community or the Mosman Council in respect of this proposed reuse of the 10 Terminal Buildings.

The first the community became aware of this proposal was when the first version of it was put on public display with comment invited for the statutory period.

The Trust only called a public meeting after the adverse public reaction the proposal caused. The Trust would have, or should have, known that its proposed departure from its previous successful adaptive reuse practices would create major concerns, not only in the local community, but also in the general community.

Sadly, the Trust has left itself open to the charge of deliberately avoiding early consultation and communication to fast track the development

SUMMARY:

If the Trust Board were to approve this proposal it would not comply with its Management Plan for the following reasons:

- It would not comply with adaptive reuse as defined in the Burra Charter adopted by the Trust.
- It would not “conserve and interpret the Commonwealth Heritage values”.
- It would alter stormwater flows into the NSW National Park with unknown consequences for flora and fauna.
- It would preclude Middle Head Road beyond the intersection with Chowder Bay Road ever becoming “a shared pedestrian, cyclist and vehicle zone” due to the increased traffic associated with residents, staff, visitors and services.
- It would destroy the heritage values of the 10 Terminal buildings which in its own words are: “a rare surviving complex and probably the only permanent school of engineering erected in NSW during WW 11”.
- It would prevent the reduction of the formal parking and vehicle wash down areas for additional public landscaped areas as envisaged in the plan.
- It would not address any of the Plan’s vision for the 10 Terminal area.
- It would not enhance the open, park-like setting of ASOPA and 10 Terminal.
- It would forego the opportunity to establish a Visitor Centre.
- It would demonstrate that the Trust only pays lip service to its stated extensive consultation and communication policy.

CONCLUSION:

The above extracts from the Trust’s existing Management Plan, as for its Comprehensive Plan, clearly demonstrate that the Aged Care Proposal does not fit with any of the criteria.

The Minister for the Environment and the Trust’s Board should reject the proposal since it does not comply with the Trust’s Management Plan approved by the then Minister for Environment.

Approval would be contrary to the specific aims and objectives of the Management Plan detailed above.

Headland Preservation group Inc

1 August 2014

Non Compliance with the Draft Amended Plan of Management – Proposed Aged Care Facility on Middle Head

INTRODUCTION

Evolution Planning Pty Limited letter dated 3 July 2014 (Addendum-to-Planning-Report.pdf) says;

“..... the proposed development, as revised, continues to satisfy all relevant planning instruments and policies, including: the Objectives of the Sydney Harbour Federation Trust Act 2001, The Comprehensive Plan, and, Management Plan No.7 Middle Head, and we recommend that the application be approved.”

However, the Planning Assessment Report Revision B dated April 2014, to which this letter refers states on Page 3;

*“The current Plan of Management for Middle Head **does not specifically contemplate the type of development proposed**, but given the overall merits of the scheme, The Plan has been revised and re- drafted for public exhibition. It is understood that a Draft amended Plan of Management will be publicly exhibited concurrently with the AA (Action Application). **This Report has been prepared in the context of the amended Plan of Management.**”*

There is however, no approved amended plan. Even if the draft amended plan¹ was approved (as required under the SHFT Act, Part 5) the current Aged Care Proposal could not conform. The draft amended plan was written specifically for the first proposal (October 2013) and is not compatible with the current proposal. For example, the new building envelope is significantly larger than the maximum permitted in Appendix 2 of the draft amended plan.

Clearly the Revised proposal by Middle Head Healthcare for an Aged care Development on Middle fails to comply with both the existing and amended Management Plans No 7 – Middle Head.

Notwithstanding this clear non compliance the balance of this document outlines how the revised Aged Care proposal fails to comply with Management Plan – Mosman No.7 Middle Head 7 June 2007 Amendment 1, October 2013 DRAFT.

AREAS OF NON COMPLIANCE

Inconsistencies between the Sydney Harbour Federation Trust Management Plan - Mosman No 7 – Middle Head, Amendment 1, October 2013 and the Proposed Residential Aged Care Development on Middle Head

1. Page 38: OUTCOMES; *“Ensure new uses achieve compliance with relevant building standards and bushfire regulations”.*

COMMENT: The Travers’ Report Bushfire protection review commissioned by the Trust concluded only that the proposal “has the potential to comply”.

The report by Bushfire Consultant Roger Fenwick, in consultation with Bushfire Consultant Terence O’Toole, dated 30 July 2014, concluded that:

¹ Management Plan – Mosman No.7 Middle Head 7 June 2007 Amendment 1 Xxx **October** 2013 DRAFT

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"The proposal has not fully or adequately addressed a number of important issues which industry standard protection measures dictate. Of those which were addressed, many have significant technical grounds on which they fail to meet recognised standards applied to such developments".

Rejection of the proposal was recommended

2. Page 42: 10 TERMINAL: *"Any additional structures must not detract from the significance or views to or from the site".*

COMMENT: It's not clear what the word "significance" means in this context. However, the proposed second floor additions will be visible and detract from bushland views both to and from Middle Harbour. The heat shield earth mounds (berms) will detract from the bush views currently enjoyed from the car park and adjacent public space to the S-E of 10 Terminal.

3. Page 42: 10 TERMINAL: *"A second story addition may be contained in the courtyard area as this location is the least visible when viewed from the surrounding areas".*

COMMENT: The proposed second story is very extensive; it extends to the outside as well as the inside of the Building 3 courtyard and also to Buildings 6 & 7, which are not connected with this courtyard. This second story in fact extends over most of the proposed development. It would be highly visible from the surrounding area on all sides. The proposal does not comply with the "courtyard area" restriction included in the amended plan.

4. Page 42: 10 TERMINAL: Appendix 1 contains statements covering the potential visual impacts associated with new development at 10 Terminal. It relies almost entirely on photographs taken from various positions (see Item 6. below). Appendix 2 establishes maximum building envelopes, footprints and heights for new and modified buildings.

COMMENT: The Appendix 2 maximum footprints drawing is no longer relevant because it shows the maximum footprint applying to the now withdrawn original proposal. The footprint for the current revised proposal is substantially larger than the existing 10 Terminal buildings.

5. Page 42: 10 TERMINAL:

It is obvious that the draft amendment has been **written to justify** the original Aged Care Development released for public comment in October 2013. The reverse should apply. Development proposals should comply with the approved plan. An approved plan can be modified if deficient. Which in this case it clearly is not. To date the trust has implemented its plans with great success.

Specific amendments are as follows

"New, modified or infill buildings must satisfy the following criteria:

"Conform to the controls identified in Appendix 2"

COMMENT: The current development plans (*Planning Assessment Report, Middle Head Healthcare – Residential Aged Care Facility: Evolution Planning, April 2014*) simply cannot conform. Appendix 2 was drafted to allow the original proposal to proceed and if approved would disallow the current proposal. For example, the new building envelope is significantly larger than the maximum permitted in Appendix 2.

6. P. 42: 10 TERMINAL: *"Any new upper story is to be visually unobtrusive and not adversely impact near or distant views to or from 10 Terminal as discussed in Appendix 1".*

COMMENT: The proposed new upper story would inevitably be visually obtrusive and would impact near or distant views to and from 10 Terminal. It would become much more visible from

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the Appendix 1, Fig A (View from Middle Head from Lower Georges Heights) and Fig B (View of 10 Terminal from Sydney Harbour National Park) positions.

The comment under Fig D, *“A second story courtyard building at 10 Terminal would be unobtrusive from this point”* is misleading. It relies on existing trees to make that claim and is only valid from that one position. A few metres away the second story would be very obtrusive, particularly with the associated verandas.

The heading under Fig E (Public parklands to the south of ASOPA and 10 Terminal) makes a similar claim:

“A second story within the courtyard section would be unobtrusive: a pitched roof would be visible behind and above the existing roofline”.

In fact its sheer bulk would make it conspicuous and attract attention. The same criticism applies to the heading under Fig F (Middle Head Road to the north east of 10 Terminal),

“A second story within the courtyard section would be visible from the car park. Landscape improvements and the use of sympathetic materials would make it unobtrusive”.

7. P.43 & 44: BARRACK BUILDINGS:

COMMENT: This whole section is irrelevant to the current development proposal and the mooted removal of these buildings by the Trust.

8. P.43, Fig 19 shows the 10 Terminal garage buildings “opened up to frame views”.

COMMENT: This is a desirable outcome but is totally at odds with the development proposal.

9. DRAFT PLAN AMENDMENT 2013 – the layout plan shown on unnumbered Page 46

The amendments are shown in red.

COMMENT: The amendment shown in red against 10 Terminal buildings 7 & 8 does not make sense in the context of the proposed development. The text in the current Management Plan was retained:

“Adaptive reuse as space that draws people to the park for e.g. dining, gallery, functions etc.”

The proposed amendment in red goes onto say:

“Other permissible uses include, visitor accommodation, offices, studios, education or similar. Allow for possible link building.”

This has no relevance to the proposed use as a Residential Aged Care Facility but does demonstrate how far these proposals have deviated from the original concepts.

SUMMARY:

The provisions of the SHFT Act, the Trust’s Comprehensive Plan and its current Management Plan do not support the proposed development.

The draft Management Plan Amendment dated 1 October 2013 was produced by the Trust specifically to accommodate the original proposal, which included removal and redevelopment of the barracks buildings. It had a number of serious deficiencies and contradictions for that purpose.

It is not relevant to the current proposal.

CONCLUSION:

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The October 2013 amendment to the Trust's Management Plan is no longer relevant. The current proposal does not comply with amendments proposed to support the original proposal.

The proposal should be rejected by the Minister of Environment and the Trust's Board because it does not comply with the provisions of the SHFT Act, the Comprehensive Plan, the current Management Plan or the draft Amended Plan of 1 October 2013.

Approval would be in contrary to the vision, aims and objectives of the Act and associated plans.

Headland Preservation Trust Inc.

2 August 2014

Submission to Mosman Council regarding Bush Fire Hazards & Community Concerns

Proposed Residential Aged Care Development on Middle Head, Mosman

28 July 2014

The Headland Preservation Group Inc. is opposed to the proposed Residential Aged Care Development on Middle Head for many reasons, particularly, the bushfire risk to elderly residents.

We refer below to the Travers Bushfire Protection Review (*Travers Report*) dated 24th April 2014 prepared for the Sydney Harbour Federation Trust (the Trust) which is available on the Trust's website.

Although the Trust does not have to comply with NSW law, the Executive Director of the Trust, Mr Geoff Bailey is on the public record (Hansard, 27th May 2014, Senate Environment & Legislative Committee) committing the Trust to comply, as a matter of policy, with NSW law and ALL the standards and fire requirements of the New South Wales Rural Fire Service (RFS).

We believe an Aged Care facility would not be permitted under the NSW State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004). Middle Head would be classed as "environmentally sensitive land" for a number of reasons, including natural hazard and its location on an escarpment.

We believe the NSW Seniors State Environmental Planning Policy (SEPP) would preclude a nursing home on environmentally sensitive land.

Our specific concerns regarding the bushfire threat are:

1. The proposed development is on bushfire prone land (ref: Mosman Council Fire Prone Land Map).
2. The proposed development is classed as a Special Fire Protection Purpose (SFPP) under NSW law. This would require a "Bush Fire Safety Authority" from the RFS before a NSW consent authority was able to determine the application for the proposed development.
3. The *Travers Report* assumes that the proposed development is stand-alone. This is not the case. The wooden ASOPA buildings are contiguous with the proposed Aged Care development. The nearest ASOPA buildings are only 15 metres away. There are around 20 of them, many interconnected, and they are closely spaced.

PROBLEM: These wooden buildings are at great risk of burning during a bushfire or indeed from any fire, whether due to an external or an internal problem, such as an electrical fault. This significantly increases the risk to the Aged Care development and negates the effectiveness of the Asset Protection Zones (APZ) and radiant heat mounds defined for the development.

- The nearest ASOPA building (Building 15) is only approximately 42m away from the bush.
- There is only a 2m clearance from Building 15 to the adjacent building.
- The ASOPA Buildings were built in 1940, are all wooden, painted and are set up on piers, have no window or glass door protection against radiant heat, no protective screens over entry points and for the most part, no gutter protection.

The risk to the proposed Aged Care development should be re-assessed taking this major additional risk into account.

4. The *Travers Report* makes the point that residents of the proposed development are more likely to be adversely affected by smoke or heat while being evacuated - see paragraph 1.3.4(7).

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5. The *Travers Report* correctly states that “SFPP developments are highly dependent on suitable emergency evacuation arrangements, which require greater separation from bushfire threats.” - see paragraph 1.3.4(8) of the report.

PROBLEM: The bush is only 33m and 38m respectively from the S-E corners of the proposed development (see copy of Figure 2.6 from the *Travers Report* on page so the separation is not “great”. In addition, the wooden ASOPA buildings present an even closer threat.

A further risk is that Middle Head Road is the only road access and egress to the proposed development. The road is a dead end at the *Sydney Harbour National Park* (a NSW National Park) and does not provide a guaranteed safe means of evacuation.

6. The *Travers Report* correctly highlights that the residents may be more vulnerable to bushfire attack. It goes on to observe that they may present organisational difficulties for evacuation and/or management. They may be more vulnerable through stress, anxiety and smoke impacts. There may be significant communications barriers. Supervision during a bushfire may be difficult.

PROBLEM: Apart from the difficulty of evacuating elderly residents, many of whom are not likely to be mobile, the facility would also be home to day care dementia residents who would present an even greater problem for emergency personnel in managing their safe evacuation.

7. The Rural Fire Service’s *Planning for Bush Fire Protection 2006*, Chapter 4, page 34, states that the public road system in a bush fire prone area should provide alternative access or egress for fire fighters and residents during a bush fire emergency if part of the road system is cut by fire. It goes on to say that this is of critical importance for areas with higher densities associated with special fire protection purpose developments.

PROBLEM: Middle Head Road does not comply with the above requirement. Not only is it the only road in and out to the location of the proposed Aged Care development, but the *Travers Report* highlights that there is an existing hazard ‘pinch point’ on Middle Head Road opposite HMAS Penguin. The report recommends the removal of shrubs from under the trees adjoining the road to a width of 7m but not the removal of the trees themselves. These are tall, grow close to the road edge, and are closely packed with large branches extending over Middle Head Road. The ‘pinch point’ is on a steep hill with a blind bend, which causes traffic to slow.

Bushfire experts refer to a pinch point on a road because of the risk it would become impassable in severe bushfire events.

8. *Planning for Bush Fire Protection 2006*, Chapter 4, page 34, also points out that large numbers of vehicles may be attempting to simultaneously enter or leave an area, congesting roads and restricting fire services and other emergency personnel accessing an area. For this reason roads should be planned for suitable widths to permit access into and out of the area during such situations.

The *Travers Report*, Table 2.4, page 26, states that: “The ideal of 8m refers to public road widths (before an tree branch hangover) leading to a facility. Within the facility if there are short sections of road then a reduced width of 6.5m is acceptable. This is the case for the access road that passes 10 Terminal.”

PROBLEM: Middle Head Road, adjacent to the proposed development, is two way and only 5.4m wide, **not 6.5m as stated in the report**. There are no roads within the proposed facility. This is therefore not a viable “alternate solution” to the non-compliance with the “acceptable solution” as described in table 2.4.

9. Table 2.4, page 26 of the *Travers Report* defines an “acceptable solution” as: “Roads are through roads. Dead end roads are not more than 100m in length from a through road ----.”

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PROBLEM: Middle Head Road is a dead end road. The proposed development is 1.2km from the first alternative through road, Methuen Avenue. This through road is also on the other side of the Middle Head Road 'pinch point' from the proposed Aged Care development.

The "Alternate solution" proposed in the *Travers Report* is: "The Middle Head Peninsula is a large land mass with one single access road." This is not a solution; it merely restates the problem. It is not clear why the report refers to the "large land mass". The Peninsula itself includes substantial bush vegetation subject to fire.

10. The required Asset Protection Zone (APZ) for the proposed development specified in the *Travers Report* (Table 2.3, page 21), is derived from the RFS's Planning for Bushfire Protection (PBP) 2006 methodology. It extends into the *Sydney Harbour National Park* to the south and southeast (refer to the statement in Table 2.1, page 14 of the *Travers Report*)

PROBLEM: The Sydney Harbour Federation Trust has no control over fuel management in the APZ within the Sydney Harbour National Park and we assume that the berms referred to below may well prevent National Park personnel from being able to access the escarpment so as to carry out the fuel management on which the Travers Report relies. The Report does not evidence any consideration of this possibility.

11. The APZ distances from the corners of the buildings in the proposed Aged Care development do not meet the acceptable solution standards required by the PBP for two of the four S-E aspects, (Table 2.3, page 21) i.e. 50m required for an SFPP acceptable solution compared to an actual of 33m for one aspect and 38m actual for the other. Radiant heat earth mounds ("berms") are proposed by the applicant as a solution to the problem.

COMMENT: Since the *Travers report* was made public, we have not had the time to test all the technical assumptions and the resultant computer program results, which the applicant and/or the Trust have apparently relied upon in proposing earth mounds as an acceptable (to the RFS) alternate solution to the APZ non-compliance. The *Travers Report* proposes the earth mounds to correct for the lack of sufficient APZ in the S-E corner. The report provides no supporting evidence that radiant heat barriers in the form of earth mounds have been accepted by the RFS in other situations where developments have been unable to comply with the APZs required by the PBP.

12. The *Travers Report* states that the APZ distance is based on ensuring building occupants are not exposed to a radiant heat threshold of >10kW/square metre.

PROBLEM: Table A 3.4.1, Addendum: Appendix 3, page 5 of the RFS's Planning for Bush Fire Protection 2010 document (superseded the 2006 version) cites the effects of exposure to this level of radiant heat flux as being life threatening to fire fighters for greater than one minute in protective clothing.

13. The *Travers Report*, paragraph 2.10, page 25, notes that Chowder Bay Road passes through Sydney Harbour National Park to provide a single access road to Chowder Bay. It also refers to an old cobblestone road winding down to Cobblers Beach.

Although not stated, the implication is that evacuation by sea could be effected via these routes should Middle Head Road become impassable.

PROBLEM: Chowder Bay Road is not a through road and has bush on both its sides along its entire length of about 1.3km.

This is also the case for what is a rough winding track of 530 metres from the 10 Terminal buildings down to Cobblers Beach. The beach itself is enclosed in bush. The so-called 'road' is not "cobbled" in the normal meaning of the word. The original stone surface only survives for the first 70m. The rest of the 'road' has no hard surface and is heavily rutted in parts. Cobblers Beach

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itself is small, has no jetty and could not be relied upon during a high tide. Neither route could be relied upon during a bushfire event.

14. The electrical power supply to the Middle Head Precinct, which includes the proposed Aged Care development, could be lost during a bushfire event. The area is served by a single above ground power supply on wooden poles along Middle Head Road passing along the 'pinch point' section of the road. Power supply is also above ground adjacent to the proposed development with take-offs to the existing 10 Terminal Buildings, which are earmarked for the Aged Care development.
15. There are close parallels between this proposed Aged Care development and the successful action taken by the RFS to block expansion of a retirement village on the North Turramurra Peninsula. That action was taken in the Land and Environment Court on 28 February 2008. The experts on behalf of the RFS were Mr L Short, Manager of Development Control of the RFS, Chief Superintendent S Midgley, Manager of Risk Management Performance of the RFS and Mr J Leonard, Research Scientist with the CSIRO.

The experts pointed to Bobbin Head Road (like Middle Head Road) having a 'pinch point', which could make it impossible to pass in severe bushfire events. They also pointed to the fact that (like Middle Head) the Peninsula was not protected by a ring road. Mr Leonard and Mr Midgley made the point that the occupants of a retirement village (like Aged Care) are more vulnerable in bush fire than the population generally. This was because smoke is more likely to affect old people than the average population. Residents of an Aged Care facility such as the proposed development would be even more vulnerable, particularly those in high care beds of which there are a large number proposed.

The experts also drew attention to the inadequate internal roads at that village.

During the above court case the experts made the point that climate change will make matters worse.

COMMENT: The proposed development has a number of similarities to the North Turramurra proposal. The RFS took action to stop the expansion of a retirement village on the Peninsula.

Climate change is predicted to lead to an increasing frequency and severity of bush fires. The RFS experts in the above case made this point. The *Travers Report* (Executive Summary, page 2) refers to mitigating, not eliminating, the level of risk. This may be an acceptable approach for developments not classed as 'special fire protection purpose' but not for a development, which would be home to 89 elderly people when the experts agree the risk will increase over time through climate change.

16. The applicant has put forward the construction of earth mounds "berms" as "an alternate solution proposed" solve the inability to meet the APZ width requirements for SFPP developments. These pose possible dangers to the environment on which the *Travers Report* is silent.

COMMENT: The NPWS "Plan of Management" (December 2012) for the Middle Head Precinct identifies the endangered species sunshine wattle and the vulnerable eastern bent wing bat. Although there is no flora and fauna or other environmental assessment for this Residential Aged Care development, Figure 2.7 of the *Travers Report* identifies the endangered sunshine wattle (*acacia terminalis sub-species terminalis*) about 50 metres on the National Park escarpment directly below the proposed development site.

The earth mounds would disrupt the natural run-off of water into the bush of the escarpment below the mounds. There appears to be no assessment of the possible effects on this endangered wattle of disruption of natural rainwater flow that may occur by reason of the earth mounds, or by reason of discharge of all storm water from the proposed development.

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SUMMARY:

The Headland Preservation Group understands that NSW law does not bind the Sydney Harbour Federation Trust. Nevertheless, the Trust has committed to comply with NSW law and all the standards and fire requirements of the RFS.

If the proposed Aged Care development were on NSW land we believe the RFS would not approve it as a complying development and in any event, it would be prohibited because of it being on environmentally sensitive land.

The main issues are:

1. The proposed development is of an especially sensitive nature, as it would be for a “special fire protection purpose” development and given that the proposed residents of such a facility are recognised as more vulnerable to the effect of bush fire than the general population.
2. The access to and egress from the proposed development do not satisfy the RFS’s requirements and there is no credible alternative solution.
3. There is a ‘pinch point’ on the only road into and out from the proposed development.
4. The *Travers Report* evaluated the bush fire risk to the proposed development on a stand-alone basis. However, the adjacent wooden ASOPA buildings would be at risk during a bush fire or any fire in the vicinity. The nearest of those wooden buildings are less than 15m away from the proposed development. Any risk assessment undertaken as part of the Travers bushfire protection review should have factored in this enhanced threat.
5. The forecast increase in the frequency and severity of bush fire events due to climate change will make the bush fire threat to the proposed development and its surrounds more severe in the coming years.
6. There are parallels with the RFS’s successful opposition to the expansion of a retirement village on the North Turrumurra Peninsula. However, many of the residents of the proposed Aged Care development would be far less physically able than those in a retirement village. Many would be “high care” and there would also be dementia patients to be moved in the event of an evacuation.

FINALLY: We believe the approval of an Aged Care facility on Middle Head would needlessly put vulnerable members of our society at risk for commercial gain to the proponents of the proposed development. We believe the *Travers Report* does not demonstrate that the proposed development can comply with the aims and objectives of the RFS’s Planning for Bush Fire Protection 2006.

Also, under the Sydney Harbour Federation Trust Act, control of Trust land at Middle Head is to pass to NSW jurisdiction in 2033 and hence will be subject to NSW law.

We believe the Mosman Council would not approve this proposed development if it were the consent authority, on the grounds that it is on a bushfire prone escarpment, which would not be permitted under the Seniors SEPP.

In any event, the bush fire risk mitigation measures proposed in the *Travers Report*, do not meet RFS “acceptable solutions” standards as detailed in the RFS Planning for Bush Fire Protection 2006.

From a public policy perspective of protection of the frail aged, it would be most unwise to risk housing them on bushfire prone land.

Headland Preservation Group Inc.

28 July 2014

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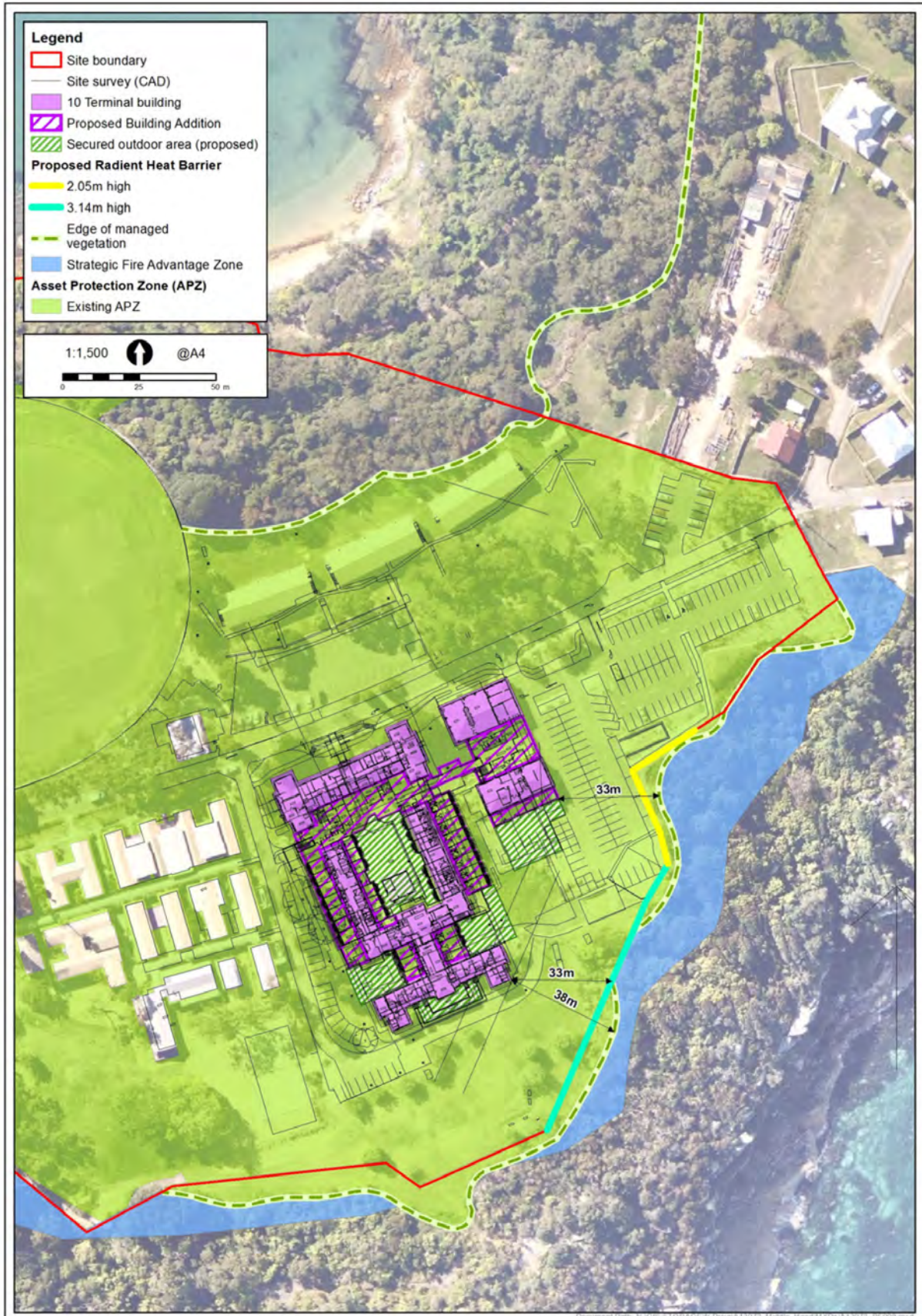


Figure 2.6 – NPWS strategic fire advantage zone and edge of managed zone

A Summary of Legal Issues Regarding a Residential Aged Care Facility “RACF” on Bushfire-Prone Land at Middle Head

SECTION 1 - SUMMARY

If the proposed Aged Care Facility were to be built on NSW land it is unlikely that it would be approved

1. In NSW, the 10 Terminal site would probably be classified as “environmentally sensitive land” and development of a RACF on such land is precluded – natural hazard & escarpment.

Question to SHFT: Why is this RACF even being considered on environmentally sensitive land?

2. If a NSW developer is able to get over this threshold issue of environmentally sensitive land, a RACF is a land use deemed by s.100B of the Rural Fires Act, 1997 to be a special fire protection purpose “SFPP”, which mandates a bushfire safety authority “BSA” from the RFS.
3. If the RFS refuses to issue a BSA, a consent authority (e.g. Council) cannot grant development consent, or if a BSA is issued with conditions, Council must impose those conditions.

Questions to SHFT: See also “6” below:

- If RFS refuses a s.100B-style approval - will SHFT abide by that refusal and deny this RACF, as would occur with a NSW Council?
 - If RFS issues a s.100B-style approval with conditions - will SHFT abide by and impose those conditions on MHH?
4. Application for a BSA **must** have a **flora and fauna** assessment **and** identification of **significant environmental features** on the property - clause 44, Rural Fires Regulation, 2013.

Conflict may reasonably be anticipated with this RACF by reason of proximity of the **endangered sunshine wattle *acacia terminalis ssp. terminalis***, identified by SHFT in its own Plan of Management “**PM2007**”, and the *Travers Report*¹ Fig.2.7, and *NPWS Plan of Management Sydney Harbour National Park* Dec. 2012 pp. 123 & 125.

Questions to SHFT:

- Why has SHFT not required the proponent to make environmental and flora & fauna assessments?
 - Since PM2007 has SHFT followed the recommendations in PM2007 so as to protect this wattle?
5. The *Travers Report* claims to apply “best practice” of NSW RFS – i.e. NSW policy is applied, and in particular the RFS publication *Planning for Bushfire Protection* “PBP”, however it denies any environmental impact [1.5.1] p.6 and see References “4” below.

Fenwick et al² has identified items in the *Travers Report*, which fall short of “best practice”.

Mr Geoff Bailey, Executive Director of SHFT testified to Senate Environment and Communications Legislation Committee meeting on 27 May 2014 that:

¹ Travers Bushfire & Ecology Report - A13072B2-Final-Aged-Care-Facility-Middle-Head-240414

² Analysis of Bushfire protection review; Roger Fenwick (BPAD-Level 2) in association with Terry O’Toole (BPAD-Level 3), 30 July 2014

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*"The trust is not bound by New South Wales law, but we comply with it as a matter of policy. So we would comply with **all** of those standards and fire assessment requirements of the Rural Fire Service, et cetera." Hansard 27 May 2014 p.18 emphasis added*

This policy also is in PM2007 [7, 8], p.12 citing the Mosman bushfire-prone map, and regarding Middle Head in particular:

*"There is also a Bushfire Fire Prone Land Map prepared under Section 146(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) that was approved by the NSW Rural Fire Service in 2003. The map identifies the site as a vegetation buffer zone with areas of bushfire prone vegetation. The majority of the site is surrounded by Sydney Harbour National Park, which contains large areas of bushfire prone vegetation. Particular developments proposed on bush fire prone lands can trigger the **need to conform** to the requirements of Planning for Bushfire Protection 2001 guidelines under the EP&A Act.*

*"The Trust has completed an assessment of bushfire risk for its sites at Middle Head, Georges Heights and Chowder Bay and this assessment informed the preparation of this management plan. **The Trust will also cooperate with other agencies** in the implementation of plans prepared under the Rural Fires Act 1997." p.12 [7, 8] emphasis added.*

SECTION 2 - REFERENCES:

References use the same numbers used as section headings in the foregoing SUMMARY. Only the most relevant Statute sections or Regulation clauses are set out.

1. Environmentally sensitive land

Development of a RACF is enabled under the "**Seniors SEPP**", clauses 10, 11 &16 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Seniors SEPP sub-clause 4(6)(a) provides that this SEPP "... does not apply to land described in Schedule 1 (Environmentally sensitive land), or..."

Schedule 1 - Environmentally sensitive land includes inter alia land broadly described as

- *"(a) coastal protection,*
- *(d) environment protection,*
- *(e) open space,*
- *(f) escarpment,*
- *(i) natural hazard,*
- *(k) Scenic (but excluding certain residential land - not here relevant)*
- *Land shown cross-hatched on the bush fire evacuation risk map."*

The RFS headline publication Planning for Bushfire Protection "**PBP**" states at [4.2.4 (e)], p.30:

"The policy does not apply to land described as 'environmentally sensitive land', which can include land identified as being bush fire prone. Consequently SEPP Seniors Living proposals may not be permitted in these areas."

Evolution Planning's "Conclusion" [2] p.35 states:

"Given the nature of the proposed use, and whilst not a statutory assessment requirement in this case, it has also been assessed against the relevant provisions of the NSW State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, and has been found to be consistent with the design principles and relevant standards therein."

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It cannot be said that this proposed use is consistent with Seniors' SEPP prohibition of a RACF/SFPP on "environmentally sensitive land". Reference to this Seniors SEPP prohibition in any of the proponent's documentation strangely, seems to be missing.

2. Bushfire Safety Authority BSA for Special Fire Protection Purpose SFPP – s.100B Rural Fire Act, 1997:

- *"(1) The Commissioner may issue a bush fire safety authority for:
(b) development of bush fire prone land for a special fire protection purpose.*
- *"(3) A person must obtain such a bush fire safety authority before developing bush fire prone land for a purpose referred to in subsection (1).*
- *"(6) 'special fire protection purpose' means the purpose of the following:
(a) to (e) and
(f) seniors housing within the meaning of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, ... "*

3. Consent authority CANNOT give consent if there is no BSA - Environmental Planning and Assessment Act, 1979 "EP&AAct" - ss 91 & 91A

Section 91:

"integrated development" is development which **requires both** development consent and authority from another State body the "approval body". Development consent is issued by a "consent authority" e.g. a Council. A BSA is issued by the RFS, which is an "approval body".

Section 91A:

*"(2) Before granting development consent to an application for consent to carry out the (integrated) development, the consent authority **must**, in accordance with the regulations, obtain from each relevant approval body (e.g. here RFS & s.100B) the general terms of any approval proposed to be granted by the approval body in relation to the development."*

*(3) If the RFS issues a BSA with conditions, the consent authority **must** apply those conditions.*

*"(4) If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority **must refuse consent** to the application."*

(5) If RFS fails to respond to the consent authority in accordance with the regulations, the consent authority may proceed to determine the application on its own.

4. There is Neither A Flora & Fauna Nor An Environmental Assessment. But the Law and the Facts Demand Answers to this Vacuum

Rural Fires Regulation 2013 Clause 44:

"An application for bush fire safety authority ... **must include** ...

- "(d) identification of any significant environmental features on the property,
- "(e) the details of any threatened species, population or ecological community identified under the Threatened Species Conservation Act 1995 that is known to the applicant to exist on the property."

Note – RFS does not authorise or otherwise, any actions in respect of flora, fauna or the environment:

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“In relation to significant environmental features, threatened species, endangered populations, endangered ecological communities and Aboriginal heritage issues, the RFS only requires sufficient information to ascertain that the environmental values are or are not a constraint to development.

The RFS is not providing an approval in relation to the loss of removal of these environmental assets. That is the role of the relevant consent authority.” (PBP, last boxed paragraph, p.68)

CONCERN:

This RACF requires an **expanded 7m asset protection zone** along Middle Head Road – *Travers Report* (*2nd-last para. Fig. 2.7 pp.18 & 19, *para 4 & Fig.2.10, p.25, and *Recommendation no. 2, p.39.

But neither the proponent nor SHFT even mentions effects on the following environmental assets.

1. The endangered **sunshine wattle** is found very close to this 7m APZ needed by this RACF:

PM2007 “Environmental Considerations” Fig.14 & p.28 - *acacia terminalis ssp.terminalis* is found east of Middle Head Rd adjacent to the additional 7m APZ required.

PM2007 at p.28 describes the importance of this sunshine wattle which is listed as 'Endangered' in both NSW Threatened Species Conservation Act (1995) and the EPBC Act (1999) and “contributes to the ecological significance of the bushland.”

PM2007 pp.27-29 advised that Conacher Travers “were engaged to prepare flora and fauna studies of Trust and NPWS lands at Middle Head and Georges Heights. “The report recommended that:

- “*A survey to specifically locate and map the occurrence of *acacia terminalis* spp. *terminalis* be undertaken, and that these areas be protected, monitored and interpreted,
- “*Current weed management should continue and communities containing *Acacia terminalis* ssp. *terminalis* should be given priority; and
- “*The future use of the site must maintain and/or improve the existing two main bus corridors so that the transfer of genetic material of both the flora and fauna is maintained.”

A “targeted survey” identified 81 specimens of this sunshine wattle and advised, “of most significance to this situation are issues of exotic weed invasion and the presence of the *Phytophthora cinnamomi* pathogen.

“Management recommendations to assist in enabling this population to persist within the area in the long term include:

*Establishment of a 20 metre buffer zone to any activities near the population. This includes public access, **fire management and potential development works.**” emphasis added*

Questions to SHFT:

- Has SHFT followed any of the protective recommendations set out in PM2007
- What is the situation faced currently by this endangered wattle
- How will it be affected by the additional 7m APZ east of Middle Head Road
- Is the extra 7m APZ not inconsistent with the recommended 20m buffer zone?
- Has the unpublished Draft Bush Fire Management Plan 2013-2014 and the 7m extra APZ which it recommends, been drawn so as to “fit” this RACF? The dates of this draft

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plan is conveniently parallel with this RACF's application period.

2. *Travers Report* Fig.2.7 p.19, notes sunshine wattle has been sighted about 50m directly below the berms, near the 1810 Fort, apparently without any assessment of effects –

- All the storm water from the RACF is to discharge into the escarpment bush; and
- The berms may be expected to disrupt the natural flow of rainwater into the escarpment.

3. SHFT's Comprehensive Plan at p.34 states:

*"The Trust has completed a fauna survey of its Middle Head lands and ... did not identify any rare or endangered species although the Common Bent Wing Bat *Miniopterus schreibersii* is known to spend the winter months in the fortifications located there and the glossy Black Cockatoo *Calyptorhynchus lathami* is an occasional visitor. Both of these species are identified as vulnerable species in Schedule 2 of the NSW Threatened Species Conservation Act 1995."*

4. NPWS December 2012 Plan of Management Sydney Harbour National Park pp.123, 125 also identifies the **endangered acacia terminalis ssp. terminalis**, the vulnerable bent-wing bat, and 4 regionally significant fauna including Burton's legless lizard and the whistling kite

QUESTIONS MUST BE ASKED OF THE POSITION / ATTITUDE OF THE PROPONENT & SHFT IN THE FACE OF THEIR PUBLICLY-ADMITTED KNOWLEDGE - SPECIFICALLY

1. SHFT's Comprehensive Plan 2003 Chapter 13 "Supporting Documents" for Middle Head cites:

- Conacher Travers Environmental Consultants December 2002, Draft Flora Study of Sydney Harbour Federation Trust Land and National Park and Wildlife Service at Middle Head / Georges Heights.
- Conacher Travers Environmental Consultants May 2001, Comprehensive Fauna Survey of Interim Sydney Harbour Federation Trust and Department of Defence Land at Georges Heights and Middle Head

2. Googling "sunshine wattle" quickly shows thousands of entries, including a **national recovery plan** - <http://www.environment.gov.au/resource/national-recovery-plan-sunshine-wattle-acacia-terminalis-subsp-terminalis>.

Travers Report admits, "The impact of bushfire protection measures (i.e. APZs) on environmental and cultural assets must be taken into account." [1.5] p.6. But the report then confines itself and dismisses any environmental impacts [1.5.1] p.6: specifically, "The proposed APZs that surround 10 Terminal buildings are mostly confined within the existing cleared and managed land and therefore will have a minimum environmental impact."

3. Evolution Planning similarly dismisses any environmental impact in short measure, at p.1:

"The Action Application, (as amended), is made under Section 26 of the Environment Protection and Biodiversity Conservation Act 1999, (Commonwealth), being an action which, in our view, will not have, or is likely to have, a significant impact on the environment."

4. This statement is repeated at [5.1] p.24. and at [5.3] pp.25 & 27:

5. *"No threatened species or ecological communities are present on the development site, nor will any be significantly affected by the proposed Action. ... No significant environmental impacts are anticipated as a result of the proposal."*

CONCLUSIONS & QUESTION TO THE SHFT AND THE PROPONENT:

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Given the **known presence** of this **endangered sunshine wattle** and the presence of vulnerable or regionally significant other species, the proponent's denials and those of the Trust's own bushfire consultant that there will be any environmental impacts may be described at best as disingenuous if not intentionally misleading. Will this attract adverse attention under the EPBC Act, 1999?

The EPBC Act, 1999:

Sub-section "3(1) The Objects of this Act are:

(a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and

(b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and ..."

And section" 3A The following principles are principles of ecologically sustainable development:

(d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;" ...

And section 18 – "Actions with significant impact on listed threatened species or endangered community prohibited without approval (who approves – the Trust or the Minister?)

"Endangered species

"(3) A person must not take an action that:

(a) has or will have a significant impact on a listed threatened species included in the endangered category; or

(b) is likely to have a significant impact on a listed threatened species included in the endangered category.

"Vulnerable species" - (4) ... same wording as for endangered species ..."

Note: The vulnerable bent-wing bat apparently is not listed in the EPBC Act. It remains listed in Schedule 2 "vulnerable "in NSW Threatened Species Conservation Act 1995.

If the Minister authorises this development, that could be an authorisation under the Act, although one would think that the Minister must require the advice of flora & fauna & environmental assessments before making any authorisation that would affect an endangered species.

Headland Preservation Group Inc.

3 August 2014

Bushfire Liability and the Trust's Reasonably Foreseeable Exposure; Flora and Fauna Assessment Proposed Residential Aged Care Development on Middle Head, Mosman

This document should be considered as an addendum to the HPG's "Summary of Legal Issues on Bushfire-Prone Land". It addresses the legal issues that arise by reason of the Middle Head site being in a bushfire prone area.

The "Summary of Legal Issues on Bushfire-Prone Land" pointed out that in New South Wales, a residential aged care facility would not be permitted on this "environmentally sensitive" land, being bushfire prone and on an escarpment.

Section 71 of the SHFT Act excludes NSW laws operating on SHFT lands in respect of certain matters and relevantly here, matters as to town planning and land use.

However, in respect of bushfire, the Commonwealth has no equivalent detailed protective laws and regulations as does NSW in its Rural Fires Act 1997, the Regulations 2013, and the Rural Fire Service publication Planning for Bushfire Protection.

The NSW Rural Fire Service also has continually updated resources including much written advice for citizens and fire fighting professionals, an enormous depth of practical experience in dealing with bushfire risks, in emergency planning and in actually fighting bushfires.

It may be that it is the gaps in Commonwealth law and Commonwealth practical experience that has resulted in the Trust's affirmation of "the need to conform to the requirements of Planning for Bushfire Protection 2001 guidelines under the EP&A Act" (per Trust's Plan of Management 2007).

The Executive Director's assurance to the Senate on 27 May 2014 that the Trust would, "comply with all standards and fire assessment requirements of the Rural Fire Service, et cetera", is consistent with Trust policy set out in the Plan of Management.

This assurance was given in the context of the advice provided at the commencement of the Senate's Estimates Hearing by the Chair Senator Williams:

"I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also contempt to give false or misleading evidence to a committee."

Given all of the foregoing, the public is entitled to rely on the Trust's policy stated in the Plan of Management and on the recent confirmation of this policy given by its Executive Director to the Senate.

HOWEVER, QUESTIONS MUST BE ASKED OF THE TRUST

Notwithstanding s.71 of the SHFT Act which excludes NSW town planning and land use laws the Trust is the primary consent authority. The Trust has confirmed its policy of complying with NSW laws and Rural Fire Service requirements through Senate testimony.

The community has a reasonable expectation that the Trust, as the effective consent authority, would be independent of any applicant seeking a 25 year use of Trust lands, for a purpose which a reasonably competent NSW municipal council would strongly caution that bushfire protective measures would prohibit it.

NSW town planning and land use laws that would apply to NSW bushfire prone and escarpment land were not created without forethought. As to bushfire, not much forethought is necessary.

The fact that the Trust has permitted this proposal to proceed to this stage against the common sense bushfire prohibition of a residential aged care facility on this land, leads one to ask:

Question 1

What will be the liability of the Trust and the Commonwealth Government, if in extreme summer heat there is a bushfire; the untested “alternative” bushfire measures fail; when the evacuation plans fail or do not work as expected; and there are deaths and injuries of dependent aged residents?

Question 2

What will be the liability of the Trust and the Commonwealth Government, when on a very hot summer's day or night, there is an electrical fault in one of the timber ASOPA buildings, less than 15m away, a fire breaks out and spreads to the residential aged care facility and there are deaths or injuries of dependent and aged residents?

THE TRUST HAS TAKEN A FUNDAMENTALLY FLAWED APPROACH TO THIS PROPOSAL.

It seems that there has been an executive decision to support the proposal, backed by the Board, when any responsible consent authority would have told the developer/proponent at the outset, **“this is bushfire prone land and it is not suitable for a residential aged care facility.”**

The SHFT Act excludes NSW planning and land use laws so that Trust by default becomes the consent authority. Nevertheless, any reasonable person would expect that provisions for bushfire protection embodied in NSW laws and in the RFS requirements, be applied to any development proposal particularly a proposal that puts dependent people at risk.

One may reasonably anticipate that an insurer and our Courts similarly, would expect the Trust, as a Commonwealth Government agency to take its duty of care very seriously.

After tragedy has struck, it will be the Australian people who will ask “Who permitted the aged to be accommodated on land of natural hazard such as bushfire, or adjacent to heritage timber buildings?”

Further, the Trust instead of acting as a dispassionate consent authority, has itself obtained a Consultant's bushfire assessment (very late in the approval process, report dated 24 April 2014) which is highly qualified and conditional and concludes that proposal “has the potential to comply”. Indeed the consultant makes recommendations suited and perhaps even

tailored to the Trust's support of this proposal.

An independent Bushfire consultant commissioned by the HPG is highly critical of the report and recommends against approval. The proponent has not produced its own bushfire assessment but appears to rely on the Trust's report.

One may expect that the reasonable standards of a professional NSW municipal Council would have required the proponent/developer to provide a bushfire assessment which the Council then would have had assessed by the RFS as well as being assessed independently by the Council's own professional staff. Any municipal Council, which compromises dispassionate decision-making, opens itself to public, if not legal scrutiny. That is a liability for which there is no insurance.

POSSIBLE LIABILITY UNDER THE EPBC ACT, 1999 - ENDANGERED SUNSHINE WATTLE - FAILURE TO REQUIRE PROPONENT TO MAKE ENVIRONMENTAL FLORA AND FAUNA ASSESSMENTS.

The "Summary of Legal Issues on Bushfire-Prone Land" Item no. 4, refers to the requirement of a developer on NSW "environmentally sensitive" land to make environmental and flora and fauna assessments.

S.71 of the SHFT Act excludes NSW Law as to "(h) the protection of the environment or of the natural and cultural heritage".

However, even though NSW law does not apply, the Trust seems to have ignored its own knowledge as to listed endangered and vulnerable species published in its own Comprehensive Plan, the Middle Head Plan of Management, and has not required the proponent to provide any environmental or any flora or fauna assessment.

The Trust's bushfire report by Travers bushfire & ecology requires an additional 7m asset-protection zone along the length of the eastern side of Middle Head Road.

However, the bushfire review made by Roger Fenwick in association with Terence O'Toole on behalf of the Headland Preservation Group analyses that 7m would be manifestly inadequate and that a 35m APZ would be required, the sealed road widened to 8m, and the fence on HMAS Penguin's boundary be relocated or removed, [2], p.9.

Note, Planning for Bushfire Protection 2006 specifies that for a SFPP, "internal perimeter roads are provided with at least two traffic lane widths (carriageway 8 metres minimum kerb to kerb) and shoulder on each side, allowing traffic to pass in opposite directions" p.35.

A 35m APZ along the eastern side of Middle Head Road would destroy the "known areas of acacia terminalis ssp. terminalis" shown in Fig.14 PM2007. This is the endangered sunshine wattle listed by the EPBC Act.

Question

If this proposal is permitted, and the Trust is later faced with having to create a 35m wide APZ along Middle Head Road, what will be its liability not only under the EPBC Act, but also to all Australians who expect the Trust to protect and encourage the bushland, with special attention given to a listed endangered species?

The Trust has a statutory liability to protect and conserve its natural assets. Failure to fulfil those statutory obligations is not insurable.

CONCLUSION

The HPG hopes that these notes will alert the Trust and the Board to reasonably foreseeable and serious liabilities, which may be expected to arise if this proposal is approved.

The public will not be impressed with any legalistic defence that NSW law does not apply. In matters of bushfire safety, in matters where the aged and disabled are dependent on our considered care, the public and presumably the Trust's insurer, will expect the highest standards of forethought and diligence which citizens of NSW know, rest with NSW laws, standards and regulations.

Headland Preservation Group Inc.

1 August 2014

The Berm Will Change the Landscape

The Preliminary Documentation (EPBC-PD-final-with-attachments-010714-3.pdf) claims under **The Assessment of visual impact** on the aesthetic quality of the environment (page 21) that,

“The design responds well to the values identified against Criteria A – Processes, C – Characteristic values, E Aesthetic characteristics and G – Social value....

“The landscape remodeling including the radiant-heat barrier solution is sympathetic to the scenic qualities of Middle Head and Georges heights and provides new public vantage points”

In short, the document says that the proposed design will flatten part of the existing sloping lawn area and the proposed lookouts will provide some views from an area that currently has none. The view may be impeded from a small section; however, the view from the pathway itself will be enhanced. Public amenity and accessibility will be improved around the car park.

These claimed benefits are dubious. A simple clean up and natural path construction similar to the work the Trust has done from the oil tanks to Rawson Park would improve access and avoid loss of view without disrupting the ridge line.

The proposed artificial landscaping and construction of a 150 metre earth mound (berm) will obstruct some views from the public areas around the existing building, obscure views of the bush and alter the natural drainage of the area with unstudied consequences for the NSW National Park flora.

The berms are proposed to be located on, or close to, the property boundary between the Trust's land and that of the National Park. It would seem inevitable that during the construction phase foreign material would contaminate the National Park bush land. The situation would be exacerbated by wash down from heavy rain during the construction phase.

Maintenance of the National Park side of the berm to keep it free of combustible grass and weed will prove difficult due to the steepness of the slope and the lack to taller bushes and trees

To put the magnitude of the berm into perspective we sought advice to estimate the volume of earth needed to construct the berm. The volume is approximately 5,500 cubic metres. Allowing for compaction this volume will mean 300 to 350 semi trailer loads of crushed rock, fill, clay layer and topsoil. Another traffic congestion issue albeit for a limited period of time.

The calculations are available on request. However, it is beholden on the proponent's consultants to produce a definitive figure.

Can we trust the Trust?

Aged Care Residential Development on Middle Head

23 July 2014

1. Right from the very beginning there has been inadequate consultation and a lack of transparency regarding the proposed aged care development.
2. The proposal is in stark contrast to all the good work the Sydney Harbour Federation Trust has done to date. The Trust's Executive Director, Mr. Geoff Bailey, has said publically and privately that the proposal **"has never been about money. It is about the best outcomes for the Park"**. It is therefore difficult to comprehend why the Trust would consider;
 - Building a permanent, large-scale two-storey institutional-type new residential development on heritage parkland in the middle of Sydney's most iconic headland.
 - Locating frail and vulnerable people in an isolated area, at the end of a single access road, classified by the Rural Fire Service as a "Special Fire Protection Purpose" because of the bushfire risk.
 - Changing the essential heritage character and landform including the construction of a 150-metre earth berm (wall) on the ridgeline blocking natural views.
 - Destroying the last link in a 200-year chain of built military history (the 10 Terminal Buildings) classified as **"rare and exceptional"** under the Trust's own Conservation Management Plan (CMP). The 10 Terminal buildings are Commonwealth Heritage listed buildings not because of the aesthetic appeal but because of their historical, military and heritage significance.
3. This is a national issue. Approval of the aged care proposal would set a dangerous precedent for residential development in all public parkland not just on Trust lands
4. It contravenes the principle of inter generational equity.
5. John Howard and Tony Abbott established the Trust with much fanfare in 2001 to prevent permanent residential development on these and other surplus military lands around Sydney Harbour. We can't understand why the Prime Minister appears unconcerned about the growing storm in his own electorate.
6. The Trust twice refused to provide documents under the Freedom of Information Act. Further, Senior Trust management employed deliberate delaying tactics to prevent the Headland Preservation Group (HPG) gaining access to the Conservation Management Plan, a public document, until 10 days before the first EPBC submission process closed¹.
7. The proposal is clearly contrary to Sections 6 (Objects) and 7 (Functions) of the Sydney Harbour Federation Trust Act. It also does not accord with the Trust's Comprehensive Management Plan 2003; the Management Plan No 7 - Middle Head (June 2007); or the Conservation Management Plan (May 2007).

The Trust concedes the aged care proposal is non-compliant by proposing to amend its own Management Plan to fit the proposal.
8. The Trust's apparent reliance on the proponent's Heritage Impact Statement rather than its own far more comprehensive CMP has not been explained and suggests lack of due diligence if not more.
9. In light of items 6 to 8 above, faith in the Trust is questionable. In addition;

¹ The EPBC is the Commonwealth Environment Protection and Biodiversity Conservation Act.

- The Executive Director made incomplete and/or misleading statements to the Senate Environment & Legislative Committee on 27 May 2014.
 - HPG found an advertisement proposing the redevelopment of other Trust sites to Chinese investors on a Chinese Web site. This was done under the banner of the NSW Government and away from the public eye.
 - The Trust claims there is no formal agreement with the proponent. However, the Trust's Board minutes (16-17 September 2013) record that the Heads of Agreement "has not yet been signed". We are confident that the proponent has spent well over \$500,000 in design fees, if not more.
 - The Trust appears to have violated its own legal requirements (Leasing Policy) and accepted a proposal knowing that the Trust's own Management Plan would have to be changed.
 - What was the agreement that allowed the proponent to spend huge sums in design fees and perhaps compromise the Board and leave it open to being sued?
 - The proposal has been substantially changed and revised with 3 public consultation processes, the present and last one being highly confusing to the public.
10. The Trust appears to be collaborating with the proponent and the Parliamentary Secretary to the Minister for the Environment. This is a perceived if not real conflict of interest.
 11. The Trust commissioned the "Travers" bushfire report and allowed the proponent to use this report as part of their documentation.
 12. The proponent, Middle Head Health Care Pty Ltd, is a new company with just 2 shareholders, Teelia Peplow and Ed Wilson. Neither have any experience in the aged care home business. Teelia previously operated a dress shop in Amaganset (Hamptons) New York.
 13. The proponent and the Trust continually rely on the experience of a company in Western Australia, Continuing Health Care (Garnstone Investments Pty Ltd), which is mostly owned by Teelia's mother, however the relationship between them is unclear.
 14. We believe that Garnstone has recently sold all its businesses in WA (to Mercy Health in Victoria) and will settle on 1 September 2014. According to the Department of Social Services (DSS), Garnstone will then lose its Approved Provider Status.
 15. The Trust's secrecy about the aged care project includes;
 - A very limited initial briefing of its own Community Advisory Committee prior to the announcement of the proposal.
 - Its unwillingness to publish any due diligence, Heads of Agreement, and financial viability documentation.
 16. In conclusion, the Headland Preservation Group, Mosman Council; most of the Mosman community; The National Trust NSW, Australia; ICOMOS (ICOMOS is the peak global body for the preservation of cultural heritage); the RSL (NSW Division); Sydney Harbour Foreshore Association and other groups have serious concerns and **strong objections** about this proposal.
 17. HPG believes the Trust has "lost its way" in its handling of this proposal. It is being driven by financial considerations and not by its original charter to establish and maintain this land as a park for present and future generations.
 18. There is no requirement in the Act for the Trust to be self-funding. The original concept was that the Trust could become self-funding after the Government provided sufficient funds for capital works. The Trust has capital reserves that could be used rather than pursue "de facto" sales to private companies.

Headland Preservation Group Inc.

23 July 2014

10 Terminal References in the Conservation Management Plan (2007) for the Middle Head Sites Commissioned by the Sydney Harbour Federation Trust

The Conservation Management Plan (CMP) for Middle Head Sites (May 2007) was prepared by a consortium of consultants headed by Robertson and Hindmarsh Pty Ltd, Architects on behalf of the Sydney Harbour Federation Trust (the Trust).

The report is huge, comprehensive and covers over 1000 pages. **Volume 1** covers the history; physical and documentary evidence; comparative analysis with similar heritage value sites; assessment of cultural significance; constraints, opportunities; and conservation policy.

Volume 2 contains a detailed inventory of each room in each building and a heritage assessment of the parts and the whole.

This document **quotes relevant extracts** from the CMP that cover the heritage value of buildings threatened by the proposed aged care development (EPBC Referral 2014/7194). It is NOT a summary of the report but rather a compilation of relevant extracts.

The Headland Preservation Group has prepared this extract document for three reasons.

1. The CMP was commissioned by the Trust. It is the basis for heritage conservation actions outlined in the Middle Head Management Plan approved by the Trust Board in June 2007.
2. The HPG believes that the Department of Environment and probably the Trust Board may not have been given the opportunity to consider the CMP conclusions and recommendations in any detail because of its length and complexity.
3. Trust senior Management has employed deliberate delaying tactics to prevent the HPG gaining access to the CMP until just 10 days before the first round of public comment was due in Canberra.

Volume 1

EXECUTIVE SUMMARY

“The former Defence lands at Middle Head ... contain the best and largest collection of military structures and landscapes spanning the greatest period of time concentrated on one site in Australia; ranging from one of the earliest surviving structures in Australia to the World War 2 buildings at Middle Head, Georges Heights and HMAS Penguin.”

..... Page vii

Statement of Significance for the Study

“The study site contains building complexes constructed in the early days of World War 2 in the Pacific which are tangible reminders of the type, range and standard of buildings required to mount a defence of Australia in wartime. They also demonstrate the long association of the site with the training of defence personnel and the long-time use of the site for military purposes which has had the effect of preventing major urban development of the headland and its preservation as part of the landscaped nature of the major headlands of Sydney Harbour.”

..... Page vii

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Detailed Recommendations

“The significance of the site and the building complexes is such that, with very few exceptions, all the buildings should be retained, adaptively re-used with minimal interference in the fabric of the buildings and landscape and interpreted with appropriate signage. Original World War 2 buildings should not be demolished but be adaptively re-used for uses compatible with their original and community uses.

The building complexes built rapidly during the war, namely the School of Military Engineering (1941)¹ and the Signals Camp (1941) should be recognised as rare, significant military complexes at a national level.”

..... Page viii

ASSESSMENT OF CULTURAL SIGNIFICANCE

5.3.5 Department of Defence Commissioned Assessments

“The Department of Defence commissioned the firm of Godden Mackay Logan in 1998 to assess the significance of the buildings at their sites on the Middle Head peninsula.

The recommendations of the Godden Mackay Logan study are embodied in Figure 7.4 of the Sydney Harbour Federation Trust’s Comprehensive Management Plan of 2003. In Figure 7.4 Godden Mackay Logan have graded the level of significance of buildings on the Middle Head peninsula (including buildings within the Sydney Harbour National Park under the jurisdiction of the NSW government).

These “gradings of significance appear to have been derived from a lack of detailed historical research in their study for the Department of Defence which, in turn has lead to factual errors regarding the dates of construction of various buildings. These errors have, in turn, lead to incorrect conclusions that this current CMP has addressed and corrected.”

..... Page 170

5.5 Criteria Used for Assessment of Significance

“... the criteria used in assessing cultural significance and the level of that significance in order to arrive at the Statement of Cultural Significance have been related to both the criteria used to assess items for inclusion on the Commonwealth Heritage List and the NSW State Heritage Manual’s assessment criteria ...

The values of significance, formerly known in NSW as assessment criteria, are those used in the Australia ICOMOS “Burra Charter”; historical significance, aesthetic significance, scientific significance and social significance.”

..... Page 174

5.8.3 Statement of Significance for the Precincts

“SCHOOL OF MILITARY ENGINEERING (LATER 10 TERMINAL REGIMENT) PRECINCT:

The 1941 permanent brick buildings of the School of Military Engineering represent a method of building common before World War 2 but which was rapidly superseded by the exigencies of the war and the need to erect standardised buildings rapidly. However, the permanent nature of the buildings represents a long-term commitment by the defence forces to the use of Middle Head as an area of on-going military training. It was probably the only permanent school of military engineering erected during World War 2 and, as such, is extremely rare.”

¹ Also called 10 Terminal

CONSTRAINTS AND OPPORTUNITIES

6.1.6 Buildings (Constraints)

“This study has identified the uniform significance of all the buildings on the study site with the exception of the following:

- 10 Terminal Building 2 which was a post-World War 2 structure,
- 10 Terminal Barracks buildings B1 to B4 which are post-World War 2 structures, the Guardhouse which is a recent prefabricated transportable steel building, and Middle Head Oval pavilion.

All the other buildings on the site relate directly to the construction of the military facilities in 1941 and, because of their relatively intact nature and the rarity of any other surviving examples they should not be demolished or unsympathetically altered.”

6.7 Opportunities

“It is the opinion of this study team that a reasonable balance between the aims of the Comprehensive Plan and the need to conserve, recognise and interpret the military heritage of the site is possible and that such a reasonable balance has been achieved with the first stage of headland park on the former 30 Terminal Squadron site at Lower Georges Heights. Such an outcome is more than possible with the excellent building stock located on the Middle head site. The Draft Management Plan for Middle Head has moved towards this more balanced appreciation of both the natural and cultural heritage of the site.

The surviving buildings are of such a quality that they could be occupied for educational purposes by school students on day excursions or by live-in students attending longer courses. Functions centres could be established in the former Golf Club house as well as in Building 3 of 10 Terminal but consideration of the impacts of car parking and service vehicle access as well as equitable pedestrian access would have to be given.”

7.0 CONSERVATION POLICY

7.2.6.4 Buildings – School of Military Engineering (10 Terminal Regiment) – Exteriors

“Former School of Military Engineering buildings (10 Terminal Buildings 1, 3, 6 & 7) should be conserved and presented as School of Military Engineering buildings (i.e. face brick walls, painted exterior joinery, green terra cotta tile roofs).

Later buildings in the main complex (10 Terminal Building 2) could be conserved and presented as part of the School of Military Intelligence, or altered to serve a new function but maintaining the overall form of the original (i.e. new openings could be inserted) or it could be demolished if the future use of Building 3 and/or the main courtyard dictated that it should be removed. A decision on its removal should only be made after the proposed use had been determined.”

7.2.6.5 Buildings – School of Military Engineering (10 Terminal Regiment) – Interiors

“Former School of Military Engineering buildings (10 Terminal Buildings 1, 3, 6 & 7) should be conserved and presented as School of Military Engineering buildings (i.e. later subdivision of lecture and store rooms should be removed to reinstate original spaces, stained joinery should be conserved and non-original wall finishes should be removed. Hazardous materials should be

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removed (i.e. asbestos cement wall and ceiling linings).”

..... Page 224-5

Volume 2

Volume 2 is in three parts and covers a comprehensive assessment of significance against Commonwealth and National Criteria. The assessment for each building covers

- Statement of Significance
- Historical background,
- Modifications,
- Policy for reuse,
- Building description (exterior and interior),
- Constraints,
- Opportunities,
- Significant elements,
- Recommended conservation works,
- Recommendations for interpretation of the 10 Terminal complex

The assessment forms the basis for the analysis, conclusions and recommendations presented in Volume 1.

This document of extracts does not address each heritage building in the 10 Terminal complex as the assessments for each building except Building 2 are very similar. There are five buildings that are the subject of the Aged Care proposal – buildings 1,2,3,6,and 7. Relevant extracts are provided for Building 3 because the proposed age care development would demolish most of this structure.

The proposal would demolish buildings 2 and 6 and most of 3 as shown in the Proponent’s drawing DA 104 (Demolition) at the end of this document.

INVENTORY SHEETS FOR BUILDING 3

The inventory report for Building 3 is 95 pages long.

Statement of Significance General

“The former brick and tile World War 2 School of Military Engineering buildings at Middle Head form an exceptionally rare collection of such buildings at a National level. Within NSW only the almost contemporary School of Artillery at North Head and the former 12th Lines of Communication complex at Boronia Park (Gladesville) are known to survive outside military establishments.

Building 3 of 10 Terminal is of significance as an integral part of the original phase of construction of 10 Terminal: the School of Military Engineering, Anti-Aircraft and Fortress, and as physical evidence of the series of permanent training facilities erected during World War 2 in Australia. The surviving plan layout of the mess and barracks block provides evidence of the long-standing use of Middle Head for the training of coastal artillery personnel.

Used as a mess and barrack, substantial documentary and physical evidence of the original configuration and detail of the building survives, including window joinery and doors.

Aesthetically the building is typical of the permanent buildings designed as training facilities in

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Australia during the 1930s and 1940s. The plan layout reflects the separation of the officers, NCO's and the other ranks."

..... **Inventory Sheet 7 - Page 11 of 95**

POLICY for reuse

"Potential Uses - New uses for the building should be those which retain substantial evidence of the internal and external configuration of the building, including any significant plantings.

Fabric to be retained - Original extant external fabric is to be preserved. Original extant spaces, joinery including partitions, finishes and fittings are to be preserved.

Adaptation - Ensure that the heritage impact of proposed alterations and additions to the place are assessed.

Intrusive Elements - Seek to remove in such a manner that does not impact on surrounding significant fabric."

..... **Inventory Sheet 7 - Page 15 of 95**

Significant Elements

Both the original external and original internal fabric are rated as **EXCEPTIONAL**

This includes the external Face brick to external walls, Green tiled roof, Timber doors and sash windows; and the internal Timber skirtings, Timber flooring, Timber doors and glazed partitions, Painted plaster on masonry, Cornice & ceilings.

..... **Inventory Sheet 7 - Page 19 of 95**

Middle Head Management Plan

The Middle Head Management Plan (MHMP) approved by the SHFT Board in June 2007 quotes the Robertson & Hindmarsh Conservation Management Plan. It says on page 26

"The draft² CMP identifies items of significance and provides a set of policies and recommendations to maintain and enhance the cultural significance of the site and to guide its future management. These recommendations are addressed in the *Outcomes* section of this plan."

The Outcomes referred to in the above paragraph are covered in pages 38 to 49 in the MHMP

10 Terminal

"The brick buildings on the south side of the road will be conserved and adaptively reused in a manner that facilitates the conservation and interpretation of the heritage values and that enhances the visitor experience of the park, for example: visitor accommodation, dining, functions, offices, studios, education or similar. The adaptive reuse of the site must ensure ongoing public access and enhance the visitor experience to the headland.

Back of house uses (such as storage or depot buildings) are not encouraged as this area is at a prominent location along the public pathways where the plateau narrows affording places to pause, picnic and enjoy the views towards the harbour and the fortification walls of Middle Head. The garages at the eastern end provide opportunities for uses that serve visitors to the

² The wording in final version of the CMP is identical with that in the draft

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park, such as café/restaurant or cultural uses. If they are used for garaging or back-of house services, these uses are to be limited to the garage buildings and the space between them, if that is adequately screened.”

“The courtyard formed by Building 3 will be landscaped to improve amenity. The Boiler House (Building 2) may be removed. There may be additional building constructed within this courtyard, and also within the smaller courtyards between the building wings. This would be to provide: improved amenity and functionality of the existing building; additional shade and shelter; and improved connections between the separate wings of the compound. Any additional building or structure in the courtyards is to be designed in a manner that is compatible with the scale, form and character of the existing building and retain its character as a courtyard.”

..... Middle Head Management Plan - Page 42

CONCLUSION

The Trust’s aggressive support for the aged care proposal stands in stark contrast to the excellent restoration and interpretative work it has done to date. The aged care proposal

- Involves demolition of 50% of the 10 Terminal building,
- Alienates the majority of the area to public use,
- In no way interprets the historical significance of the buildings and adjacent area
- Destroys the clear heritage value of the 10 Terminal Complex.

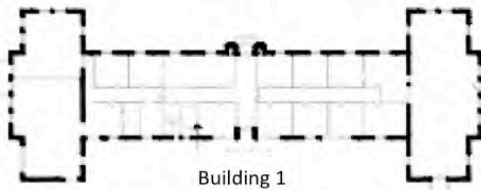
In light of the forgoing it is difficult if not impossible to argue that the proposed aged care facility meets the requirements of the SHFT Act, the Trust’s Comprehensive Plan or its Management Plan.

Headland Preservation Group In.

25 June 2013

HEADLAND PRESERVATION GROUP

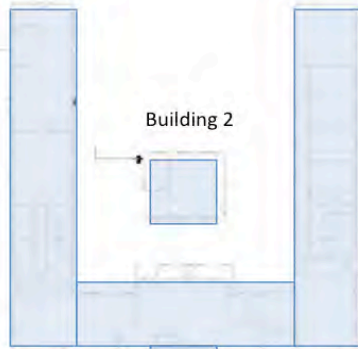
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Building 1



Building 6



Building 2



Building 7



Building 3

Building 2,
Building 7 and
most of Building
3 will be
demolished

Is the “Acute” Shortage of Aged Care Beds Correct?

Official federal government figures have cast doubt on claims by a private developer that an 89-bed nursing home needs to be built on harbour foreshore public land at Middle Head because of “**an acute shortage of residential aged-care services**” in the local area.

Privately owned Middle Head Healthcare Pty Ltd (the developer) is currently seeking permission from both the Sydney Harbour Federation Trust (the Trust) and the Federal Environment Department to demolish most of a heritage-listed former Army complex on the historic Mosman headland and build in its place a two-storey, luxury aged-care home and associated dementia day-care unit.

In a series of documents submitted to the Trust over recent months, the developer argues that the main reason the proposed development should go ahead is because it would help relieve “an acute shortage of residential aged care and respite care facilities on the lower north shore”, and that “measured against the federal government benchmark, there was a shortfall of around 300 aged care beds in Mosman and North Sydney” last year.

Figures supplied by the federal Department of Social Services reveal, however that in the northern Sydney aged-care planning region - of which Mosman and the lower north shore are a part - **the supply of residential aged-care beds currently exceeds federal aged-care benchmarks and planning targets, and is also well above both the NSW and Australian average.**

A departmental spokesman said it was not possible to say whether or not there were shortages of nursing home beds in any one individual suburb or local area, as aged-care service planning was done on a “far broader, regional level, not at an individual suburb level”.

However, he said in the government’s Northern Sydney planning region, there were just over 8,500 residential aged care places available as of June 2013, representing 92.5 places for every 1,000 residents aged 70 years or over.

By contrast, federal targets for each planning region by 2022 are currently 80 residential places for every 1,000 people aged 70 or over, with a major expansion in in-home care and support services to enable frail and elderly people to remain living in their own homes longer.

Out of a total of 72 planning regions nationwide, the Northern Sydney Region had the 14th highest ratio of residential aged-care places to residents aged 70 or over in Australia, the spokesman said.

For NSW as a whole, the ratio of residential aged-care places as of June last year was 86.4 per thousand, while the overall Australian figure was 84.5 per 1,000 – both well below Northern Sydney’s 92.5 places.

By contrast however, Middle Head Healthcare has repeatedly advised the Sydney Harbour Federation Trust in its development applications and promotional material that there is “an acute shortage of residential aged care and respite care on the lower north shore”, and that “Mosman alone has a population of 27,500 people, of which more than 1,500 are aged 80 years or over”.

Middle Head Healthcare (co-owner) Teelia Peploe says the proposed 89-bed nursing home and dementia day-care unit

“will help meet this acute demand for residential aged care and respite care, easing the burden on people looking after loved ones at home..... Projections are for the number of people in Australia aged 80 years or over to double in the next 20 years, and measured against the Federal Government benchmark, in 2013 there was a shortfall of around 300 aged care beds in Mosman and North Sydney, predicted to rise to 417 beds by 2017.”

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But information on a website run by the aged-care industry to help people identify local nursing home facilities casts further doubt on Middle Head Healthcare's claims, revealing that of 95 aged-care facilities within a 10km radius of Mosman, 14 currently have vacancies, **and that of the 16 nursing homes within a 5km radius, one-quarter have vacancies.**

The federal departmental spokesman said that as part of recent major changes in government aged-care policies and service planning, known as the "Living Longer, Living Better" program, billions of dollars in federal funding was also now being redirected towards expanding in-home services for frail and elderly people, and away from far more expensive nursing home services.

Research by;

Headland Preservation Group Inc.

28 July 2014

Aboriginal Report

BACKGROUND

In 1992 an Australian Museum archaeological dig found points, stone flakes, human, animal and fish bones and charcoal at a rock shelter and midden near Balmoral Beach. Radiocarbon dating indicated human occupation started there over 3,000 years ago. At the beginning of the settlement in 1788 members of the Borogegal or Camaraygal clans occupied the area but were almost wiped out with the smallpox epidemic in 1789. Although this midden is not at Middle Head but close by, it indicates the existence of Aborigines in the area. Other middens are scattered around the foreshore, including Middle Head, but have not been so extensively studied.

There are rock carvings, middens and pigment art on Middle Head, the whereabouts of which have been documented in 2005 AMBS¹ Aboriginal Heritage Study of the Mosman Local Government Area:

The Final Report says these findings support the existence and importance of the area to the Aborigines. It goes on to say

“the most unique collection of engraving sites is found in the Eastern zone of the Mosman area centred on Middle Head and is the most visually dramatic and aesthetic placement of engravings in Mosman”.

The way that the site is organised in a formal structure with the concentration of middens on the western part of the headland away from the engravings and the relative lack of pigment art is significant. A study by Kelleher in 2003 found that *“similar combinations of archaeological and topographical features relates to ceremonial behaviour”* (Vol 4 p.100- 102). It is very likely from this together with some evidence from early writings that Middle Head was an important ceremonial site for Aborigines.

How much more suitable it would be to use the buildings of terminal 10 in the centre of Middle Head to honour this as an important site for the original inhabitants and to tell the story of the significant landing on Middle Head by Captain Hunter’s survey crew, as recorded in Lieutenant’s Bradley’s journal, when they were welcomed by the Aborigines and both Aborigines and navy men mixed and danced together.

What an amazing symbol of reconciliation. Most of the original inhabitants of the area had died during the smallpox epidemic. Then the land in the area of Middle Head again assumed importance when Governor Macquarie gave land in the area to 16 Aboriginal families from the Broken Bay area headed by the famous and colourful Bungaree in the hope they would settle there and farm the land.

This is important history and prehistory. Middle Head needs to remain in public hands and in particular honour its first inhabitants. An interpretive centre for both the Aboriginal and Military history would be a far better use of the buildings and open to the public rather than the proposed Aged Care facility that would be privately owned with restricted access.

ABORIGINAL HERITAGE for display in a proposed Middle Head Interpretation Centre

Caves and rock carvings (see above)

Tribes and language

¹ Australian Museum Business Services

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Lieutenant William Dawes placed the Borogegal people in a word list compiled in 1790 by identifying *Borogegy* as Bradley Point (Souter, G. *Mosman, A History*, Melbourne University Press 1994 p. 5-6) The language they would have spoken was Kuringgai and their name for Middle Head was *Cubba Cubba*.

Significant encounters and personalities

Most of the aboriginal heritage interest at Middle Head comes from the stories of encounters recorded in the journals of settlers.

1. *Welcome to Middle Head*

One of the most significant was recorded by Lieutenant William Bradley of the *Sirius* on 28 and 29 of January 1788 just two days after the first fleet had entered Port Jackson. He records in his Journal that on January 28 in a longboat captained by Captain Hunter setting out to survey the harbour he saw on approaching Middle Head

Several of the Natives on the upper part of the rocks who made a great noise and waved to us to come on shore, there being a great surf we could not land at the Point we wished, which they observing, pointed to the best place to land and came down unarm'd to meet us, we of course landed unarm'd, taking care that arms were ready for us at a moments notice...the Natives ..were all much disposed to good humour and pleased with us. (Ibid p.7)

These were the men. There were women there as well but they kept their distance, peeping out from behind rocks and trees. The landing place was probably *Koree*, later known as Chowder Bay. As they left to go to spend the night at Camp Cove on the south side of the harbour,

The men began dancing and laughing...they held their arms extended over their heads, got on their legs and danced till we were some distance, then followed us upon the rocks as far as the boats went along that shore. (Ibid p.7)

The next day they approached Middle Head on the eastern side. They were hailed from the cliff top by the men and again pointed to the best landing place. The place from Bradley's description was either Cobblers Beach or the southern end of Balmoral. A remarkable occasion then followed –

Some of these people having pieces of tape and other things tied about them, we conclude them to be some of those people whom the Governor had met here before, these people mixed with ours and all hands danced together. (Ibid p.8 – emphasis added)

2. *Breakdown of relationship with killings and smallpox*

These early encounters had such promise of harmonious relationships which unfortunately were shattered both by later killings and by the almost annihilation of the Borogegal people by smallpox which struck in 1789 killing about half of the Aborigines in and around Sydney (Ibid p.11)

3. *Bungaree*

By 1815 Governor Macquarie had settled some members of the 'Broken Bay tribe' who were Kuringgai speakers. Macquarie's desire was to domesticate the Natives. He entrusted leadership of the settlement to Bungaree giving him a crescent-shaped copper plate to be worn on a chain around his neck, inscribed 'Boongaree Chief of the Broken Bay Tribe 1815'. Bungaree had been an interpreter and mediator for Matthew Flinders in 1802-03 in his circumnavigation of Australia. The 60 or 70 people, including Bungaree's retinue of several wives, settled on George's Head. They were

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given clothes, some useful articles and implements for farming and a boat and equipment for fishing in the hope that they would farm the land and fish. (Ibid p.28)



Nothing came of the farm but there are several drawings and stories of their various activities. Bungaree was quite a colourful figure in Sydney dressed in an old General's uniform presented to him by Governor Macquarie cutting "a bizarre figure, very amusing to his petty benefactors, as he slid further into alcoholic buffoonery" (Ibid p.31). Bungaree died in 1830 and by 1890s a few Aborigines lived at Red Hand Bay, so called because of some ghostlike stencilling there. By the turn of the century they had all gone. (Ibid p.32)

James Bray in his *Narrative of the discovery and description of contents of a very old Aboriginal burying-ground, at Middle Harbour...* (Reprinted from the *Sydney Morning Herald*) which was published in 1888 has a drawing of Queen Goosberry – wife of King Bungaree – the last of the Sydney Aborigines who visited the Grave every month at full moon only and wept and wailed all night long.

Comments to Mosman Council regarding GTK Traffic Report Proposed Residential Aged Care Development on Middle Head, Mosman

These comments refer to the GTK Consulting Traffic Report and the potential traffic increase from the Proposed Residential Aged Care Development at Middle Head, Mosman if the proposal proceeds.

GTK TRAFFIC REPORT, Para 12, page 20, CONCLUSIONS states that:

- *The traffic generated by the proposed residential care facility will not present any unsatisfactory traffic safety or capacity issues on the existing road network.*
- *During times of peak traffic generation by the proposed residential care facility, Middle Head Road between Middle Head and Effingham Street will operate within the environmental capacity goal and below the functional capacity limits for a collector.*

COMMENT: These conclusions are misleading. Mr Kennedy fails to mention that the afternoon peak traffic generation on Middle Head Road **WEST** of Effingham Street as it approaches the roundabout will **exceed** the Environmental Capacity. This is documented in Table 6, page 17.

The post development volume between 1400 and 1500 hours is 554 versus the Environmental capacity of 500. The survey conducted in November 2013 by CFE Information Technologies Pty Ltd, for the aged care proponent, recorded 495 movements in the 1400-1500 hours time segment.

The report details current and estimated traffic flows. It does not address congestion at Mosman Junction, which is particularly bad before 3pm because of school finishing times.

Table 5, page 16 of the report states the desirable "Environmental Goal" for a collector road (Middle Head Road is a collector road) to be **300 vehicles per hour**.

The report asserts on page 19 that the traffic volumes "are well within the functional capacity of Middle Head Road, i.e. 1,000 vehicles per hour. Does this mean 500 vehicles per hour in both directions or 1,000 vehicles per hour if the current parking/cycle lanes were used as vehicle lanes? Either way this comment appears unrealistic.

Apart from this volume being 100% over the Environmental maximum it is difficult to see how Military Road, Mosman and surrounding "rat run" roads could cope.

CONCLUSIONS

1. The proposed development will have a significant and undesirable impact on traffic flow west of Effingham Street between the hours of 2pm and 3pm – a time period, which is already very congested due to school children being picked up before 3pm.
2. The GTK Report is misleading when it concludes, "*that there will be no adverse traffic impacts caused by the proposed residential care facility at Middle Head*". Figures in the main body of the report (Table 6) show clearly that west of Effingham Street the traffic flow between 1400 and 1500hrs will exceed the "Environmental Capacity."
3. Traffic flow already significantly exceeds the "Environmental Goal" before any increase from the potential aged care facility.

Mosman Council's specialist knowledge of Mosman traffic would best assess the likely collateral effect on the local road system at that time of day.

Headland Preservation Group Inc.

29 July 2014

Compliance with Due Process

Freedom of Information

Previous Expressions of Interest

Proposed Residential Aged Care Development on Middle Head, Mosman

There are serious doubts as to whether the Trust has observed due process and applied proper governance in respect of its consideration of a proposal to develop a residential aged care facility (RACF) on the site of 10 Terminal at Middle Head.

The Trust is a statutory body holding Commonwealth lands in effect on trust for the benefit of the people of Australia, to whom those lands were very publicly dedicated by the Howard Government. It is incumbent on the Trust to observe and comply with the terms of the statute under which it is to hold and administer those lands for the benefit of present and future generations of Australians.

The Trust is also under a statutory obligation to consult the community on the management and conservation of those lands and in respect of any proposed changes to the Trust's Management Plans for those lands.

Further, the Trust management is under a statutory duty to manage the affairs of the Trust in accordance with the policies determined by the Trust. However, the Trust has repeatedly failed to satisfactorily explain the particular process by which the Trust came to select the RACF proposal for sole consideration.

In respect of information sought from the Trust, it is not expected that information which may *properly* be withheld on the grounds of commercial confidentiality be disclosed. However, that is a narrow exemption and would not justify the repeated failure of the Trust to provide requested information which relates to procedures adopted by the Trust and which cannot properly be claimed to be commercial-in-confidence.

Apparent failure by the Sydney Harbour Federation Trust to comply with its Leasing of Land and Building Policy (the Leasing Policy)

In a letter to the Trust dated 6 May 2014 from Baker & McKenzie on behalf of the Headland Preservation Group, specific information was sought as to the process referred to above.

The response to Baker & McKenzie five weeks later by the Geoff Bailey's letter dated 11 June 2014 failed to provide virtually any of the information requested. Instead, in respect of

the application of the Leasing Policy, that letter merely gave a two paragraph general narrative of procedures by which other proposals are said to have been received.

In respect of what that Trust letter of 11 June 2014 called the “direct marketing (open leasing)” process which the Trust claims to have employed, the Trust response in that letter:

- failed to identify: the nature of that process; its terms and conditions; when it began; when it concluded; how it was publicised; how it was conducted; what proposals were received pursuant to it; whether it required that proposals made pursuant to it comply with the then existing Management Plan-Mosman No.7 Middle Head and, if not, what constraints were imposed in respect of compliance and non-compliance with such Management Plan
- failed to state whether the RACF proposal was made, received or considered pursuant to the said “direct marketing (open leasing)” process.

The result of the lack of disclosure of such information has been –

- a lack of transparency in respect of the process, and
- a lack of publicly available information on which to make an informed assessment as to whether there has been the requisite fairness and competition in the process.

In respect of consideration by the Trust Board of the RACF proposal, the Trust response in that letter failed to disclose:

- what was the nature of the proposal put before the Trust Board
- how such proposal had come to be made to the Trust
- how such proposal had come to be submitted to the Trust Board for approval
- what process the Trust had conducted to identify such proposal as against any other interested parties as a suitable proposal to be considered by the Trust
- whether there had been a change at any point to the party submitting the proposal and, if so, what were the process and criteria followed and applied by the Trust in considering the implications of such change.
- the nature of the assessment to be conducted by the Trust before it were to make any decision in respect of such proposal, including what steps and processes would need to be taken and applied in order for the Trust to comply fully with the rules and obligations applying to the Trust.

and

- failed to explain why the Trust would not consider proposals from any other party even though no decision had been made in respect of the proposal for the RACF.

In respect of the application to the Trust of Commonwealth Procurement Rules (CPRs), the Trust response in that letter:

- acknowledged that the principles of the CPRs regarding competition, fairness and transparency are incorporated into the Leasing Policy
- failed to provide any information to show that the Trust had applied such principles in its process or processes in respect of the proposal for the RACF
- failed to disclose how the Trust intended to apply the CPRs in future with respect to considering uses for the site the subject of the RACF proposal
- made the unsubstantiated assertion that the Trust “has followed generally accepted probity principles in obtaining, considering and selecting leasing proposals.”
- failed to show how the Trust had done so and failed to reconcile that assertion with what appears to be evidence to the contrary, as indicated below.

It would appear that the Trust has failed to comply with the Leasing Policy in respect of the process by which it has come to consider the proposal for a RACF.

This proposal was made to the Trust in the name of or on behalf of Middle Head Health Care Pty Ltd or the companies and/or individuals associated with the business or activities carried out under the name of Continuing Health Care.

We understand that the Leasing Policy must be followed under Section 40 of the Trust Act.

Attempts to establish whether the Trust has complied with the Leasing Policy have either been rejected, ignored or sidestepped by the Trust or responded to by unsubstantiated and inconsistent assertions by the Trust.

Freedom of Information

The Trust has rejected two Freedom of Information requests made by the Headland Preservation Group (on 16 January 2014 and 7 March 2014).

Letter to the Trust from Baker & McKenzie 6 May 2014 requesting information

In a letter dated 11 June 2014 to Baker & McKenzie, the Trust failed to provide virtually any of the information sought by Baker & McKenzie, in its letter to the Trust dated 6 May 2014, relating to the process referred to above. [This is referred to in greater detail above.].

Expressions of Interest for 10 Terminal

At a public Information Session at 10 Terminal on 26 November 2013, the Trust Executive Director and the Trust Deputy Executive Director gave contradictory answers as to the process or processes by which the Trust received the proposal for a RACF then on public exhibition.

At a public meeting on 10 April 2014 at the Mosman Senior Citizens' Centre, the Trust Executive Director gave incomplete and inconsistent statements as to the process by which the Trust received the proposal for a RACF which had been placed on public exhibition on 31 October 2013.

The Trust website as at 3 August 2014 shows FAQs which state that the Trust called for Expressions of Interest (EOIs) 2 times for the 10 Terminal site (in 2009 and 2011) but a letter from the Trust dated 11 June 2014 to the Headland Preservation Group states that the Trust called for EOIs three times (in 2009, 2011 and 2012).

Present Information on Trust Website

FAQs on the Trust website state : "Page last updated: Thursday, 6-Feb-2014 18:36:47 EST". Those FAQs give information relating to the 2013 RACF proposal and are misleading in that they are out of date and do not present the current situation.

Actions and statements by Trust management giving rise to perceptions of lack of impartiality on the part of the Trust

The Trust is to make a decision on whether or not to accept the RACF proposal. As the Trust is under statutory obligations to hold and administer Trust lands for the benefit of present and future generations of Australians, it is incumbent on the Trust to remain impartial.

However, Trust management has publicly advocated or promoted the RACF proposal, including –

- to the Mayor of Mosman, in a letter date 3 March 2014, which not only promoted the purported benefits of the RACF but also asked the Mosman Council to defer discussion of the RACF proposal and to invite the proponent of the RACF proposal to address Mosman Council
- to Mosman Council, in its meeting on 4 March 2014, when the Executive Director of the Trust addressed Mosman Council in terms similar to those in the letter of 3 March 2014
- to a public meeting at the Mosman Senior Citizens' Centre on 10 April 2014

Trust management has obstructed and delayed effective access to a significant document on the public record, by-

- refusing electronic access to the Conservation Management Plan report (the CMP report) prepared for the Trust and which contains well over 1,000 pages, and offering only to allow personal photographing of pages of the CMP report at the Trust offices
- eventually granting approval for such electronic access except for that part of the CMP report which contains the detailed information specifically relevant to the site and buildings the subject of the RACF proposal
- after further application, finally granting full electronic access to the CMP report.

Within one week of such access finally being granted, the RACF proposal was referred to the Minister for the Environment under the Environment Protection and Biodiversity Conservation Act (the EPBC Act), with the public being given only 10 business days in which to make submissions. The CMP report was a critical resource for being able to make relevant and informed submissions on key elements of such referral (the EPBC Referral). The Trust's unnecessary and unwarranted delay in granting electronic access to a critical document publicly available only in hard copy

caused needless and unjustifiable hindrance to the public in seeking to make relevant and informed submissions on the EPBC Referral in the limited time allowed.

It would not be unreasonable in the circumstances to question whether, at the time such electronic access was delayed, the Trust Executive Director could have been aware of or could have had reasonable grounds to believe that the EPBC Referral was imminent.

Trust management gave public indications as to the likely timings of when public submissions would be called for under the EPBC Act and the Trust Act, from which interested parties were or were likely to be misled –

- At a public meeting at the Mosman Senior Citizens' Centre on 10 April 2014, the Trust Executive Director derided the idea that there was any urgency about the RACF proposal and indicated that such matters took many months to be considered.

However, the EPBC Referral was made less than three weeks later and the public was given only ten business days from that referral in which to make submissions.

- On a number of occasions from 4 March 2014 onwards, the Executive Director publicly indicated that the way in which the RACF proposal would be dealt with would be that-
 - It would be considered first by the Environment Minister under the EPBC Act
 - If the Environment Minister in effect found that the RACF proposal had or would have a significant impact on the environment, then that would be the end of the matter as it could not proceed further
 - If the Environment Minister in effect found that the RACF proposal did not or would not have a significant impact on the environment, then the RACF proposal would still need to be assessed by the Trust under the Trust Act and other relevant criteria.
 - It was both expressed and implied that any assessment by the Trust would only occur after assessment under the EPBC Act had concluded.

However, at the open Board meeting of the Trust on 17 June 2014, it was announced for the first time that the assessment by the Trust would be held concurrently with the assessment by the Environment Minister under the EPBC Act and that both assessments would likely call for public submissions within a period of about three weeks.

Concurrent assessments by the Trust under the Trust Act and by the Environment Minister under the EPBC Act

Holding these assessment proceedings concurrently is contrary to the public perception created by Trust management that the assessments would be held sequentially.

Holding the assessments concurrently is unreasonable as the matters to be addressed under each assessment are not identical.

This has unnecessarily introduced further complexity into what are already complex issues. It has caused considerable public confusion as to how to make submissions that appropriately address the relevant criteria for each different assessment procedure.

This is likely to detrimentally affect the ability of members of the public to make as effective submissions as they may have made had the assessment procedures been conducted independently.

There has been no credible explanation offered by the Trust as to why its assessment of the RACF proposal should have been brought forward to run concurrently with the assessment under the EPBC Act.

Ombudsman

In view of the matters referred to above, a submission to the Commonwealth Ombudsman is being prepared detailing the above issues.

ATTACHMENT B: Statements by MPs in support of preserving Middle Head from redevelopment

In response to concerns expressed by the National Trust in December 1997 about the proposed sale for profit by the Department of Defence of Sydney Harbour foreshore lands, the Member for Warringah, The Hon. Tony Abbott, responded:

"I have been extremely concerned about this issue ever since the former Labor Government announced the military's plans to leave in answer to a Parliamentary Question on Notice from me in May 1995. Since then, I have organized a number of protest meetings and campaigned strongly to ensure that this priceless piece of our heritage is not squandered to the everlasting loss of the people of Sydney and Australia.

"The principles I have attempted to uphold have been: that all bushland must be protected forever; that there should be no large scale commercial development; that heritage buildings should be protected and restored; that any redevelopment must be confined to existing areas; and that the military's departure should produce a better environment for local people with more open space, more bushland and more public access to the last unspoilt headlands in Sydney Harbour." ¹

In response to the same concerns, Joe Hockey, the Member for North Sydney also responded:

"The sheer volume of correspondence I have received on this issue indicates that while the community respects the need for the Department of Defence to occupy prime land for strategic purposes, this need does not encompass a right to pass title to this land into the hands of private interests.

"Significantly, the views of the local community also reflect a general desire to promote intergenerational equity when it comes to our environment. The request that the lands do not fall victim to private concerns is not motivated by jealousy on the part of local residents. Instead, the community is determined to see the lands preserved for the benefit of future generations. This desire for preservation is consistent with the view of a large majority of people who live on the lower north shore that this generation is the guardian of our environment for the generations to come." ²

In 1997-8, Prime Minister John Howard said:

"I find it [the idea of the Middle Head area being "cut up and sold off to private development"] very unattractive ... the Harbour foreshores of Sydney [are] a jewel in the Australian crown"³

In September 1998, an Interim Sydney Harbour Federation Trust was established by the Commonwealth Government to manage surplus Defence lands on Sydney Harbour foreshores prior to the passage of legislation.

On announcement of the establishment of the Interim Trust, the then Prime Minister, the Hon. John Howard MP, reminded Australians of the value of Sydney Harbour to all Australians and outlined the importance of establishing the Sydney Harbour Federation Trust:

"...[Sydney Harbour is] probably the world's greatest harbour. It is one of the great natural beauty spots of our nation. It is the cradle of European settlement in Australia and it is one of those parts of our country which gives immense pride and immense pleasure, not only to the residents of Sydney, but also to all Australians because it wins such wide acclaim around the world.

"[As a result of vigorous community opposition to the proposal to sell some of the sites for redevelopment] ..the Government has devised a long-term plan to return the [vacated Defence] land to the People of Australia. Not just to the people of Sydney, not just to the people of the suburbs around Sydney Harbour, but to all of the people of Australia.

"The Sydney Harbour Federation Trust...will manage the sites with the objective of maximising public access to the sites... It will preserve heritage buildings and features of the sites. The Trust will be [chaired by] Mr Kevin McCann who is a local resident ...and [he] has a particular commitment to the return of these lands to the people of Sydney.

"[the establishment of the Trust] will prevent any ad-hoc treatment of the return of the land to the people and it will ensure that there is maximum weight given to the desire of all Australians that the maximum advantage be derived in open space and recreational purposes in relation to the land.

"The Trust will be a transitional body...and after that time the Commonwealth will transfer North Head, Middle Head and Georges Heights for inclusion in the Sydney Harbour National Park." ⁴

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The preamble to the Sydney Harbour Federation Trust Act 2001 states:

"The Parliament intends to conserve and preserve land in the Sydney Harbour region for the benefit of present and future generations of Australians. ... Suitable land with significant environmental and heritage values will be returned to the people of Australia.

"The Parliament intends to establish the Sydney Harbour Federation Trust as a transitional body to manage the land and facilitate its return in good order. The Trust will transfer suitable land to New South Wales for inclusion in the national parks and reserves system."

In 2007, when opening the new Visitor Centre at North Head, The Hon. Tony Abbott said that, for himself, returning the harbourside defence lands to public use had been the best government initiative he'd been involved with.⁵

In 2012, The Hon. Tony Abbott said:

"As a member of parliament, my next campaign was against the Keating government's proposed sale of former military land around Sydney Harbour. Largely at my instigation, the Howard government committed more than \$115 million to the Sydney Harbour Federation Trust to preserve the natural and built heritage of places like North Head and Middle Head."⁶

Also in 2012, The Hon. Joe Hockey told Parliament:

"But I think that one of the great legacies of the previous coalition government —and I pay great tribute to John Howard for this— was the creation of the Sydney Harbour Federation Trust. A number of sites across the harbour in both Labor and Liberal seats were put into the trust and used for the community in Sydney.

"This land could never be recovered once sold. Woolwich Docks, which is down the road from Hunters Hill, where I am, is one of the sites that John Howard preserved. It is now a vibrant centre of activity. North Head, Middle Head and Cockatoo Island are other great examples.

"I thank the community advisory committee and the local state member, Jillian Skinner, who has been a very strong advocate of the interests of Platypus. This is a long-lasting community facility... there will be a 1.8 hectare site on Sydney Harbour —on prime land—for our community... these sorts of sites represent the very fabric of the community.

"The protection of our harbour foreshores should enjoy bipartisan support. The continuation of the Sydney Harbour Federation Trust and the protection of the greatest harbour in the world, Sydney Harbour, and the fact that we are all working together to make these things reality mean that even in some of the most adverse of circumstances we can all work together to make our community a better place to live."⁷

¹ The National Trust of Australia (New South Wales) Submission to the Sydney Harbour Federation Trust dated 26.2.2014 opposing the proposal for an aged care residential development on Middle Head, p.1

² *ibid*, p.2

³ <http://pmtranscripts.dpmc.gov.au/preview.php?did=10734>, accessed 7.3.2014

⁴ Sydney Harbour Federation Trust Comprehensive Plan, pp.11-12 and transcript of PM John Howard's announcement

⁵ Geraldine O'Brien, "Urban Warriors", Sydney Morning Herald, 23.6.2007, p.13

⁶ Address to the Australian Industry Group, Brisbane 'The Coalition's Plan for a Cleaner Environment', <http://engage.wa.liberal.org.au/general/tony-abbott-speech-to-the-australian-industry-group-brisbane-the-coalitions-plan-for-a-cleaner-environment>, 2012, accessed 4.4.2014

⁷ Speech to House of Representatives, 24.5.2012, Hansard page 5575

Summary of Board minutes relating to the Middle Head Health Care proposal

12 December 2012 (82nd meeting)

6) Lease Concept Brief: Continuing Health Care, Middle Head Proposal

(Agenda Item 4) Mr Bailey spoke to the paper. The purpose of the report was to seek the Board's endorsement for moving the negotiations to the next stage.

The Board RESOLVED to approve the Trust continue with negotiations and progress the proposal.

Moved: P Lowry Seconded: A Tinney

No mention in the 83rd meeting

19 Feb 2013 (84th meeting)

Item 7 - Continuing Health Care proposal, Middle Head Update (Agenda Item 8).

An update on this proposal was given. No DA has been issued as yet. Company financials have not yet been received. Due diligence has commenced. SHFT would need to provide services to the site.

The company has raised the possibility of a ground lease - further investigation will be made into this. A report outlining the company's financials, due diligence results and risk analysis will be presented at the next Board meeting.

18 June 2013 (85th meeting)

8) Continuing Health Care Proposal, Middle Head (Agenda Item 8) Mr. McKay (Mr Tim McKay is Director, Leasing and Property Management at SHFT) spoke to the paper.

This is considered to be an excellent proposal for the Middle Head site. An agreement to lease is required for the construction period. Minor amendments are also required to the Middle Head Management Plan to accommodate the proposal.

There was discussion about the proposed changes to the Management Plan. It was considered the proposed use of the site for aged care comes within the parameters of the current Management Plan.

The review by Stantons Research of the proposal was tabled at the meeting. It was advised comprehensive background checks be conducted on the proponents.

The Board RESOLVED to proceed with the Middle Head Health Care proposal to the next stage subject to satisfactory resolution of questions raised.

Moved: P Lowry Seconded: E Heiss

The Board RESOLVED to place on exhibition the proposed amendment to the Middle Head Management Plan to accommodate the height of the buildings outlined in the proposal.

Moved: P Lowry Seconded: R Jeffs

10) Draft Middle Head Management Plan (Agenda Item 10)

This matter was discussed and resolved in conjunction with agenda item 8 – Continuing Health Care Proposal, Middle Head.

No mention in the 86th meeting

16-17 September 2013 (87th meeting)

9) Middle Head Aged Care Facility - Briefing Nota (Agenda Item 9)

This proposal has been delayed because of the fire standards required. A solution has been reached and the Trust is currently awaiting the amended DA. The project will then go on exhibition.

Mr McKay gave a verbal update on the proposal outlining details of ownership of the company making the proposal, its background and the due diligence that has been undertaken to date. The newly adopted Due Diligence procedure has been used as a basis for these investigations.

The Heads of Agreement has not yet been signed.

The Trust is continuing to make enquiries and to date all appears to be in order. Further discussion was deferred until the next meeting.

Note that minutes of the 88th meeting were held in private on 11 December 2013

The 89th meeting was very short and also held on 11 December 2013 after the Open Board meeting at which Linda spoke.

15 February 2014 (90th meeting)

9) Middle Head Aged Care update (Agenda Item 9)

A letter from the Headland Preservation Group Inc. was handed out at the meeting.

There was discussion of the process moving forward. The decision by the Trust regarding the Proposal will be made when all information is available.

29 April 2014 (91st meeting)

Ms Braxton-Smith (Trustee) declared a potential conflict with the company with whom she is a consultant (Kathy Jones & Associates). This company has been engaged by the Trust in relation to the Middle Head Aged Care facility proposal.

6) Finance Report (Agenda Item 5)

.... The AR&CC were given assurance that the forecast was robust and expenses/supplies forecasts were reliable. It was noted that there had not been significant changes in the variances in the Financial Report since the last Board meeting in February. As at the reporting period end, the Trust has a year to date surplus of \$1.769m, against a budget surplus for the same period of just \$3,689.

.... The main contributing factors to this surplus being higher than expected are:

- Licensing Revenue \$0.271m over budget and Other Income \$0.130m over budget.
- Total Expenses \$1.356m below budget.

The Trust is currently forecasting a surplus of \$676K at the year-end. A car park may be added to the non-financial assets prior to financial year-end (estimated value \$350-\$400K).

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7) Middle Head Aged Care Proposal update (Agenda Item 6)

The proponents have advised that they are to lodge a revised proposal with the Department of the Environment in accordance with the EPBC Act. Mr Bailey explained the process to Trustees.

10) Defence Heritage Sub Committee (Agenda Item 9)

Mr McLeay gave a verbal report on the Defence Heritage Sub Committee. The Sub Committee met by teleconference and a plan of action has been agreed. Suitably experienced people will be asked to join the Sub Committee for specific projects.