

JRPP No:	2010SYE075
DA No:	DA 2010/575
PROPOSED DEVELOPMENT:	Demolition of existing dwellings and construction of residential aged care facility containing 116 beds - 164, 166, 170, 172, 176 Sailors Bay Road and 47, 49, 51 Baringa Road, NORTHBRIDGE NSW 2063
APPLICANT:	Markam Ralph
REPORT BY:	Annie Leung, Assessment Officer, Willoughby City Council

Assessment Report and Recommendation

ATTACHMENTS:

1. **NOTIFICATION MAP**
2. **PLANS & ELEVATIONS**
3. **SEPP 1 OBJECTIONS**
4. **LIST OF AMENDMENTS (18 JAN 2011)**

REPORT DATE: 2 FEB 2011

RECOMMENDATION: APPROVAL

LOCATION: 164, 166, 170, 172, 176 SAILORS BAY ROAD AND 47, 49, 51 BARINGA ROAD, NORTHBRIDGE NSW 2063

APPLICANT: MORRISON DESIGN PARTNERSHIP

PROPOSAL: DEMOLITION OF EXISTING DWELLINGS AND CONSTRUCTION OF RESIDENTIAL AGED CARE FACILITY CONTAINING 116 BEDS.

DATE OF LODGEMENT: 13-SEP-2010

REPORTING OFFICER: ANNIE LEUNG

RESPONSIBLE OFFICER: IAN ARNOTT

Description of Proposal

Development application 2010/575 seeks consent for demolition of the existing dwellings at the site and for the construction of a 116 bed residential care facility, including 15 beds dedicated to persons with dementia. 10% of the proposed beds will be provided as affordable places.

The proposed development is an "H- shaped" building with street frontages on Sailors Bay Road and Baringa Road. Pedestrian entrance and vehicular access to the site are provided from Sailors Bay Road. The proposed driveway leading to the basement car parking for 34 vehicles will be provided on the existing Euroka Street

and Sailors Bay Road roundabout. A loading bay and ambulance zone are also provided within the basement area.

The proposed building is 3 storeys in height. However, due to the fall of the site from Baringa Road towards Sailors Bay Road by approximately 3m, the lower ground level of the proposed building is substantially below existing ground level for that part of the site towards Baringa Road. The proposed development as viewed from Baringa Road is two storeys in height. Beds/rooms on the lower ground floor of the proposed building have access to natural light and ventilation via 6 excavated courtyard areas up to approximately 6m below existing ground level. Two of the proposed secured courtyards are dedicated for residents with dementia.

The development application is accompanied by SEPP 1 objections to height standards contained in Clause 40(4)(a), Clause 40(4)(b), & Clause 40(4)(c) of SEPP (Housing for Seniors or People with a Disability) 2004.

A summary of the proposed facility is provided below:

Basement (RL 83)	Basement car parking for 34 vehicles, including 13 visitors, 21 staff spaces, and 1 ambulance bay. Storage areas, kitchen, staff areas, and excavated courtyard at RL82.85
Lower Ground (RL87)	37 beds, including 15 dementia beds Entrance lobby from Sailors Bay Road, lounge and cafeteria. Access to excavated secured courtyards
Ground floor (RL90.2)	51 beds with access to roof garden at RL90.2 adjacent to No 45 Baringa Road
First floor (RL93.4)	28 beds with access to roof garden at RL 93.4 adjacent to No 182 Sailors Bay Road

Existing Building and Site Context

The site is bounded by Sailors Bay Road and Baringa Road between Strathallen Ave and Gunyah Street. It has a total site area of 4552m². It comprises 8 existing allotments as listed below:

Sailors Bay Road – 61m frontage		
	Site area	
164	325.5m ²	Single storey semi detached dwellings
166	324.8m ²	
170	650.3m ²	Single storey dwelling
172	650.3m ²	Single storey dwelling
176	650.3m ²	Single storey dwelling
Baringa Road – 45.72m frontage		
47	650.3m ²	Two storey dwelling

49	650.3m ²	Two storey dwelling
51	650.3m ²	Single storey dwelling

The western boundary of the site immediately adjoins the end of the Northbridge commercial strip along Sailors Bay Road, adjacent to a 4 storey commercial building at No 160 Sailors Bay Road. Northbridge town centre, and its shopping centre Northbridge Plaza is approximately 300m walk to the west of the site. Bus services are available on Sailors Bay Road and Strathallan Ave with services to the City, Chatswood, and Northbridge. The nearest bus stop to the site is less than 100m in either direction along Sailors Bay Road from the site.

To the east and to the south of the site are low density residential developments, except for the church at No 53 Baringa Road, which adjoins the eastern boundary of the site. Also adjoining the eastern boundary of the site is a two storey residential flat building at No 182 Sailors Bay Road. Residential developments along Baringa Road are mostly two storey detached houses. The development site is also located within the vicinity of local heritage item, Clavering, at No 184 Sailors Bay Road.

Relevant History

Previous DA2010/16

A previous application, DA2010/16 was lodged with Council for the construction of a residential care facility accommodating 116 beds. This application was withdrawn by the applicant subsequent to discussions with Council's officers who raised issues of concern about the abrupt change of building scale, height, density, and potential site isolation of adjoining properties at No 164-166 Sailors Bay Road. The applicant has since then acquired the properties at No 164 and 166 Sailors Bay Road, and has included these properties as part of the current development site.

DA2010/575

The current application was lodged on 13 September 2010.

Amended plans – 18 Jan 2011

Council received an amended proposal on 18 Jan 2011. The amendments generally relate to revisions of the proposed building façade on Sailors Bay Road, and changes to landscaping details. A detailed list of amendments accompanying the amended proposal is provided as Attachment 4 to this report.

Neighbour Notification of the amended proposal is considered unnecessary. The proposal as amended is not considered to create greater environmental impacts or additional impacts to adjoining and surrounding developments.

Neighbour Notification

The application attracted 27 submissions during public notification, including one submission from Energy Australia. The letter from Energy Australia does not object to the proposed development. The issues raised in the submissions are summarised below:

Baringa Road (14 Submissions)

- Increase of traffic on Sailors Bay Road during peak hours. The submitted traffic report does not consider existing peak hour during 3:00 – 3:30pm due to nearby schools, and the wider Northbridge peninsula
- The development will exacerbate existing street parking issues, particularly on Baringa Road, Gunyah Street and Namoi Road. Street parking along these streets are already at their maximum capacity due to commuter parking.
- Inadequate car parking spaces for the proposed facility. The submitted traffic report assumes 50% of all staff will take public transport, which is considered unreasonable, given the lack of public transport outside peak hours. Some correspondents recommend 1 car space per employee be provided
- The existing Euroka Street roundabout is not designed to service the proposed facility
- Concerned with construction traffic and disruption to residents in the locality
- The proposal does not comply with SEPP requirements, including height and FSR
- Bulk and scale of the development not in keeping with the area, and exceeds expectation under the Draft LEP 2009
- The proposed built forms look commercial and not residential in character, and not well-articulated. The proposed development will have a loss of residential character
- The submitted SEPP 1 objections are not well founded
- The FSR nominated by the applicant is misleading, and excludes areas that would normally be included by Council
- The scale of the development is too large for the site
- The development's breach of the 25% rear height restriction to single storey will adversely affect the Baringa Road Streetscape
- The area between Northbridge Plaza and the residential zone of Northbridge should not be infill/ the existing commercial strip should not be extended into residential area
- Insufficient provision of greenspace/landscaped area and excessive site coverage
- Doubtful fire safety measures given the application does not include a full fire safety report,
- The gate/entry from Baringa Road should be locked to prevent access to the facility from Baringa Road.
- Breach of guidelines for residential developments

Uniting Church (53 Baringa Road)

- The proposed excavation is extensive, and the correspondent requests a performance bond of \$50,000 in favour of the Church as security against dilapidation
- Requests that Council prepares a construction management plan to address parking issues during construction, including concerns with deliveries and heavy vehicle movements.

Sailors Bay Road (6 Submissions)

- Excessive bulk, especially along Sailors Bay Road and its proximity to local heritage item "Clavering" and the property at No 182 Sailors Bay Road
- The excessive size of the development that would adversely impact upon the amenity of adjoining properties and the streetscape in general

- The height of the proposed building will “dwarf” adjoining properties
- The proposed 116 beds facility is commercial in scale and unsuitable for the residential area
- The density of the proposed development is inappropriate for the site
- Overshadowing impacts to No 182 Sailors Bay Road
- Requests for dilapidation report prior and post development
- Inadequate setback from No 182 Sailors Bay Road
- Departures from the requirements of the SEPP should not be allowed
- Inadequate car parking for the size of the proposed facility, particularly for staggered staff. There is also no provision of car spaces for residents, visiting health professionals, and volunteers, etc. It is considered unreasonable to assume staff will catch public transport
- Access for the proposed facility being at the existing roundabout would be detrimental to reasonable access to the property at No 182 Sailors Bay Road
- The existing Euroka Street roundabout is inadequate in servicing the proposed development despite proposed widening of the driveway to allow for two way traffic. Signs on top of the roundabout had often been damaged by heavy vehicles running over the top. The existing roundabout is narrow and tight for existing traffic.
- The application underestimates existing traffic in and out of Northbridge peninsula
- The single vehicular access point to the building is inadequate, particularly for emergency situations
- The proposed rezoning/redevelopment for Northbridge is not complemented with traffic assessment or supported by residents
- The increased traffic resulting from the proposed development will increase hazards to pedestrians
- Loss of existing mature vegetation
- Non-compliance with required landscaped provisions

Euroka Street (2 Submissions)

- The requirements of the proposed 116 bed nursing home is different to the proposed medium density zoning for the site and is not in keeping with the character of Northbridge.
- The proposed development is one total mass with no building shape
- The bulk and scale of the development detract from the amenity of the area
- Inadequate car parking
- The proposed 34 car spaces assumes a significant number of staff using public transport, but the current bus services to Northbridge are unlikely to be acceptable to shift workers
- Objects to the proposed development being over height limit.
- The development will exacerbate existing traffic congestion in the area
- The proposed entrance on the Euroka Street roundabout is a safety hazard

Others (4 Submissions)

- The development breaches the height standard, and fails to meet FSR and Landscaping requirements in SEPP (Seniors);
- The development exceeds FSR proposed in Draft WLEP 2009;
- The development is out of character with the residential area or its future character;

- Adverse traffic and congestion for Northbridge due to the scale of the proposed facility;
- Inadequate car parking spaces for the proposed facility;
- Adverse impact on the operation of the existing Euroka Street roundabout;
- Recommendations for land dedication to the road way on the Sailors Bay Road frontage of the site to improve pedestrian safety;
- Construction management issues with respect to construction vehicles' access and parking
- SEPP overrides Council's policies for this development, but objectives of Council's policies must still be met.

Controls and Classification

- i) Willoughby LEP 1995: Yes
- ii) Conservation Area: No
- iii) Zoning: 2(a)
- iv) Applicable DCP (SEPPs, REPs): SEPP (Seniors Housing), WDCP, SREP (Syd Harbour Catchment), SEPP 1, SEPP 55, SEPP 6.
- v) S94 Contribution Plans: Yes
- vi) Draft LEP 2009 Zoning: R3 – Medium Density for allotments fronting Sailors Bay Road, R2- Low Density for allotments fronting Baringa Road

Development Statistics

	Proposed	Standard	Compliance
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004			
Location and Access to Facilities (Cl. 26)			
Site Area (m2) (Cl. 40(2))	4552m ²	1000m ²	Yes
Site Frontage (Cl. 40(3))	61m	20m@bldg line	Yes
Height (Cl. 40(4))	8.5m 3 Storeys 2 Storeys	a) 8m or less b) 2 Storey adj b'dy c) 25% rear of the site must not exceed 1 storey in height	No, see assessment of submitted SEPP 1 objections.
Residential Care Facility (Division 2)	Submitted report Access	Commonwealth aged care accreditation standards and the Building Code of Australia.	Satisfactory
Standards not forming part of grounds for refusal (Clause 48 – Residential care facility)			
Height	8.5m & 3 storey	Max 8m & 2 storey	No
Density & Scale	1.24:1	Max FSR 1:1	No
Landscaped area	22.7m ² /bed	Min 25m ² /bed	No

	Proposed	Standard	Compliance
Parking	13 visitors 21 staff spaces 1 ambulance bay = 34 spaces + 1 ambulance bay	1/10beds 1/15 dementia beds 1/2 employees 1 ambulance bay Required = 101/10 + 15/15 32/2 + + 1 = 28 spaces	Yes
WLEP 1995			
Zoning cl. 14, 14A, & 14B	2(a)	Nursing home is a permissible use	Yes
Height Cl.18	3 storey (Sailors Bay Road) & 2 Storey Baringa Road	2 storey	Also see requirements under SEPP (Seniors)
Draft WLEP 2009			
Zoning	R3 – Medium density residential & R2 Low Density residential	Residential care facility is permissible use	Yes
FSR	1.24:1	0.7:1	No
Height	<9m except for lift overrun (Sailors Bay Road)	9m	No.
WDCP			
Car Parking (C.4)	34 spaces + 1 ambulance bay	28 car spaces (including 1 ambulance bay) as per SEPP (Seniors)	Yes. However, WDCP discourages excess car parking spaces
Water Mgt (C.5)	Submitted stormwater proposal	Council's OSD policy and technical standards	Satisfactory subject to conditions
Access (C.6)	Submitted access statement noting general compliance with BCA	BCA	Preliminary report submitted and acceptable
Waste Mgt (C.8)	Basement garbage room	Various	Satisfactory subject to recommended conditions.
Landscaping (C.9)	Not calculated.	Min 35% in 2(a) zone and other residential zones, but SEPP requirements overrides DCP provisions	No. Note that WDCP requires soft landscaped areas, which does not include paved areas that are included by the SEPP.
Safer by Design (C.11)	See page 52 -53 of submitted statement of environmental effects	Various	The application has been referred to Chatswood Police
Fencing (C.12)	Sailors Bay Rd: 0.6m Baringa Rd: 1.6m (0.95m masonry)	1.1 solid and up to 1.6m with open form material. (Fences between 1.1m and 1.6m in height are to be setback 1m from the street alignment for at least 20% of the site frontage)	Yes.

	Proposed	Standard	Compliance
SEPP 55 & Contaminated Land (C.13)	Existing residential uses	SEPP 55	Acceptable subject to appropriate conditions

Referrals

Internal

Building	Standard conditions of consent are recommended.
Waste	No objections subject to recommended Conditions 72 - 76 .
Development Engineering	The submitted stormwater plans are required to be amended in accordance with recommended conditions.
Traffic	The proposed development is generally satisfactory. Please see assessment under Part C.4 of WDCP of this report.
Environment Health Landscaping	No objection subject to recommended standard conditions. Council's landscape officer raised no objection to the proposed removal of trees subject to the proposed replacement planting.
Heritage	The submitted Heritage Impact Statement has been assessed by Council's Heritage Architect. The proposed development as amended is found to have acceptable impacts to the local heritage item in the vicinity of the site.
Community Service	See further discussion under WLEP - Heritage. Noted. No objection raised against the proposed development.

External

Police (CPTED)	The application has been referred to NSW Police – NS LAC Chatswood station. Recommendations received from the Police are incorporated as conditions of consent as relevant. Please also see assessment under Clause 37 –Crime Prevention of SEPP (Seniors).
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Matters for Consideration Under S.79C EP&A Act

Satisfactory ✓ Unsatisfactory ✗ Not Relevant N/A

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	• State Environmental Planning Policies (SEPP)	✓
	• Regional Environmental Plans (REP)	✓
	• Local Environmental Plans (LEP)	✓
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	• Draft State Environmental Planning Policies (SEPP)	N/A
	• Draft Regional Environmental Plans (REP)	N/A
	• Draft Local Environmental Plans (LEP)	✓
(a)(iii)	Any development control plans	
	• Development control plans (DCPs)	✓
(a)(iv)	Any matters prescribed by the regulations	
	• Clause 92 EP&A Regulation- Demolition	✓
	• Clause 93 EP&A Regulation-Fire Safety Considerations	✓
	• Clause 94 EP&A Regulation-Fire Upgrade of Existing Buildings	N/A

Matters for Consideration Under S.79C EP&A Act

Satisfactory ✓ Unsatisfactory ✗ Not Relevant N/A

(b)	The likely impacts of the development	
	<ul style="list-style-type: none"> Context & setting 	✓
	<ul style="list-style-type: none"> Access, transport & traffic, parking 	✓
	<ul style="list-style-type: none"> Servicing, loading/unloading 	✓
	<ul style="list-style-type: none"> Public domain 	✓
	<ul style="list-style-type: none"> Utilities 	✓
	<ul style="list-style-type: none"> Heritage 	✓
	<ul style="list-style-type: none"> Privacy 	✓
	<ul style="list-style-type: none"> Views 	✓
	<ul style="list-style-type: none"> Solar Access 	✓
	<ul style="list-style-type: none"> Water and draining 	✓
	<ul style="list-style-type: none"> Soils 	✓
	<ul style="list-style-type: none"> Air & microclimate 	✓
	<ul style="list-style-type: none"> Flora & fauna 	✓
	<ul style="list-style-type: none"> Waste 	✓
	<ul style="list-style-type: none"> Energy 	✓
	<ul style="list-style-type: none"> Noise & vibration 	✓
	<ul style="list-style-type: none"> Natural hazards 	N/A
	<ul style="list-style-type: none"> Safety, security crime prevention 	✓
	<ul style="list-style-type: none"> Social impact in the locality 	✓
	<ul style="list-style-type: none"> Economic impact in the locality 	✓
	<ul style="list-style-type: none"> Site design and internal design 	✓
	<ul style="list-style-type: none"> Construction 	✓
	<ul style="list-style-type: none"> Cumulative impacts 	✓
(c)	The suitability of the site for the development	
	<ul style="list-style-type: none"> Does the proposal fit in the locality? 	✓
	<ul style="list-style-type: none"> Are the site attributes conducive to this development? 	✓
(d)	Any submissions made in accordance with this Act or the regulations	
	<ul style="list-style-type: none"> Public submissions 	✓
	<ul style="list-style-type: none"> Submissions from public authorities 	✓
(e)	The public interest	
	<ul style="list-style-type: none"> Federal, State and Local Government interests and Community interests 	✓

Assessment

SEPP (Housing for Seniors or People with a Disability) 2004

The proposed development is consistent with the definition of a residential care facility as defined under Clause 11 of SEPP (Seniors) as quoted below:

Clause 11 – residential care facilities

In this Policy, a **residential care facility** is residential accommodation for seniors or people with a disability that includes:

- (a) meals and cleaning services, and
- (b) personal care or nursing care, or both, and
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, not being a dwelling, hostel, hospital or psychiatric facility.

Note. The Aged Care Act 1997 of the Commonwealth requires residential care facilities to which that Act applies to meet certain requirements.

Part 1 General requirements

A restriction on the occupation of the proposed development is required pursuant to Clause 18 of the SEPP. See recommended **Condition 47**.

Site compatibility certificate pursuant to Clause 24 of the SEPP is not required for the proposed development. The proposed development, being a residential care facility is similarly defined as a nursing home in the Willoughby Local Environmental Plan 1995, which is a permissible use in residential 2(a) zone.

Part 2 Site- related requirements

The proposed development satisfies the site-related requirements contained in Part 2 of the SEPP as outlined below:

Clause 26 Location and access to facilities: The submitted application is accompanied by an Access report prepared by Accessible Building Solutions dated 20 August 2010. The report identifies compliance with Clause 26, including all facilities required and adequate access to transport. It is noted that the site immediately adjoins commercial properties to the west, and adjoins a church along its eastern boundary. Northbridge Plaza shopping centre is located within 300m of the site. There are a wide range of shops, banks and other facilities available between the site and Northbridge Plaza. Gradient of the footpaths on Sailors Bay Road is moderate between the site and Northbridge Plaza. Regular bus services are available on Sailors Bay Road and Strathallan Ave for travel towards the city and Chatswood.

The closest bus stop near the site is located directly outside No 190 Sailors Bay Road (50m from the site) for buses travelling towards the City and Chatswood, and outside No 209 Sailors Bay Road opposite the site for buses travelling towards the Northbridge peninsula to destinations such as the Northbridge Golf Course, Northbridge Baths and foreshore parks. More bus services are available on Strathallan Ave near its intersection with Sailors Bay Road, which is approximately 150m walk from the site. Further details can be found on Page 6 Figure 4 of the submitted Traffic Assessment Report.

Clause 28 Water and sewer: The site compromises existing residential allotments with existing connection to water and sewer services.

Clause 29 Certain site compatibility criteria: The proposed development is compatible with the surrounding land uses of the site.

The subject site considered to be at the interface between the existing commercial and residential zones, and is identified to be suitable for higher density development in the exhibited draft local environmental plan, Draft WLEP 2009. It is well serviced by existing services and infrastructure, including regular buses and a wide range of local and retail services. The existing residential allotments comprising the site are not known to be subject to any natural hazards that would hinder the proposed development. The compatibility of the bulk and scale of the proposed development with respect to its locality is further discussed under the relevant headings in this assessment report.

Part 3 (Division 2) Design requirements

Neighbourhood amenity and streetscape (Clause 33)

The subject site is located at the interface of commercial developments extending from Northbridge Town Centre to low density residential developments on Northbridge peninsula. The change in building scale along the existing streetscape on Sailors Bay Road is abrupt. The 4 storey development at No 160 Sailors Bay Road stands starkly against the existing single storey semi-detached dwelling at No 164 and 166 Sailors Bay Road. Developments along Baringa Road are mostly large two storey dwelling houses. The proposed development generally takes into account the building elements of both the adjoining commercial zone and the low density residential zone and seeks to mediate a transition of building forms. The proposed building height is considered compatible with adjoining developments. See assessment under Clause 40(4).

The siting and setbacks of the proposed development are considered appropriate and sensitive to the surrounding and adjoining developments. The proposed development provides progressive setback from the Sailors Bay Road frontage of the site, but also provides increased setback from the residential flat development at No 182 Sailors Bay Road and the detached house at No 45 Baringa Road. The mass of the proposed development is concentrated along the central axis of the site (within the area of the existing allotments at No 172 Sailors Bay Road and No 49 Baringa Road) and provides substantial setbacks from adjoining properties. The proposed development is not considered to cause unreasonable amenity impacts to adjoining residential developments. Please also see assessment under Clause 48(b) -FSR.

Visual & Acoustic Privacy (Clause 34)

The design and location of proposed windows and balconies of the development are considered appropriate and unlikely to unreasonably overlook the rear yard of the property at No 45 Baringa Road.

The proposed development's potential privacy conflicts relates to its roof gardens that are located within the rear 25% of the site. These roof gardens may provide opportunities to overlook into the rear yard of adjoining properties. The proposed roof garden on the eastern side of the development is approximately 1.8m above the existing boundary level with No 45 Baringa Road, and is setback about 3m from the respective common boundary. The proposed roof garden on the western side of the development is approximately 4m above existing site level at No 182 Sailors Bay Road, but it mainly overlooks a car parking/driveway area at No 182 Sailors Bay Road. The proposal includes a planter around the edges of the proposed roof

gardens to prevent users from overlooking adjoining properties. Additional details have been requested from the applicant with respect to screen planting/planter edges to demonstrate a reasonable level of privacy will be maintained for the rear yard of No 45 Baringa Road. (Also see **Condition 4**).

The proposal as amended on 18 Jan 2011 reduced the proposed first floor balcony near the common boundary with No 182 Sailors Bay Road, and incorporated changes to a first floor sitting room window to a highlight window in order mitigate privacy conflicts with windows on the western elevation of the property at No 182.

Solar access and design for climate (Clause 35)

- The proposed development does not unreasonably affect solar access to adjoining properties as illustrated by the submitted shadow diagrams.
- The proposed development provides adequate natural light and ventilation to all bedrooms in the facility. Whilst the lower ground floor is excavated and substantially underground for that part of the site fronting Baringa Road, the proposed internal courtyards are large in size with minimum dimensions at over 10m. Common living areas within the facility are mostly located on the Sailors Bay Road part of the site which adjoins north facing windows and balconies.

Crime Prevention (Clause 37)

The application has been referred to Chatswood Police for Safer by Design assessment, who recommended a number of security measures be incorporated by the proposed development. It is also noted that the proposed development provides good surveillance internally and to/from the street, and access control is generally provided from the design and layout of its reception, and entrance area with direct access from Sailors Bay Road and from the basement car parking area. In addition to **Condition 48** which incorporates recommended safer by design measures by Chatswood Police, it is recommended additional subclause **I**) be imposed to ensure all public access is controlled via the entrance lobby from Sailors Bay Road, and no access is gained through cafeteria area or pedestrian gates on Baringa Road.

Accessibility (Clause 38)

Pursuant to Division 2 of Part 4 of the SEPP, Development standards concerning accessibility and useability for residential care facilities are not specified in this Policy noting relevant standards are contained in Commonwealth aged care accreditation standards and the Building Code of Australia. Nevertheless, the application is accompanied by an accessibility report to demonstrate an acceptable level of accessibility will be provided by the proposed development.

Waste Management (Clause 39)

The proposed development provides a garbage room with mechanical ventilation and wash down facility in the basement area.

Part 4 Development standards to be complied with

Development standards—minimum sizes and building height (Clause 40)

The proposal satisfies the minimum site area and site frontage for the development of a residential care facility pursuant to the SEPP as noted in the Development Statistic table.

Clause 40(4) also contains development standards with respect to the height of the development. It applies to development pursuant to the SEPP in a residential zone where a residential flat building is not permissible, and is applicable to the subject site, which is zoned 2(a) – Low Density Residential. The proposal does not satisfy the height standards contained in this clause.

SEPP 1 - Height standards

The application is accompanied by SEPP 1 Objections against the development standards in Clause 40(4), which requires:

- a) the height of all buildings in the proposed development must be 8 metres or less, and
- b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and
- c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

The submitted SEPP 1 objections have been assessed and discussed below. This report includes a number of extracts from the submitted SEPP 1 objection. A full copy of the submitted SEPP 1 objection is attached to this report as Attachment 3.

Clause 40(4)(a) – Max 8m

Extent of breach

The proposal's extent of breach of the standard contained in Clause 40(4)a) of SEPP (Seniors) is illustrated by diagrams contained in page 5 of the submitted SEPP 1 objection and outlined below:

- a) The 8m height limit represents the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point. The proposed development is up to 8.5m in height as shown on submitted drawing - Section GG, representing 6.35% above the height standard of 8m.
- b) The area of non-compliance is limited to that part of the proposed development fronting Sailors Bay Road for a depth of 6m (as measured from the façade of the uppermost level).

The proposed variation to this standard only relates to the Sailors Bay Road frontage of the site.

Reasons for variation

The applicant submits that the proposed variations should be approved for the following reasons (quoted in *italics*).

- *The proposed development results in a minor non-compliance with the 8m ceiling height as demonstrated in **Figures 1 & 2** below. The extent of the non-compliance (0mm to 500mm over a distance of 6.5m) is limited to the Sailors Bay Road frontage. The non-compliance is as a direct result of the topography falling steeply to the street.*

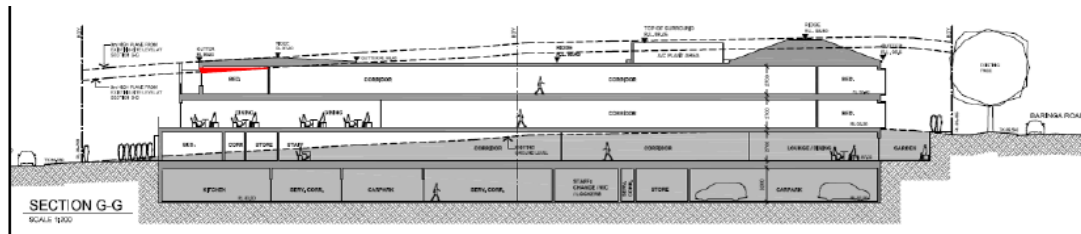


Figure 1: Long section (red infill demonstrating non-compliance)

Figure 1 - Figure 1 - extract from Page 5 of the submitted SEPP 1 objection

Comments: The proposed variation from the 8m height standard is numerically minor, and is not considered to materially change the external impacts of the development. Compliance with the height standard can be strictly achieved by the development by lowering the proposed finished ceiling height up to 500mm (generally 200 -300mm), but will result in no improvement in the overall bulk and scale of the proposed development or notable reduction in the development's external impacts. The reduction of floor to ceiling height to strictly comply with the standard will unreasonably compromise internal functions and amenity for the proposed facility.

*The subject development recognises the change of scale that occurs in the built form along the western edge of Sailors Bay Road between higher existing development within the Neighbourhood Village and the lower rise built form of the existing residential premises to the east. It is noted that the proposed development is located approximately 0.8m lower than No. 182 Sailors Bay Road (RL97.8) and 3.6m lower than No. 160 Sailors Bay Road (RL100.63) (see **Figure 4**).*

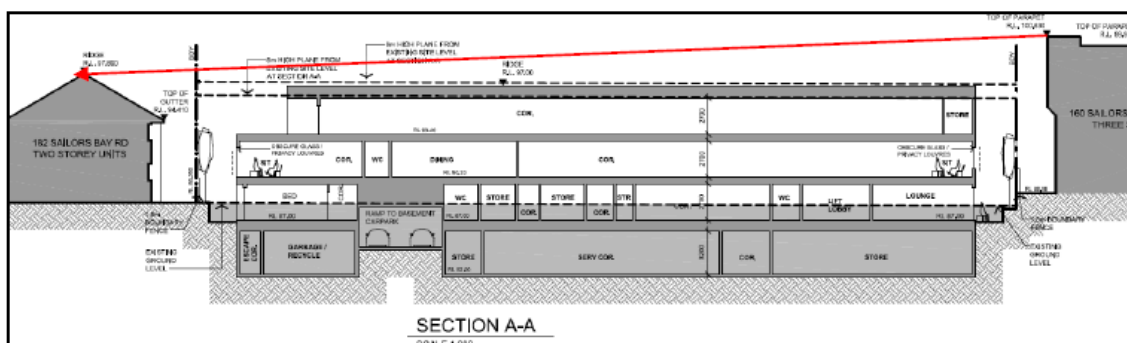


Figure 4: Transition in built form

Figure 2 - extract from Page 6 of the submitted SEPP 1 objection

Comments: The subject site immediately adjoins the Northbridge Town Centre, which provides a range of neighbourhood business and services to Northbridge. The western boundary of the site immediately adjoins a four storey office building at No 160 Sailors Bay Road. The top of the parapet level of the development at No 160 is RL100.63. This is compared to the ridge height of the proposed development on

Sailors Bay Road at RL 97. The development site only adjoins one low density residential development at No 45 Baringa Road. The proposed development is less than 8m in height when viewed from this property due to the slope of the site from Baringa Road towards Sailors Bay Road.

The proposed built form and development character has been developed to be sympathetic to the character of lower scale development to the east in terms of massing, fenestration and materials, and which is relative to the height established by the existing two storey buildings.

Comments: The immediate locality of the site does not present uniform character, but rather a transition between commercial zones, medium density developments and low density developments. The proposed exceedance of the maximum 8m height limit is not considered to unreasonably detract from the existing streetscape along Sailor Bay Road.

Council has acknowledged the proximity of the sites fronting Sailors Bay Road to the centre and its relationship with the adjoining larger commercial development by up-zoning the parcels of land fronting Sailors Bay Road to R3 Medium Density Residential under the Draft LEP 2009. Further the Draft LEP allows a maximum height of 9m which could translate to a 3 storey development (flat roof).

Comments: Upon gazettal of the Draft WLEP, residential flat development will be permissible in the proposed R3 Medium Density Residential zone, and Clause 40(4) will no longer be applicable to development of the site for purposes of residential care facility pursuant to SEPP (Seniors).

The proposed height and massing of the building ensures that:

- solar access and overshadowing objectives for adjoining properties are complied with;
- views from neighbouring dwellings are not unduly compromised; and
- the building height does not overwhelm the public street and is of compatible scale with surrounding developments.

Comments: The proposed variation to the maximum 8m height standard is not considered to create additional external impacts in terms of overshadowing for adjoining properties, or loss of views. The proposed variation is also considered numerically minor and does not unreasonably contribute to the overall bulk and scale of the proposed development. That part of the proposed development, which exceeds 8m in height, is setback 12m from the front property boundary on Sailors Bay Road. The bulk and scale of the proposed development with respect to the surrounding context is further discussed under assessment against Clause 48 of SEPP (Seniors) –FSR.

Considerations

Development context

Despite the low density residential zoning of the site, it immediately adjoins commercial development, a church and a residential flat development. The exhibited Draft WLEP also identifies the transitional character of the locality and the desirability for an increase of building height and density for that part of the site fronting Sailors Bay Road due its proximity to transport and services. The overall height of the proposed development is not considered to detract from the existing streetscape or the desired future character of the locality. The compatibility of the bulk and scale of

the proposed development is further considered with respect to the proposed Floor Space Ratio, but is not considered to be a significant factor in the proposed breach of the maximum 8m height standard.

External Impacts

The proposed variation to the maximum 8m height standard is numerically minor and is limited to the Sailors Bay Road frontage of the site. Whilst the extent of variation is not a determinative factor in the consideration of the SEPP 1 objection, but it is evident that in the circumstances of the case, the minor variation is not considered to add to the external impacts of the proposed development. It must be noted that the section of the proposed building breaching the maximum 8m height standard is setback 12m from the front property boundary on Sailors Bay Road, 9.4m away from the residential flat development at No 182 Sailors Bay Road. That part of the proposed development directly behind the low density residential property at No 45 Baringa Road complies with the maximum 8m limit. (See section E-E on drawing numbered 3-01 rev B)

Recommendations

The objectives of the maximum 8m height standard are not explicitly stated in SEPP (Seniors). Noting that the standards contained in Clause 40(4) only apply to development sites where residential flat development is not permitted. It can be reasonably assumed that the standard seeks to protect low density development from external impacts of residential care facilities and other developments under SEPP (Seniors).

Having regard to the development context of the site, and the lack of external impacts resulting from the development's breach of the standard, it is considered unreasonable and unnecessary to strictly apply the maximum 8m height standard to that part of the site fronting Sailors Bay Road given the objectives of the standard have been achieved by the proposed development.

Note: Clause 40(4)(a) does not refer to a “number of storey” requirement.

Clause 40(4)(b) – two storeys adjacent to a boundary of the site

b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

Note. *The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.*

Extent of breach

The proposed development does not comply with subclause b) of Clause 40(4) of SEPP(Seniors). The proposed building is 3 storeys in height. There is no definition of a storey contained in Clause 3 – Interpretation of SEPP (Seniors). Subclause (2) of clause 3 excludes a basement car park from the calculation of storeys. In this regard, the proposed basement car parking level is not included in this calculation, but the proposed lower ground level (not a car park) is included in this calculation.

Relevant references to Clause 3 - interpretation of SEPP (Seniors) are provided below.

streetscape means the character of a locality (whether it is a street or precinct) defined by the spatial arrangement and visual appearance of built and landscape features when viewed from the street.

ground level means the level of the site before development is carried out pursuant to this Policy.

2) In calculating the number of storeys in a development for the purposes of this Policy, a car park that does not extend above ground level by more than 1 metre is not to be counted as a storey.

Reasons for variation

The applicant submits that the proposed variations should be approved for the following reasons (quoted in *italics*).

The subject development recognises the change of scale that occurs in the built form along the western edge of Sailors Bay Road between higher existing development within the Neighbourhood Village and the lower rise built form of the existing residential premises to the east.

The site provides the opportunity to resolve the transitional built form, by developing a building mass which translates in height from the existing 4 storey building to the west of the subject site.

The proposed built form and development character has been developed to be sympathetic to the character of lower scale development to the east in terms of massing, fenestration and materials, and which is relative to the height established by the existing two storey buildings.

Comments: During assessment of the application, the main issues of concern raised by the assessing officer related to the modulation of the proposed building façade along Sailors Bay Road due to the relative length of the proposed development being greater than other developments on Sailors Bay Road. However, the overall height of the proposed development is not considered to be detracting from the existing streetscape as previously discussed under Clause 40(4)(a).

In the context of the development of the site, it is relevant to note that the site falls significantly from Baringa Road to Sailors Bay Road. As a consequence and in conjunction with the need to ensure a level and accessible floor plan throughout the nursing home, two (2) storeys at Baringa Road results in three (3) levels at Sailors Bay Road

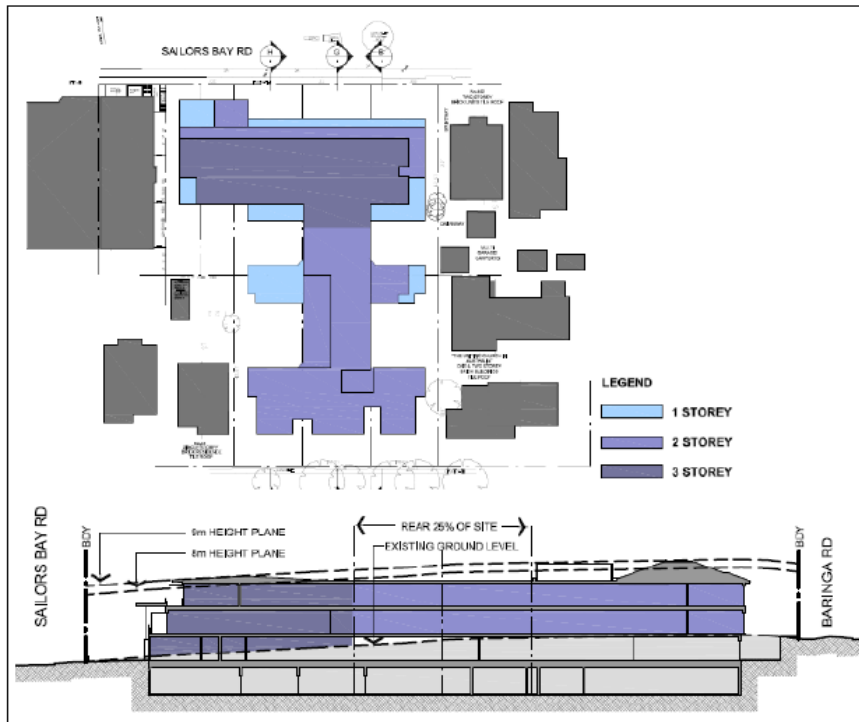


Figure 6: Storey analysis

Figure 3 - extract from Page 11 of the submitted SEPP 1 objection

Comments: Car park that does not extend above ground level by more than 1m is explicitly excluded from the calculation of storeys in accordance with Clause 3 of the SEPP. The proposed lower ground floor, ground floor and first floor together constitute a 3 storey development, where they are adjacent to a boundary of the site. The “Storey Analysis” contained in the submitted SEPP 1 objection, which excludes that part of the proposed lower ground floor on the Baringa Road portion of the site is not strictly in accordance with the SEPP (Seniors). However, given that the purpose of Clause 40(4)(b) relates to the streetscape as explicitly stated by the SEPP, those parts of the proposed development that are completely below existing ground level, including part of its lower ground floor, are not considered to hinder the proposed development in achieving the objective of the clause. It is also noted that the definition of a “storey” contained in the Willoughby Local Environmental Plan also excludes all levels with finished ceiling level less than 1m above natural ground level.

*In relative terms the proposed development is only half a storey greater than the development standard as demonstrated on **Figure 5** above. The increased side setbacks, together with the proposed landscaping, will ensure that contextually the proposal is consistent with the existing streetscape and does not result in any abrupt change in scale.*

Comments: Clause 40(4) only applies to a residential zone where residential flat developments are not permitted. It is reasonable to assume the clause applies to a development context of low density residential development. However, the development site immediately adjoins a 4 storey office building and a 2 storey residential flat building, and has a substantially different development context to that envisaged by Clause 40(4). The existing development context of the immediate locality of the site is considered to present special circumstances where departure from Clause 40(4)(b) should be considered, given the relative scale of developments adjoining the site on Sailors Bay Road are not similar to a low density residential

development context, where detached houses are generally limited to two storeys in height.

The submitted SEPP 1 objection also refers to the Planning principle for seniors living in low density zones as identified by Senior Commissioner Roseth during GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) NSWLEC 268. The applicant submits that the proposed development satisfies the relevant planning principle given:

The proposed 3rd level does not result in any adverse impact by way of overlooking and overshadowing.

Moreover, the proposal has a similar appearance and scale to the existing buildings (at No. 160 Sailors Bay Road) within the streetscape and is considered compatible with the existing streetscape character.

The well articulated street facade, together with materials and finishes result in the building appearing like three individual building elements. The visual mass to the street has been broken up so that it does not appear as one building.

The building is considered consistent with the existing streetscape character and provides the opportunity to resolve the transitional built form, by developing a building mass which translates in height from the existing 4 storey building to the west of the subject site (No. 160 Sailors Bay Road – see photo 2), to the existing two storey residential flat premises east of the subject site (No. 182 Sailors Bay Road see photo 1). Accordingly, the proposal is consistent with the bulk and character intended by the new draft planning controls.

Council has acknowledged the evolving character of the lots fronting Sailors Bay Road by seeking to up-zone the parcels of land to R3 Medium Density Residential under the Draft LEP 2009. It is considered that the up-zoning from low density residential to medium density residential establishes the desired new character for this side of Sailors Bay Road. The proposed development is consistent with the new character as established by the Draft LEP and as such will not visually dominate the streetscape.

The chosen materials are face-brick timber and sandstone, sympathetic to the existing domestic building palette.

Comments: Based on site inspection by Council's officer, and assessment of the proposal, including submitted photomontages, the proposed 3 storey built forms as viewed from Sailors Bay Road are not considered to detract from the existing streetscape or present an abrupt change of building scales from the adjoining commercial zone to the west of the site to the low density residential zone to the east.

The proposed development is 3 storeys in height for the Sailors Bay Road part of the site, adjoining properties at No 160 Sailors Bay Road and No 182 Sailors Bay Road. No 160 Sailors Bay Road is a 4 Storey commercial building. The proposed development is approximately 3.6m lower in height than the building at No 160. The third storey of the proposed development is setback from its common boundary with No 182 Sailors Bay Road by 9.4m.

The exhibited Draft WLEP 2009 stipulates an up zoning of that part of the site fronting Sailors Bay Road. The height of the proposed development is not inconsistent with the height standards contained in the Draft WLEP 2009.

Considerations

Objective of the clause

The purpose of Clause 40(4)(b) is stated to avoid an abrupt change in the scale of development in the streetscape, which shall be measured with reference to the existing development context. In the circumstances of the site, the height of the proposed development being lower than adjoining commercial development and comparable to adjoining residential flat development along Sailors Bay Road is not considered to create an abrupt change to the existing streetscape. Issues raised regarding the scale of the proposed development due to its length as viewed from Sailors Bay Road is separately discussed under assessment against Clause 48 – FSR section of this report.

The proposed development along Baringa Road has only two storeys as visible from the street level, and is similar in height to adjoining dwellings and surrounding developments along Baringa Road.

Recommendations

Given the objective of the clause is to avoid abrupt change in building scale and the proposed development has achieved this objective, the proposed variation to the 2 storey height standard contained in Clause 40(4)(b) is recommended for support.

Clause 40(4)(c) – 25% rear at single storey

c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

Extent of breach

Whilst not explicitly stated in the clause, the restriction of building height for the rear 25% area to single storey is considered important in a maintaining reasonable level of amenity to the rear yard of any adjoining residential properties in a low density residential zone (where residential flat building is not permitted). Having regard to this objective, Council's officer considers that it is appropriate to accept the 25% rear area of the site for the purposes of this clause being the 25% area within the rear yards of the existing residential allotments comprising the site as nominated by the applicant (see area marked with dotted red line):

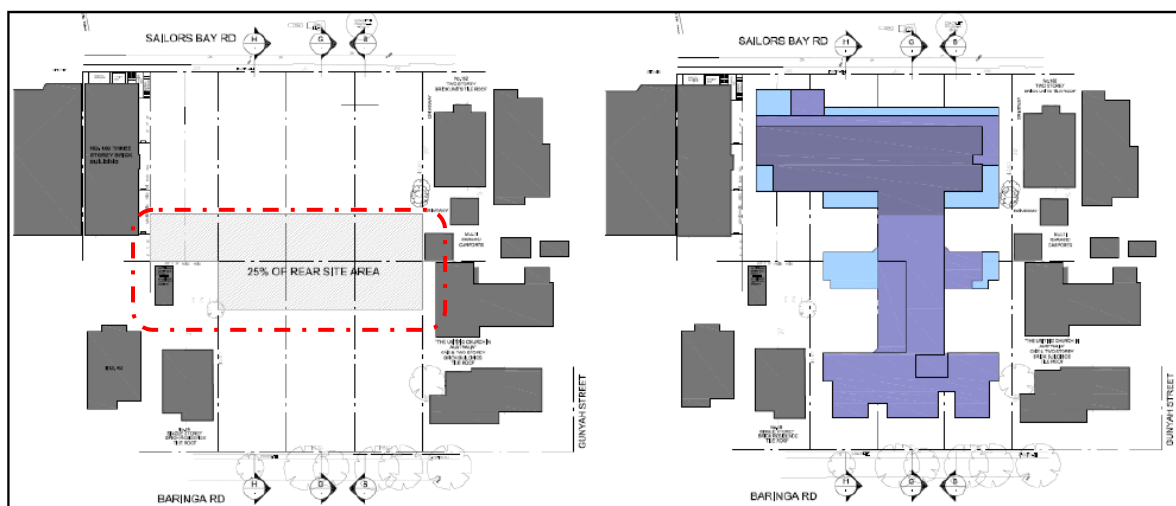


Figure 9: Rear 25% area and storey analysis

Figure 4 - extract Figure 9 on Page 17 of the submitted SEPP 1 objection (dotted red line added)

Within this 25% area, the built forms connecting the proposed building from Sailors Bay Road to Baringa Road is 2 storeys in height above ground, and the proposed wings extending to the side boundaries of the site are also 2 storeys in height. However, the wing element extending to the western boundary of the site adjoining No 45 Baringa Road is substantially excavated below existing ground level, and is not considered to materially add to the two storey component of the development within the 25% rear zone. Please also refer to submitted section drawings numbered DA 3-01 & 3.02 Rev B, particularly Sections CC, DD, EE, BB, GG & HH.

Reasons for variation

The applicant submits that the proposed variations should be approved for the following reasons (quoted in *italics*).

The proposal does not cause unreasonable direct overlooking of habitable rooms and principal private open spaces to the side boundaries.

Comments: The development site adjoins two residential properties, including a detached dwelling at No 45 Baringa Road adjoining the southern and western boundaries of the site, and a residential flat development containing 4 units at No 182 Sailors Bay Road.

The property at No 182 Sailors Bay Road has no private or communal open space adjoining the rear 25% of the development site. The private open spaces to the 4 units at No 182 are provided in the form of balconies fronting Sailors Bay Road. The rear 25% of the site adjoins the car parking and manoeuvring area of the property at No 182.

Within the rear 25% of the site, the proposed development is progressively setback from the common boundary with the rear yard of No 45 Baringa Road up to approximately 21.5m as illustrated by drawing numbered DA3-01 rev B, Section EE below. Privacy issues relating to the use of roof gardens above the wing elements are discussed under the relevant headings of this report.

Moreover, upon gazettal of the Draft WLEP 2009, Clause 40(4)(c) of SEPP (Housing for Seniors) will no longer apply to Nos. 166, 170, 172 & 174 Sailors Bay Road eliminating the need for a SEPP 1 to that part of the site.

Comments: The implications of the Draft WLEP 2009 is considered to have limited relevance to the proposal's compliance with the requirements of Clause 40(4)(c). The proposal's area of non-compliance is located on the boundary between the allotments fronting Sailors Bay Road and Baringa Road, and a substantial section within the existing allotment at No 49 Baringa Road.

*The shadow diagrams demonstrates 3 hours of sunlight to north facing windows and primary open spaces of the adjoining properties between 9am and 3pm mid winter (See **Appendix 2**). Accordingly, the proposal does not adversely impact on the sunlight amenity of adjoining properties.*

Comments: Assessment by Council's officer agreed with the applicant's submission with respect to solar access.

Considerations

Amenity impacts

It is reasonable to assume that the objectives of Clause 40(4)(c) relates to the protection of the amenity of the typical rear yard zone in low density residential areas. In this regard, the site only adjoins one low density residential property at No 45 Baringa Road.

The proposed central connecting built form is not considered to create significant privacy impacts to adjoining properties given its generous setbacks from respective boundaries. Where appropriate, mitigating measures are provided as previously discussed under assessment against Clause 34 of SEPP (Seniors).

Recommendations

The proposed non-compliance with Clause 40(4)(c) does not result in unreasonable amenity impacts to the rear yard of adjoining low density residential development at No 45 Baringa Road. As such, it is recommended that the proposal's objections to Clause 40(4)(c) be supported given the objectives of the clause are met by the proposed development despite the non-compliance.

Summary of Recommendations with respect to SEPP 1 objections against Clause 40(4) of SEPP (Seniors)

Based on the assessment above, the submitted SEPP 1 objections:

- a. are well founded. Given the objectives of Clause 40(4) in mitigating the impacts of developments for the purposes of SEPP (Seniors) in low density residential zones are met by the proposed development despite non-compliances with the height standards contained Clause 40(4). There is no unreasonable amenity impact to adjoining low density residential development arising from the development's breach of the respective height standards.

- b. are supported with considerations of the existing development context of the site and its immediate locality. The site is located at the interface between an existing commercial zone and low density residential zone. The proposed built forms being two to three storeys in height are considered appropriate in mediating the transition between the existing commercial and low density residential developments. Noting the development site only adjoins one low density residential development at No 45 Baringa Road. The proposal's non-compliances are supported based on the site's specific circumstances.
- c. are further supported having regards to the future desired character of the site. The proposed up zoning of that part of the site with frontage on Sailors Bay Road in Draft WLEP 2009 identifies higher development density and height for properties along Sailors Bay Road for purposes of medium density residential developments. Noting, height standards contained in Clause 40(4) will no longer be applicable to that part of the development site fronting Sailors Bay Road upon gazettal of the Draft WLEP 2009. Please refer to further discussions under assessment against Draft WLEP 2009 in this report.

The assessment officer recommends that the submitted SEPP 1 objections against height standards contained in Clause 40(4) of SEPP (Seniors) be supported and be approved.

Development standards not to form grounds for refusal

Clause 48 of SEPP (Seniors) prescribes the grounds for which a consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility if the requirements contained in this clause are met. These requirements are not development standards, and non-compliances do not require objections in accordance with SEPP 1.

The proposal's non-compliances as noted in the Development Statistics are further discussed below.

Density & Scale (FSR)

The proposed development has a Floor Space Ratio of 1.24:1. The calculation of the proposed FSR is based on Clause 3 of the SEPP as quoted below:

gross floor area means the sum of the areas of each floor of a building, where the area of each floor is taken to be the area within the outer face of the external enclosing walls (as measured at a height of 1,400 millimetres above each floor level):

- (a) excluding columns, fin walls, sun control devices and any elements, projections or works outside the general lines of the outer face of the external wall, and
- (b) excluding cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts, and
- (c) excluding car parking needed to meet any requirements of this Policy or the council of the local government area concerned and any internal access to such parking, and
- (d) including in the case of in-fill self-care housing any car parking (other than for visitors) in excess of 1 per dwelling that is provided at ground level, and
- (e) excluding space for the loading and unloading of goods, and

(f) in the case of a residential care facility—excluding any floor space below ground level that is used for service activities provided by the facility.

Given the proposed FSR is greater than 1:1 prescribed in Clause 48(b), the consent authority must be satisfied that the density and scale of the proposed development is appropriate for the site and compatible with adjoining and surrounding development.

Streetscape

The applicant submits that the bulk and scale of the proposed development are compatible with the existing streetscape, and that the proposed FSR needs to be considered with respect to its distribution between that part of the site fronting Sailors Bay Road and that part fronting Baringa Road. In this, the proposed floor space is distributed more toward the Sailors Bay Road frontage of the site with a FSR of 1.28:1 fronting Sailors Bay Road and a FSR of 1.19:1 fronting Baringa Road.

Sailors Bay Road

The visual bulk of the proposed development is not considered to overwhelm the public street as viewed from Sailors Bay Road, given the development's progressive setback from the street, and the overall height of the proposed development being compatible with adjoining developments as previously discussed under the assessment against height standards in this report.

Due to the length of the site's frontage on Sailors Bay Road, it is important that there is appropriate delineation of the building façade into module and bays in order to reduce the overall visual perception of the length of the proposed development. The proposal as amended is considered to have achieved this by reinforcing the vertical bays of the proposed facades with progressive setbacks and building modulation together with varied roof/balcony alignments and material variations.

Baringa Road

The proposed lower ground floor is completely below existing ground level on the Baringa Road part of the development site. The proposed building as viewed from Baringa Road appears two storeys in height. In addition, the proposed building façade incorporates 2 to 3m deep recesses to provide breaks in the building façade to mimic separations between the existing detached houses at the site. The proposed building as viewed from Baringa Road is considered to be similar in bulk as adjoining and surrounding two storey detached dwellings and dual occupancy developments along Baringa Road.

Bulk and scale/ External Impacts

The distribution of the floor space of the proposed development by concentrating the mass and density of the development along the central axis of the site and the Sailors Bay Road portion of the site is considered an appropriate response to the site's context. It mediates the change of building scale from the commercial zone to the residential zone and also provides a satisfactory relationship with adjoining properties by allowing adequate separation distance, particularly away from adjoining low density residential property at No 45 Baringa Road. The submitted site analysis plan clearly shows the depth of the proposed building generally respecting the depth of existing and adjoining developments in order to reflect the established development pattern at the locality, and mitigate impacts to the perceived sensitive rear yard zone in the low density residential area.

In addition to the above, a substantial amount of floorspace is below the existing ground level, and does not contribute to the visual bulk of the proposed development, whether as viewed from the street frontages or from adjoining properties. The applicant submits that 0.49:1 of the proposed FSR (approximately 2230m²) is below existing ground level.

The proposed FSR in excess of 1:1 is not considered to create unacceptable external amenity impacts to adjoining properties in terms of visual bulk or overshadowing.

Density

In considering whether the density of the proposed development is excessive, the assessment officer also takes into account the capacity of the site, internal amenity of future occupants, opportunities for landscaping and the traffic generation of the site as outlined below:

- The proposed FSR in excess of 1:1 does not compromise the internal amenity for the development's future occupants. The proposed development provides a variety of bedroom sizes and generous living and dining areas on each level with access to outdoor spaces. All rooms have aspect to internal garden or the street frontages of the site. There is no increase in the number of Beds proposed in the current application in comparison to the previously withdrawn application DA2010/16, despite an increase of site area (resulting from the developer's acquisition of the properties at No 164 & 166 Sailors Bay Road).
- The proposed development provides adequate landscape area for the site and usable outdoor space for its occupants. Please see assessment under the heading Landscape Area below.
- Additional traffic generated by the proposed development is not considered to adversely affect the local road network or the existing service level of nearby intersections. Further discussion in respect to the public submission on traffic and parking issues are discussed under the Notification Issues section of this report.

Affordable places

In addition to issues discussed above, the applicant also submits that consideration should be given to the 10% affordable places proposed by the development in the context of the Draft WLEP 2009 and Clause 45 of SEPP (Seniors).

affordable place, in relation to seniors housing, means a dwelling for the accommodation of a resident:

- (a) whose gross household income falls within the following ranges of percentages of the median household income for the time being for the Sydney Statistical Division according to the Australian Bureau of Statistics:
- | | |
|---------------------------|-------------------------------|
| Very low income household | less than 50% |
| Low income household | 50% or more but less than 80% |
| Moderate income household | 80–120% |
- (b) who is to pay rent that does not exceed a benchmark of 30% of the resident's actual household income.

Clause 45 permits an additional FSR of 0.5 above the prescribed FSR contained in a planning instrument subject to the provision of affordable places within the development for development sites that permits residential flat developments. Upon gazettal of Draft WLEP, that part of the development site fronting Sailors Bay Road will permit development of residential flat buildings with a FSR of 0.7:1 + 0.5 (Clause 45 affordable places bonus) will result in a permissible FSR of 1.2:1 for that part of the site fronting Sailors Bay Road. Please see further discussion under consideration of the application against the Draft WLEP 2009.

It is recommended that a condition be imposed with respect to the proposed 10% affordable places to secure the public benefit arising from the development's excess FSR. (**Condition 47**).

Based on the above, the proposed FSR in excess of 1:1 is considered acceptable for the reasons summarised below:

- The proposed additional FSR will not result in unacceptable environmental impacts or unreasonable amenity impacts to adjoining properties. Where appropriate, the distribution of the massing and excavation for the proposed development suitably mitigate the likely impacts arising from the additional FSR.
- The proposal is considered compatible with the bulk and scale of adjoining and surrounding developments and consistent with the existing and future character of the site by respecting the established residential development pattern in its siting and adopting appropriate proportion and architectural elements in its street façades.
- The increase density of the proposed development is not considered to contradict the objectives of the zoning of the site. Please see assessment under WLEP.
- The additional FSR will not result in unacceptable traffic generation that will adversely affect the local road network. Based on the submitted traffic report, the proposed development will potentially generate 20 vehicle trips per hour during peak hour periods. This is not considered to create any notable change to the service of nearby intersections. Please see assessment under WDGP - Transport & Parking and Neighbour Notification Issues sections of this report.

Landscape Area

Landscape area is provided at 22.7m²/bed by the proposed development and is less than the required 25m²/bed. The proposed variation is considered numerically minor subject to adequate replacement planting being provided for the proposed removal of existing site trees to maintain a reasonable level of visual amenity to adjoining properties, and the general residential character of the development.

***landscaped area** means that part of the site area that is not occupied by any building and includes so much of that part as is used or to be used for rainwater tanks, swimming pools or open-air recreation facilities, but does not include so much of that part as is used or to be used for driveways or parking areas.*

The proposed landscaping will provide 24 large canopy trees in large pots of 100L to 400L, and screen planting trees along all common boundaries (mostly Blueberry Ash trees in 100L pots). The landscape proposal is considered to strategically address:

- the street frontages of the site, particularly Baringa Road frontage to ensure the proposed development will not detract from the residential character of Baringa Road, which is lined with prominent street trees and landscaped front yards. The 5 existing street trees along Baringa Road are to be retained by the proposed development. 6 additional street trees will be provided along the Sailors Bay Road frontage of the site in addition to the proposed canopy trees within the site.
- Whilst most screen planting along the boundaries of the site are provided within 1000mm wide retained areas, substantially wider landscaping areas, and greater soil depths are provided along the development's boundaries with the rear yard of No 45 Baringa Road. 8 canopy trees are proposed along the common boundaries with the property at No 45 Baringa Road, including 2 large 400L pot Smooth- Barked Apple trees.
- The proposal as amended on 18 Jan 2011 also provides a levelled planting area along the eastern boundary of the site near the adjoining development at No 182 Sailors Bay Road. This is to increase the soil volume and planting conditions to support the proposed canopy trees at this location. Whilst there are no windows on the proposed eastern elevation that will conflict with the privacy of the residential flat development at No 182 Sailors Bay Road, the proposed planting will soften the proposed built forms as viewed from No 182 Sailors Bay Road.

As previously discussed in this report, there are no concerns raised against the adequacy of open space for the future occupants of the development given the proposal includes generous indoor and outdoor living areas, including balconies. The assessing officer also concurs with the applicant's submission that a large number of existing and similar facilities in the local area do not strictly comply with the numerical requirements of this clause (**See page 39 of SEE**), and strict application of the requirement may be unreasonable subject to adequate replacement planting to achieve a high standard of landscape amenity.

NB:

- 1) Subclause b) of Clause 48 repeats height requirements contained in Clause 40(4), which have been discussed previously in this report.
- 2) Subclause d) of Clause 48 contains parking requirements, which are incorporated into Part C.4 of the WDCP, and have been discussed under the relevant heading.

Draft WLEP

Council exhibited its Draft WLEP 2009 in March 2010. The exhibited Draft WLEP – 2009 proposes up-zoning of that part of the development site, fronting Sailors Bay Road to medium density (R3), whilst existing allotments fronting Baringa Road will retain their current low density residential zoning (R2). The proposed development will continue to exceed the draft maximum FSR proposed for R3 zoning, and the FSR

for R2 zoning. Residential flat development will be permissible in R3 zone, but will not be permissible in R2 zone. When the proposed zonings in Draft WLEP 2009 are gazetted, height standards contained in Clause 40(4) of SEPP (Seniors) will no longer apply to that part of the site fronting Sailors Bay Road. The proposed development will comply with the draft height standard of 9m contained in Draft WLEP 2009 with the exception of a minor section of the proposed lift shaft.

Since the exhibition of the Draft WLEP 2009, further studies have been undertaken with respect to the economic viability of the proposed R3 zoning, FSR and height of properties fronting Sailors Bay Road, identified as Site 18 (164 to 182 Sailors Bay Road) in Council's Reports relating to Draft WLEP 2009. A further strategic report to Council's meeting scheduled 3 Nov 2010 reiterates the suitability of the subject site for a nursing home and medium density development, but acknowledges that medium density redevelopment based on the exhibited Draft WLEP 2009 will fall below the value of the existing residential properties. However, the report recommends that the exhibited Draft not be amended with respect to Site 18, and in the event that the proposed nursing home does not proceed, a change of the development control for the site be revisited.

Though inconclusive, the Draft WLEP 2009, and further strategic studies conducted with respect to development potential and future planning of the locality confirms the suitability of the site for redevelopment for higher density developments. Draft WLEP has been exhibited and adopted by Council at its meeting on 3 Nov 2010, and is currently with the Department of Planning awaiting final approvals and setting of gazettal date.

WLEP

Objectives of low density residential 2a) zone (Clause 14 & 14A)

The proposed residential care facility as defined by SEPP (Seniors) is equivalent to a "Nursing home" as defined by WLEP, which is permissible in the low density residential zone. The proposed development has been reviewed against the relevant zoning objectives of low density residential zones and the 2(a) zone. The general objectives of low density residential zones are:

- (a) To provide residential environments free from any adverse impacts of non-residential uses, and*
- (b) To maintain the scale, character and streetscape of individual localities, and*
- (c) To retain and enhance residential amenity, including views, solar access, aural and visual privacy and landscape quality, and*
- (d) To retain the heritage values of particular localities, and*
- (e) To minimise the potential for adverse impacts of new development on the efficiency and safety of the road network.*

Specific objective of 2(a) zone:

To accommodate dwelling-houses and other land uses which are compatible with the existing housing.

Comments: The proposed development is a form of residential accommodation specific for aged persons. The proposal is a designed response to the scale, and character of adjoining developments and the existing streetscape. The proposed built

forms, and their siting are considered appropriate having regard to the development context of the site. Further assessment of the external impacts, including impacts to residential amenity and heritage item, and the traffic impacts of the proposed development are discussed under the relevant headings.

Trees (Clause 13C)

The proposal development will require the removal of all existing site trees. However, none of the trees proposed to be removed are considered significant species by Council's Landscape officer. It is also noted that adequate replacement planting is proposed in the submitted landscape proposal. Please refer to assessment of landscape area under Clause 48 of SEPP (Seniors).

Heritage (Clause 58)

The site is located within the vicinity of the local heritage item at No 186 Sailors Bay Road, also known as the "Clavering". The item is a Californian Bungalow. A heritage impact statement accompanying the development application has been assessed by Council's Heritage Architect. The proposed development is not considered to adversely affect the heritage significance of the item given:

- The main view to this heritage item is from the corner of Sailors Bay Road and Gunyah Street. This view will not be affected by the proposed development. The proposed development respects the established front setback along Sailors Bay Road, and does not interfere with views to the heritage item from its primary street frontage.
- There is limited view to the heritage item from the site, which is blocked by existing vegetation and the adjoining development at No 182 Sailors Bay Road.
- The proposed building incorporates neutral and recessive colours and materials including face bricks and sandstones that are unlikely to visually compete with views to the heritage item.

WDCP

Transport and Parking (C.4)

Traffic

The application is accompanied by a Traffic Impact Assessment prepared by Traffix Traffic and Transport Planners. The report includes surveys of the existing traffic situation during peak hours, and provides traffic modelling of the proposed development. Council's traffic section has reviewed the finding of this report, and concurs that the proposed development will not cause unacceptable traffic impacts.

Traffic impacts of the proposed development are further discussed below:

a) Sailors Bay Road / Euroka Street (Intersection & roundabout)

There is no existing vehicle delay at the Sailors Bay Road and Euroka Street intersection controlled by an existing roundabout. During peak hours, the intersection operates at service level A (Good Operation – average delays per

vehicle less than 14 seconds). The proposed development is likely to only contribute to peak hour traffic by staff only, given visitors are unlikely to visit the site during peak hours. The traffic report makes assumption of 24 staff attending the site for AM shift and 50% of these staff driving to the site, and 8 night shift staff leaving the site with 100% driving away from the site. This equals to 20 vehicle trips (12 in, 8 out). These trips will not affect the service level of the operations of the Sailors Bay Road and Euroka Street intersection, and only staff leaving the site during the AM peak hour is likely to travel in the same direction as the dominant traffic flow exiting the Northbridge peninsula.

b) Euroka Street Roundabout

The applicant has made several consultations with Council's Traffic Engineer and the assessing officer with respect to the proposed vehicular access on the Euroka Street – Sailors Bay Road roundabout since the lodgement of the previous application for the site in Jan 2010. The proposal to have the new vehicular access to act as a fourth leg to the existing roundabout is considered superior to alternative proposals to have a new vehicular access near the intersection with Euroka Street or further to the west. The proposed vehicular access is 5500mm wide, which will permit two-ways traffic. Council's Traffic Engineer recommends that appropriate signage be installed outside the vehicular access and suitable line-marking be provided to provide guidance to vehicles entering and exiting the site. **(Condition 20)** Please refer to Neighbour Notification Issues section of this report for further discussion.

c) Sailors Bay Road & Strathallan Ave intersection (approximately 150m west of the site)

It is acknowledged that there are existing delays experienced by drivers approaching Strathallen Ave from Sailors Bay Road during peak hour period. However, the impacts of the proposed development with respect to these delays must be considered in appropriate proportions to the existing traffic context. It must be noted that Sailors Bay Road carries approximately 4000 vehicle trips and Strathallan Ave carries approximately 28,000 vehicle trips in the vicinity of the site per day. The traffic generation of the proposed development, in the worst case scenario, where vehicle trips are generated during peak hours being 20 trips per hour (in & out) (as assumed by the submitted traffic report) is unlikely to result in any notable increase in traffic in the context of Sailors Bay Road and Strathallan Ave. It is considered unreasonable to refuse the proposed development based on existing traffic issues in the vicinity of the site.

d) Staff Shifts

Traffic generation assumption made by the submitted traffic report is considered to be a worst case scenario. It assumes the split of the 36 staff with 12 hour shift, and with shift changes to occur during peak hour period. This is considered unusual for nurses and other health care professionals that generally operate on 7 -10 hour shifts, with shift changes are likely to occur outside both AM and PM peak hours, and staggered throughout the day. Further information received from the applicant also confirms that only 32 staff will be at the site at any one time and includes only 5 administration staff that are likely to work normal business hours.

e) Visitors and visiting health professionals

It is unreasonable to assume visitors and visiting health professionals will significantly contribute to the traffic generation of the site. As these trips are likely to occur with large degree of discretion for drivers to avoid unnecessary peak hour travel and managed with appointments with staff. Visitors are also likely to be more frequent outside normal work hours and during weekends, which will not conflict with the peak operations of the local road network.

f) Service vehicles

Additional information received from the applicant indicates that only limited service vehicles will visit the site to deliver necessary supplies. It is indicated that medical related deliveries are likely to occur fortnightly, and various fresh food supplies are about once a day. These will be carried out by small vans and will be accommodated by the proposed loading bay in the basement area.

Parking

The parking requirements contained in Part C.4 of the WDCP are consistent with Clause 48 (d) of SEPP (Seniors), which states:

d) parking for residents and visitors: if at least the following is provided:

- (i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and*
- (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and*
- (iii) 1 parking space suitable for an ambulance.*

As noted in the Development Statistics, the proposed development provides 34 car spaces, and exceeds the minimum requirements contained in Clause 48 d) and Part C.4 of WDCP, which require 29 car spaces only.

Pursuant to Clause 48 of SEPP (Seniors), given the standard contained in Clause 48d) is met by the proposal, the consent authority must not refuse the proposed development on the grounds of car parking. Please refer to further discussions under the Neighbour Notification Issues section of this report with respect to street parking issues raised by public submissions.

Neighbour Notification Issues:

The issues raised in the public submissions are discussed below:

Additional Traffic

As detailed in the submitted traffic report, and discussed in details under the heading, Transport & Parking in the assessment section of this report, the proposed development generates a relatively low number of additional vehicle trips in the context of Sailors Bay Road. Vehicle trips in and out of the site are also dispersed through the day, and unlikely to significantly contribute to peak hour delays currently occurring at the Strathallan Ave and Sailors Bay Road intersection 150m west of the site.

Euroka Street roundabout safety & vehicular access

The proposed vehicular access on the Euroka Street roundabout is likely to force all vehicles to approach the new vehicular access at slower speed, and allow easier access into and out of the proposed development. Vehicles exiting the site will be required to give way to all vehicles in the roundabout. Alternative designs for a new vehicular access to the site have been considered inappropriate as outlined below:

- If the new vehicular access to the site is provided near the Euroka Street intersection, but not on the roundabout, it is likely to affect to the efficiency of the operation of the roundabout and Sailors Bay Road, by creating additional conflicting turning movements, including possible right hand turn into the site from East bound lanes on Sailors Bay Road.
- A new vehicular access at locations closer towards the western side of Sailors Bay Road will again need to facilitate right hand turn into the site from Sailors Bay Road, and sight distance from such location is also likely to be affected by parked vehicles outside shops in the adjoining commercial zone.
- A new vehicular access on Baringa Road frontage of the site is considered inappropriate. Baringa Road only has a carriageway of approximately 7m in width, and has one lane thresholds between Strathallan Ave and the site. It will have greater impacts to the adjoining low density residential area.

Based on the above, the proposed vehicular access on the existing Eurorka Street roundabout is considered the appropriate design option.

Parking

As mentioned in the assessment section of this report, the proposal complies with the requirements of Clause 48d) of SEPP (Seniors), and the consent authority must not refuse the application on the grounds of inadequate car parking.

Notwithstanding the above, car parking issues raised by the public submission are further discussed below:

Public transport: The requirements contained in Clause 48d) and Part C.4 of the WDCP assumes 1 out of 2 employees will either be a sharing car with another car driver or take public transport given only one car space is required to be provided per 2 employees. The assumption is not considered unreasonable given developments pursuant to SEPP (Seniors) are also required to meet location and access requirements contained in Clause 26 with respect to access to services and transport. In the circumstances of the proposed development, good bus services are available to the site, with 6 bus services operating on Strathallan Ave (150m away from the site), 3 bus services operating on Northbridge peninsula along Sailors Bay Road (frontage to the site), 1 service pass Northbridge Town Centre, and 1 service along Alpha Road. Buses operating along Strathallan Ave provide services frequently and extend outside peak hours.

The applicant also submits that based on operation of another nursing home currently operated by the owner of the proposed development, the percentage of drivers to work is 10% rather than the 50% assumed by the requirements due to socio-economic base of staff. It is noted that street parking is not an issue of concern

during night time operation of the facility, when public transport is less frequent or unavailable. The number of staff onsite at the proposed facility during night time operation will be much less than 21, and will be accommodated by the proposed 21 staff car parking spaces.

The applicant also confirms that the maximum number of staff at the site at any one time will be 32. Based on 21 staff car spaces, only 11 staff need to catch public transport or car share at worst case scenario.

Shift Change: Peak parking demand at the facility is likely to occur during shift change over for staff, when there may be short intervals of time with staff entering and exiting. With the assumption that this occurs during an afternoon school pick up hour when street car parking will be scarce, the proposed development with a total of 34 car spaces (including 21 staff and 13 visitor car spaces) is considered sufficient to allow for a smooth shift change over to occur.

Residents parking: No parking is proposed for future occupants/residents of the proposed development. **Condition 98** will be imposed to ensure the allocation of car spaces can be enforced and complied with, and also explicitly prohibits the allocation of car spaces to residents of the facility.

Street parking (Baringa Road): Baringa Road is narrow and is often occupied by parked vehicles utilising bus services along Strathallan Ave and during school pick up and drop off. This situation is unlikely to be significantly affected by the proposed development given adequate car parking is proposed by the development in excess of minimum requirements contained in SEPP (Seniors) and the WDCP. Existing street car parking issues relating to school zones and commuter parking at the locality cannot be reasonably resolved as part of the subject development application.

It is recommended that **Condition 48I)** be imposed to limit the use of all pedestrian access from the Baringa Road frontage of the development to essential maintenance and emergency access only. This is to discourage all staff and visitors to the facility from utilising any street parking on Baringa Road.

Pedestrian Safety

The proposed development will involve removal of all existing 8 driveways, and will be replaced by the proposed driveway on the Euroka Street – Sailors Bay Road roundabout. Subject to appropriate signage and traffic markings as recommended by Council's Traffic Engineer, the proposed development is unlikely to significantly affect the use of the existing pedestrian footpath along the Sailors Bay Road frontage of the site.

Bulk & Scale/ Height/ Residential Character

The assessment section of this report provides detailed assessment on the bulk and scale of the proposed development, and its compatibility with the existing residential zone with respect to height and FSR controls contained in SEPP (Seniors). In addition, the following comments are provided to address issues raised in the public submissions:

The proposed residential care facility is a form of residential accommodation, whether it is considered within the scope of the local planning instrument or state planning policies. This is related to the fact that the character and operation of a residential care facility presents greater similarity to a residential development than a commercial development. This is in terms of the lower traffic generation of the proposed facility in comparison to commercial developments, particularly during peak hours, and the level of residential amenity, including landscaping and open space provided by the proposed facility. The proposed development when viewed from its street frontages on Sailors Bay Road and Baringa Road, resembles the overall height, bulk and scale of adjoining and surrounding developments. A “commercially operated” residential care facility does not make a development commercial in nature. The proposed medium residential zoning of that part of the site fronting Sailors Bay Road affirms the site’s location as being suitable for higher density development due to its proximity to transport and services, and likewise, considered to be suitable for the proposed residential care facility.

It is also noted that existing developments immediately adjoining the eastern boundary of the site include a residential flat building (that is not a permissible use based on current WLEP 1995 low density zoning) and a church. Refusal of the application based on the bulk and scale of the proposed development being larger than that expected of low density detached dwelling houses will be unreasonable given the site’s specific development context, and the lack of adverse external impacts arising from the height and density of the proposed development as detailed in the assessment section of the report. The proposed development is also considered to have achieved the objectives contained in SEPP (Seniors) in mitigating impacts of the proposed development to adjoining low density residential development at No 45 Baringa Road.

SEPP (Seniors) & WLEP

As previously discussed in the assessment section of this report, a residential care facility is equivalent to a “nursing home”, which is permissible in all residential zones, including the current 2(a) low density residential zoning of the site in accordance with WLEP 1995. The objectives of the residential zone contained in WLEP and the residential character of the locality are not overridden by the provision of a residential care facility pursuant to SEPP (Seniors).

Council’s WLEP and WDCP provide limited controls and requirements that are specific to nursing homes. The majority of requirements applicable to the proposed development are contained in SEPP (Seniors). The inconsistencies between the SEPP and WLEP are limited to definition of floor space and landscape area, which are numerical in nature and are not considered to affect the assessment of merits of the proposed development as detailed in the assessment section of this report. The proposed variations of the standards contained in SEPP (Seniors) are subject to assessment against the requirements of SEPP 1 objections as detailed in the assessment section of this report.

Overshadowing impacts to No 182 Sailors Bay Road

Due to the north-south orientation of the site, the proposed development has limited overshadowing impacts to the existing residential flat building at No 182 Sailors Bay Road. The submitted shadow diagrams show that the proposed development will

affect part of the driveway area and western elevation of No 182 Sailors Bay Road in the afternoon at winter solstice. This is not considered to unreasonably affect the amenity of the units at No 182 Sailors Bay Road, which all have north facing balconies and windows to Sailors Bay Road.

Fire Safety

There are no specific concerns raised by Council's Building section with respect to the fire safety of the proposed development having assessed the submitted application including a preliminary assessment of the proposal of the application against the Building Code of Australia. The submitted BCA assessment identifies that the proposal generally satisfies the relevant deem to satisfy provisions and/or performance requirements of the BCA. Access and egress issues are addressed in this document. The proposal will require further detailed assessment against the BCA prior to the issue of any construction certificate for the development. In the BCA, the proposed residential care facility will be categorised as a Class 9c) building with specific requirements reflecting the needs of an aged care facility. In addition, residential care facilities are subject to *Aged Care Act 1997 (Cth)* and *Commonwealth Aged Care Accreditation Standards*, which include the provision of a safe and comfortable environment that ensures the quality of life and welfare of residents, staff and visitors. The proposed facility cannot operate without meeting relevant licensing and certification requirements set out by the Commonwealth Government.

The proposal's non-compliance with the single storey 25% rear yard requirement contained in Clause 40(4)b) of SEPP (Seniors) does not relate to fire safety issues. As discussed in details in the assessment section of this report, the objective of Clause 40(4)c) relates to mitigation of adverse amenity impacts to rear yards of adjoining properties in a low density residential environment.

Demolition/Excavation

The proposed excavation is extensive, and the correspondent requests a performance bond of \$50,000 in favour of the Church as security against dilapidation. A performance bond cannot be obtained by Council in favour of a third party. However, dilapidation reports of adjoining properties, and a construction/traffic management plan will be required as recommended **Condition 10 & 28**.

Heritage Item

There is a wide variety of development types and architectural style presented by properties in the vicinity of the heritage item at No 186 Sailors Bay Road. The proposed development with limited visual correlation with this heritage item is not considered to adversely affect its significance as per assessed by Council's Heritage Architect.

Loss of trees

The proposed removal of existing trees is considered to be adequately compensated by the proposed landscaping works and planting of large canopy trees. During assessment of the application, Council's officer has requested that advanced species must be provided by the site given some of the proposed planting are located below natural ground level. These have been reflected in the amended landscape proposal. Please refer to the relevant landscape section in assessment section of this report.

Conclusion

The proposed development is considered a designed response that exploits the site opportunities and constraints to maximise the development potential of the site without unreasonable external impacts to the existing streetscape or adjoining properties. The proposed development is greater in bulk and scale than existing single and two storey detached houses at the site. However, the proposed greater bulk and scale is not considered to be incompatible with the locality having regards to the development context of the site and the existing streetscape. The proposed development density and intensity of use are not considered to generate unacceptable traffic impacts or notable cumulative impacts to existing street parking issue along Baringa Road or traffic delays at Strathallan Ave at its nearby intersection with Sailors Bay Road.

The location of the site is suitable for the proposed residential care facility given its easy access to services, shops and transport as required by SEPP (Seniors), and further supported by strategic planning studies associated with the preparation and exhibition of Draft WLEP 2009. The proposed development will increase the availability of residential accommodation at the locality to cater for an aging population, including affordable places. Despite the low density residential zoning of the site, the site only adjoins one low density residential property which allows greater flexibility in the siting and design of the proposed development. The proposal's objections to the height standards contained in Clause 40(4) are considered to be well-founded given the objectives of Clause 40(4) are primarily related to the mitigation of adverse impacts of developments in the context of low density zones, and such objectives have been achieved by the proposed development. The approval of the proposed development is consistent with the objectives of SEPP (Seniors) in meeting the residential needs of aged persons and the aims of SEPP 1 in providing flexibility in the application of planning controls where special circumstances arise.

OFFICER'S RECOMMENDATION

- 1) That the submitted SEPP 1 objections against Clause 40(4) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 are considered to be well found and be approved. It is considered unreasonable and unnecessary to strictly apply the development standard contained in Clause 40(4) given the objectives of the standards have been met by the proposed development despite the non-compliance.**
- 2) That the application be approved and delegated authority be granted to the General Manager to issue the consent notice subject to the attached conditions.**

Schedule 1 – RECOMMENDED CONDITIONS OF CONSENT

SCHEDULE OF CONDITIONS

CONDITIONS OF CONSENT:

GENERAL CONDITIONS

1. Hours of Work

All construction/demolition work relating to this Development Consent within the City must be carried out only between the hours of 7 am to 5 pm Mondays to Fridays and 7 am to 12 noon on Saturdays. No work is permitted on Sundays or Public Holidays.

An application under Section 96 of the Environmental Planning and Assessment Act for a variation to these approved hours must be lodged with Council at least 3 working days in advance of the proposed work. The application must include a statement regarding the reasons for the variation sought and must be accompanied by the required fee.

Note: This S96 application may require re-notification in some circumstances. (Reason: Ensure compliance and amenity)

2. Approved Plan/Details

The development must be in accordance with plans numbered with project number 2595, drawings DA2-01, DA2-02, DA2-03, DA2-04, DA2-05, DA3-01, DA3-02, DA4-01, DA4-02, DA4-03, DA4-04, revision B dated 17/01/11, DA6-01 Revision A, dated 11/08/10, prepared by Morrison Design Partnership P/L (Architects), Landscape drawings numbered DA0919-01-B, dated 22 Dec 2010, DA0919-02-H, DA0919-03-E, dated 14 Jan 2011, prepared by Guy Sturt + Associates, Engineering plans numbered HSK 01, HSK 02, & HSK 09, Issue B, HSK 07, Issue C, dated 18.01.11, prepared by Sparks and Partners, the application form and any other supporting documentation submitted as part of the application:

except for:

- a) any modifications which are "Exempt Development" in SEPP (Exempt and Complying Development Codes) 2008.
- b) any modifications which are 'Exempt Development' in Willoughby Development Control Plan Part B.2, or as may be necessary for the purpose of compliance with the Building Code of Australia and any Australian Standards incorporated in the Code:
- c) otherwise provided by the conditions of this consent.
(Reason: Information and ensure compliance)

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a construction certificate.

3. Detailed Drawings

Detailed construction drawings, specifications, and other supporting documentation required for a Construction Certificate are to be in accordance with the terms of this Consent and comply with the requirements of the Building Code of Australia.
(Reason: Ensure compliance)

4. Roof Gardens - Planters

Selected planting provided in the raised planters on the approved roof gardens must include species with mature height no less than 2m and densely planted to appropriately mitigate any overlooking into adjoining properties.

A privacy screen/lattice of minimum 1600mm in height be provided as shown on the approved landscape plan for the western roof garden facing 45 Baringa Road. Additional privacy screen/lattice of 400mm high must be provided above the top of wall of the approved planters of 1200mm in height (together provide an effective screen of 1600mm in height above the finished floor level of the roof garden) along the western and southern elevation of the roof garden or planter to prevent overlooking into the private open space of the property at No 45 Baringa Road Northbridge.

Plans and details complying with this condition must be shown on the Construction Certificate plans and approved by the certifying authority.
(Reason: Ensure compliance)

5. Additional Details and Information

Any requirements outlined by conditions of this consent requiring changes and/or information to be noted on plans are to be incorporated within the Construction Certificate plans and documentation.
(Reason: Ensure Compliance)

6. Section 94 Contributions

A cash contribution is to be paid in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979, in relation to the following items specified below:

A	Open Space and Recreational Facilities	\$425,218.90
	<u>Calculation</u>	
	\$4,592.93 per resident (116)	
	Less credit for existing dwellings	
	\$12,538.24 per 3 bedroom dwelling (6)	
	\$16,165.77 per 4 bedroom dwelling (2)	
B	Roads and Traffic Transport/Management	\$110,597.88
	<u>Calculation</u>	
	\$953.43 per unit (116)	
Total		\$535,816.78
<i>Office Use – Calculation Checked</i>		

This contribution is based on needs generated by the development as identified in the relevant adopted Section 94 Contributions Plan. The contribution rate and calculation is current until 30 June 2011, if payment is made after this date the rate/contribution will be increased in accordance with the CPI adjusted rates current at the time of payment.

Please note that payment will only be accepted by way of a bank cheque or cash.

Copies of the Contributions Plans and revised rates are available for inspection at the Councils Administration Building, 31 Victor Street, Chatswood or online at www.willoughby.nsw.gov.au

(Reason: Statutory requirement)

7. Services - Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained prior to occupation. Application must be made through an authorised Water Servicing Coordinator, for details see Customer Service, Urban Development at www.sydneywater.com.au or telephone 13 20 92.

Following application a "Notice of Requirements" will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Water Servicing Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and the building, driveway or landscape design and therefore require further approvals of Council.

The "Notice of Requirements" relating to the approved development in accordance with this consent is to be submitted to Council.

(Reason: Ensure Statutory Compliance)

8. Services - Energy Australia

The applicant should consult with Energy Australia to determine the need and location of any electrical enclosure for the development. Should such an electrical enclosure be required, the location and dimensions of the structure are to be detailed on all the plans issued with the Construction Certificate. All required electrical enclosure within the front setback areas of the site must be setback at least 1m away from the respective front property boundary, and screened by suitable planting. The applicant is responsible for creation of any

necessary easements as required by Energy Australia at no cost to Council.
(Reason: Compliance)

9. Damage Deposit

The applicant shall lodge a Damage Deposit of \$66,200.00 (GST Exempt) as cash, cheque or an unconditional bank guarantee, with Council against possible damage to Council's asset during the course of the building works. The deposit will be refundable subject to inspection by Council after the completion of all works relating to the proposed development. Any damages identified by Council shall be restored by the applicant prior to release of the Damage Deposit.

(Reason: Protection of public asset)

10. Traffic Management Plan

A detailed Traffic Management Plan shall be prepared for pedestrian and traffic management and be submitted to the relevant road authority for approval. The plan shall: -

- a) Be prepared by a RTA accredited consultant.
- b) Implement a public information campaign to inform any road changes well in advance of each change. The campaign shall be approved by the Traffic Committee.
- c) Nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
- d) Temporary road closures shall be confined to weekends and off-peak hour times and are subject to the approval of Council. Prior to implementation of any road closure during construction, Council shall be advised of these changes and a Traffic Control Plan shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.

(Reason: Public safety and amenity)

11. Construction Management Plan (CMP)

Submit, for approval by the Principal Certifying Authority, detailed Construction Management Plan (CMP). The CMP shall address:

- (a) Construction vehicles access to and egress from the site
- (b) Parking for construction vehicles
- (c) Locations of site office, accommodation and the storage of major materials related to the project
- (d) Protection of adjoining properties, pedestrians, vehicles and public assets
- (e) Location and extent of proposed builder's hoarding and Work Zones

- (f) Tree protection management measures for all protected and retained trees.
(Reason: Compliance)

12. Road Pavement – Engineering Details

The applicant shall submit, for approval by Council as the road authority, full engineering design plans and specifications prepared by a suitably qualified and experienced civil engineer for the pavement reconstruction of half of **Sailors Bay Road** including kerb, gutter, footpath all associated works fronting the subject site.

The required plans must be designed in accordance with Council's Specifications (AUS-SPEC). Approval must be obtained from Willoughby City Council as the road authority under the Roads Act 1993 for any proposed works in the public road.
(Reason: Protection of public asset)

13. Stormwater Conveyed to Street Drainage

Stormwater runoff from the site shall be collected and conveyed to the street drainage system in accordance with Council's specifications. A grated drainage pit (min. 600mm x 600mm) shall be provided within the property and adjacent to the boundary prior to discharging to the Council's drainage system. Any new drainage pipe connections to the underground system shall be approved by Willoughby Council and comply with the requirements described in Part C.5 of Council's DCP and Technical Standards. In this regard, full design and construction details showing the location and method of connection shall be submitted to Council for approval.
(Reason: Stormwater control)

14. Locate and Expose Existing Pipeline

Prior to commencement of any drainage connection works, the applicant shall locate and expose the existing Council's drainage line for assessment of the condition of such pipeline by the design engineer and Council. Inspection by Council's Engineers is required prior to any backfilling. For the purpose of inspections carried out by Council Engineers, the corresponding fees set out in Council's current *Fees and Charges Schedule* are payable to Council.
(Reason: Protection of public asset)

15. Basement Pumpout Drainage System

The applicant shall submit, for approval by the Principal Certifying Authority, detailed stormwater management plans in relation to the pump-out drainage system. The construction drawings and specifications, shall be generally in accordance with the approved stormwater management plans with the following requirements:

- The pumpout drainage system shall comprise with two (2) submersible type pumps. The two pumps shall be designed to work on an alternative basis to ensure both pumps receive equal use and neither remains continuously idle.
- Each pump shall have a minimum capacity of 10L/s or shall be based on the flow rate generated from the 1 in 100 year ARI 5-minutes duration storm event of the area draining into the system, whichever is greater.
- An alarm warning device (including signage and flashing strobe light) shall be provided for the pump-out system to advise the occupant of pump failure. The location of the signage and flashing strobe light shall be shown on the stormwater management plans.
- The volume of the pump-out tank shall be designed with a minimum storage capacity equivalent to the runoff volume generated from of the area draining into the tank for the 1 in 100 year ARI 2-hours duration storm event.

All drawings shall be prepared by a suitably qualified and experienced civil engineer and shall comply with Part C.5 of Council's Development Control Plan, AS3500.3 – *Plumbing and Drainage Code* and the BCA.

(Reason: Prevent nuisance flooding)

16. Stormwater to Street Drainage via Reinforced Concrete Pipe (RCP)

Stormwater runoff from the site shall be collected and conveyed to the underground drainage system in **Euroka Street** via the proposed 450 mm RCP in accordance with Council's specification. The system shall be analysed by the hydraulic grade line to ensure that backwater effect to the OSD tank is avoided for the critical 1 in 100 year ARI rainfall event. A grated drainage pit (min. 600 mm x 600mm) shall be provided adjacent to the property boundary prior to discharging to the Council's drainage system. In this regard, full design and construction details including longitudinal section showing the positions of underground services on the footpath/street are to be submitted to Council for approval.

(Reason: Prevent nuisance flooding to OSD tank)

17. Stormwater on Sailors Bay Road

The stormwater system on Sailors Bay Road for the full frontage of the site shall be collected and drained into the low point of the existing gully pit via two additional kerb inlet pits approximately 20 m east and 10 west of the existing gully pit on **Sailors Bay Road**. The new pits shall be connected to the low point on the existing gully pit by 375 mm dia RCP. The proposed driveway shall be profiled to prevent stormwater entering the car park. All pits and pipes shall be designed in accordance with Willoughby Council's standard (AUSPEC).

Construction of the drainage system shall be satisfactory completed **prior to the release of the Occupation Certificate**. (Reason: Prevent nuisance flooding of car park)

18. Temporary Ground Anchors

Obtain written permission from all private property owners affected by any encroachment either below ground or the air space above as a result of the above works. Copies of the permission shall be sent to Council. All works associated with the drilling and stressing of the ground anchors shall be installed in accordance with approved drawings.

A professional Geotechnical Engineer shall be on site to supervise the piling, excavation and finally the installation and stressing of the ground anchors. On completion of these works, a report from the Geotechnical Engineer shall be submitted to Council for record purposes.

(Reason: Encroachment of works)

19. Civil Works on Road Reserves

All required road pavement, footpath, kerb and gutter, drainage works and/or any necessary associated works on the road reserve fronting the development shall be completed in accordance with the Council approved drawings, conditions and specification (AUS-SPEC).

Pursuant to Section 138 of the Roads Act 1993, all works carried out on the road reserve shall be inspected and approved by Council's Engineer. Upon completion, Work-as-Executed drawings prepared by a registered surveyor shall be submitted to Council for record purposes. A completion certificate shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.

(Reason: Ensure compliance)

20. Traffic signs & marking

Plans and details prepared by a suitably qualified traffic engineer showing design of any signage and traffic line marking required for the approved driveway access off the Euroka Street and Sailors Bay Road roundabouts. These must include, but not limited to the provision of a 'Stop – Proceed with caution' near the exit from the approved basement car parking area, and line marking to clearly delineate the entry and exit lane of the driveway. The installation of additional regulatory signs and road sign outside the site may be subject to statutory public notification/advertising, and requires reviews and recommendations by Council's Local Traffic Committee to be approved by Council.

(Reasons: Safety and Ensure Compliance)

21. Food preparation, handling and storage areas

The fitout of all food preparation, handling and storage areas must comply with Australian Standard AS4674-2004 Design, Construction and Fitout of Food Premises and with the requirements of the Food Safety Standards. Details are to be submitted to the Principal Certifying Authority together with certification from a suitably qualified person that the fitout complies with the standards prior to a Construction Certificate being issued.

(Reason: Ensure Compliance)

22. Noise Mechanical Services

To minimise the impact of noise onto residential receivers, all mechanical services shall be designed and installed to ensure ambient noise levels are maintained. Details of the proposed equipment, siting and any attenuation required shall accompany the application for construction certificate.

(Reason: Amenity)

23. External Finishes

The external building material shall be consistent with the submitted schedule of colour and finishes shown on the approved plans. The roofing and cladding of the proposed building are to be of minimal reflectance (maximum of 20%) so as to avoid nuisance in the form of glare or reflections to the occupants of nearby buildings, pedestrians and/or motorists. Detailed specifications complying with this condition of consent must be submitted to the certifying authority and endorsed with the Construction Certificate.

(Reason: Avoid nuisance and ensure compliance)

PRIOR TO THE COMMENCEMENT OF ANY WORKS

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. All of these conditions are to be complied with prior to the commencement of any works on site, including demolition.

24. Building Site Hoarding

Provision of a hoarding, complying with WorkCover NSW requirements which is to be erected to restrict public access to the site (including demolition and/or excavation site) and building works, materials or equipment. A separate application is to be made to Council's Infrastructure Services Division for this purpose should the hoarding be located on Council property.

(Reason: Safety)

25. Provide Erosion and Sediment Control

Erosion and sediment control devices shall be provided whilst work is being carried out in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into Council's stormwater system natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the requirements of the Protection of Environment Operations Act 1997 and the Department of Environment, Climate Change and Water guidelines. The control devices are to be maintained in a serviceable condition AT ALL TIMES.

(Reason: Environmental protection)

26. Demolition Work AS 2601

Demolition works being carried out in accordance with the requirements of AS 2601 "The demolition of structures".
(Reason: Safety)

27. Silencing Devices

Sound attenuating devices shall be provided and maintained in respect of all power-operated plant used during demolition, excavation, earth works and the erection of the structure.
(Reason: Maintain amenity to adjoining properties)

28. Site & Construction Management

A Site and Construction Management Plan shall be submitted to and approved by the Principal Certifying Authority prior to the commencement of any work, including demolition. The site and construction management plan shall include the following measures as applicable.

- Details and contact telephone numbers of the owner, builder and developer;
- Location and construction details of protective fencing to the perimeter of the site;
- Location of site storage areas, sheds and equipment;
- Location of stored building materials for construction;
- Provisions for public safety;
- Dust control measures;
- Site access location and construction;
- Details of methods of disposal of demolition materials;
- Protective measures for tree preservation;
- Provisions for temporary sanitary facilities;
- Location and size of waste containers and bulk bins;
- Soil and Water Management Plans (SWMP); comprising a site plan indicating the slope of land, access controls, location and type of sediment controls and storage/control methods for material stockpiles;
- Construction noise and vibration management.
- Construction vehicles access to and egress from the site. No construction vehicle is to access the site from Baringa Road.
- Parking for construction vehicles. No construction vehicle is to park on Baringa Road.
- Locations of site office, accommodation and the storage of major materials related to the project
- Protection of adjoining properties, pedestrians, vehicles and public assets
- Location and extent of proposed builder's hoarding and Work Zones
- Tree protection management measures for all protected and retained trees.

The site and construction management measures shall be implemented prior to the commencement of any site works and maintained during the construction period. A copy of the approved Site and Construction Management Plan shall be conspicuously displayed, maintained on site and be made available to the PCA/Council officers upon request. (Reason: Environment protection, public health and safety)

29. Dilapidation Report of Council's Property

Submit a dilapidation report including photographic record of Council's property extending to a distance of 50m from the development, detailing the physical condition of items such as, but not exclusively to, the footpath, roadway, nature strip, and any retaining walls.

The developer may be held liable to any recent damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition prior to the commencement of works. In this regard, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

This dilapidation report shall be submitted to Council and the Principal Certifying Authority.

(Reason: Protection of Council's infrastructure)

30. Dilapidation Report of Adjoining Properties

Submit a photographic survey and report of the adjoining properties at No 182 Sailors Bay Road (Lot 18 Section 3 DP7122/ SP 10737), No. 160 Sailors Bay Road (Lot 13 Section 3 DP7122 & Lot 2 SP321), No 45 Baringa Road (Lot 27 Section 3 DP7122), & No 53 Baringa Road (Lot 31 & 32 Section 3 DP 7122).

to the PCA and all owners of these adjoining properties. Such photographic survey and report shall be prepared by a suitably qualified person, detailing the physical condition of these properties, both internal and external including items as walls, ceilings, roof, structural members and other items as necessary. Copies of all report must be submitted to Council if Council is not the PCA.

In the event of a property owner refusing to allow access to carry out the photographic survey, the proponent must demonstrate in writing to the PCA, and provide a copy to Council, that the purpose of the survey was made clear to the property owner and that reasonable attempts to obtain access were made.

(Reason: Protection of adjoining owners)

31. Asbestos Sign to be Erected

On sites involving demolition or alterations and additions to building where asbestos cement is being repaired, removed or disposed of a standard commercially manufactured sign not less than 400mm x 300mm containing

the words “DANGER ASBESTOS REMOVAL IN PROGRESS” is to be erected in a prominent visible position on the site. The sign is to be erected prior to the commencement of works and is to remain in place until such time as all asbestos cement has been removed from the site to an approved waste facility.

(Reason: Public Health & Safety/Ensure Compliance)

32. Tree Protection

Retain and protect the following trees and vegetation throughout the demolition and construction period:

All trees not indicated for removal on Tree retention /Removal Plan numbered DA0919- 01B dated 22 Dec 2010 prepared by Guy Sturt & Assoc.

The protective measures must comply with the following specifications:

- i. AS 4970-2009 Protection of trees on development sites.

(Reason: Tree Management)

33. Public Tree Protection

Unless identified by the development consent, no tree roots over 25mm diameter are to be damaged or cut and all structures are to be bridged over such roots.

Should any problems arise with regard to the existing or proposed trees on public land during the construction or bond period, the applicant is to immediately Contact Council's Open Space section and resolve the matter to Council's satisfaction.

(Reason: Tree management)

34. Application for Vehicle crossing

Submit an application with fees to Council for the construction of a plain concrete vehicular crossing.

(Reason: Protection of public asset)

35. Neighbour Notification of Asbestos Removal

The applicant/builder is to notify the adjoining residents five working days prior to demolition works involving removal of asbestos. Such notification is to be clearly written, giving the date work will commence, Work Cover NSW phone number 131 050, Councils phone number 9777 1000.

This notification is to be placed in the letterbox of every property (including every residential flat or unit) either side and immediately at the rear of the site.

(Reason: Public Health)

36. Asbestos Sign to be Erected

On sites involving demolition or alterations and additions to building where asbestos cement is being repaired, removed or disposed of a standard commercially manufactured sign not less than 400mm x 300mm containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" is to be erected in a prominent visible position on the site. The sign is to be erected PRIOR TO THE COMMENCEMENT OF WORKS AND IS TO REMAIN IN PLACE UNTIL SUCH TIME AS ALL ASBESTOS CEMENT HAS BEEN REMOVED FROM THE SITE TO AN APPROVED WASTE FACILITY. (Reason: Public Health & Safety/Ensure Compliance)

37. Permits and Approvals Required

Application is to be made to Council's Infrastructure Services Division for the following approvals and permits as appropriate:-

- a) Permit to erect Builder's hoarding where buildings are to be erected or demolished within 3.50m of the street alignment. Applications are to include current fees and are to be received at least 21 days before commencement of the construction.
- b) Permit to stand mobile cranes and/or other major plant on public roads. Applications are to include current fees and security deposits and are to be received at least seven days before the proposed use. It should be noted that the issue of such permits may also involve approval from the NSW Police Force and the RTA. A separate written application to work outside normal hours must be submitted for approval.

It should also be noted that, in some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.

- c) Permit to open public roads, including footpaths, nature strip, vehicular crossing or for any purpose whatsoever. All applications are to include current fees.
- d) Permit to place skip/waste bin on footpath and/or nature strip. (Maximum three (3) days)
- e) Permit to work and/or place building materials on footpath and/or nature strip. (Maximum two (2) weeks)
- f) Permit to establish Works Zone on Public Roads adjacent to the Development including use of footpath area. Applications must be received by Council at least twenty-one days prior to the zone being required. The application will then be referred to the Council's Local Traffic Committee for approval, which may include special conditions.
- g) Permit to construct vehicular crossings over Council's footpath, road or nature strip.

(Reason: Legal requirements)

38. Spoil Route Plan

Submit a “to and from” spoil removal route plan to Council prior to the commencement of excavation on the site. Such a route plan should show entry and exit locations of all truck movements.
(Reason: Public amenity)

39. Report Existing Damages on Council’s Property

Prior to commencement of any works on site, the applicant shall notify Council in writing with digital photographs of any existing damages to Council’s assets fronting the property and the immediate adjoining properties. Failure to do so will result in the applicant being liable for any construction related damages to these assets. In this respect, the damage deposit lodged by the applicant may be used by Council to repair such damages.
(Reasons: Protection of Council’s Infrastructure)

40. Property Boundary Levels

The applicant must obtain the levels for the vehicle crossing at the property boundary from Council under a separate application. These levels shall be incorporated into the design of the internal driveway. The suitability of the grade of driveway *inside* the property is the sole responsibility of the Applicant and the required levels fixed by Council may impact upon these levels.

The crossing at the property boundary is to be 5.50 metres wide and is to be constructed of right angle to the street kerb. The proposed waiting area beside the driveway is not approved and shall be deleted.

All adjustments to the nature strip, footpath and /or public utilities’ mains and services as a consequence of the development and associated construction works are to be carried out at the full cost to the Applicant.
(Reason: Public amenity)

41. Excavation – Geotechnical Assessment

Prior to any excavation commencing a report is to be obtained from a Geotechnical Engineer outlining how the excavation is to be undertaken with safety. The report is to address excavation methods, support for adjoining properties, vibration control and monitoring, the need for dilapidation surveys of adjoining premises in addition to any requirements specified by conditions of this development consent, site stability and the level of geotechnical supervision required during site works. All recommendations of the engineer are to be complied with. The report together with copies of any dilapidation surveys are to be submitted to the PCA, Council if Council is not the PCA, and relevant adjoining property owners prior to works commencing.
(Reason: Protection of property)

PRIOR TO OCCUPATION OF THE DEVELOPMENT

The following conditions of consent must be complied with prior to the issue of an occupation certificate.

42. Occupation Certificate

The building/structure or part thereof shall not be occupied or used until an interim occupation / final occupation certificate has been issued in respect of the building or part.
(Reason: Safety)

43. Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained prior to occupation. Application must be made through an authorised Water Servicing Coordinator, for details see Customer Service, Urban Development at www.sydneywater.com.au or telephone 13 20 92.

The Section 73 Certificate must be submitted to the Principal Certifying Authority.
(Reason: Ensure Statutory Compliance)

44. Marked parking bays

All approved parking bays including 21 staff and 13 visitors car spaces, ambulance bay, loading bay and the direction of traffic movement being permanently marked on the pavement surface in accordance with the approved car parking and driveway layout to the satisfaction of the Principal Certifying Authority.
(Reason: Ensure compliance)

45. Motorcycle parking and bicycle rack

a) One motorcycle parking must space must be provided within the approved basement car parking area. The space is to have an area of 1.2 metres x 3 metres.

b) 3 bicycle parking rail/racks must be provided by the development.

The required motorcycle and bicycle racks by this condition must be marked by suitably signage.
(Reasons: Sustainable Transport)

46. Registration of Plan of Consolidation

All individual allotments involved in the development site being consolidated into a single allotment and evidence of the registration of the plan of consolidation to be submitted to Council.
(Reason: Ensure compliance)

47. Seniors Living - Documentation

The documentation relating to the constitution and operation of the development is to be submitted for Council's approval including:

- a) A restriction on the occupation of the development to persons defined under Clause 18(1) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

A restriction as to user be registered against the title of the property on which the approved development is carried out, in accordance with section 88E of the Conveyancing Act 1919, limiting the use of any accommodation to which the development consent relates to the kinds of people referred to in Clause 18(1) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

- b) A minimum of 10% of the approved 116 beds must be provided as affordable places with on-site support services. Affordable places and on-site support services are defined by Clause 45 (12) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The creation of a restrictive or positive covenant on the land to which this development consent relates concerning the continued provision of a minimum of 10% affordable places with on-site support services is required. The positive covenant is to be in favour of Willoughby City Council with Council being the only authority to vary, modify or extinguish the covenant.

(Reason: Ensure compliance)

48. Safer by Design

To minimise the opportunity for crime and in accordance with CPTED principles, the development shall incorporate the following:

- a) In order to maintain a safe level of visibility for pedestrians within the development, adequate lighting to AS1158 is to be provided to all common areas including the basement car park, common open space and any common stair access to these areas and pedestrian routes, including the waste storage areas.

This lighting shall ensure consistency to avoid contrasts between areas of shadow/illumination and preferably be solar powered and with an automatic/timed switching mechanism, motion sensor or equivalent for energy efficiency. Such lighting shall be installed and directed in such a manner so as to ensure that no nuisance is created for surrounding properties or to drivers on surrounding streets. Car parking lighting system is to be controlled by sensors to save energy during periods of no occupant usage.

- b) The roof of the basement parking area shall be painted a gloss white (or equivalent) in order to ensure good visibility, surveillance and less reliance on artificial lighting lux levels.
- c) The design, installation and maintenance of landscaping (and associated works) within pedestrian routes around the site (and

adjacent to mailboxes) shall not impede visibility and clear sight lines along the pedestrian footway from one end to the other.

- d) Appropriate level of lighting must be provided within the approved internal courtyard area suitable for residents to freely move between indoor and outdoor areas.
 - e) Only one entry to each of the secured courtyard area be available for access by residents. Alternative entries to secured courtyards must be locked with access control by staff only.
 - f) The means to isolate visitors and residents/staff components of the building shall be incorporated into the development, including the security keying of lifts and doors and other measures for access control.
 - g) Adequate signage within the development to identify facilities, entry/exit points and direct movement within the development.
 - h) All medical stores must be locked and alarmed.
 - i) All doors that give external access to the streets are to be locked and alarmed.
 - j) Mobile panic alert alarms are to be provided to staff and fixed panic alarms are to be provided throughout the premise.
 - k) CCTV is to be installed to monitor the approved courtyards, and car parking areas.
 - l) Access from Baringa Road frontage of the site is limited to emergency exits only. Appropriate signs must be permanently affixed to all pedestrian gates/entries on the Baringa Road frontage of the site, stating "Emergency exit only. Entrance on Sailors Bay Road".
- (Reason: Safety and surveillance, energy efficiency, amenity)

49. Street number

The street number at least 100mm high shall be clearly displayed on the street frontages of the site.

(Reason: Information)

50. Sustainable Development - Final Occupation

The measures proposed to be undertaken in the submitted Sustainability Scorecard as part of the Development Application are to be implemented as part of the development. Should any variation to these measures be proposed, a revised scorecard with the amendments highlighted is to be submitted for the Principal Certifiers approval, and is required to continue to achieve the relevant mandatory measures and same

(Reason: Environmental Sustainability)

51. Food Premises Registration

Prior to occupation and use of the kitchen facilities in connection with the approved residential care facility, Council and the NSW Food Authority must be notified that the premises are being used for the preparation or manufacture of food for sale and registered on the food notification database.

If a Private Certifier is to be used for the development, a final inspection may be conducted by Council's Food Surveillance Officer to ensure that food standards required by this development consent are met, at a fee of \$154 per inspection paid beforehand.

(Reason: Information & Ensure Compliance)

52. Inspection of Civil Works on Road Reserves

All required road pavement, footpath, kerb and gutter, drainage works and/or any necessary associated works on the road reserve shall be completed in accordance with the Council approved drawings, conditions and specification (AUS-SPEC).

Pursuant to Section 138 of the Roads Act 1993, all works carried out on the road reserve shall be inspected and approved by Council's Engineer. Upon completion, Work-as-Executed drawings prepared by a registered surveyor shall be submitted to Council for record purposes. A completion certificate shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.

(Reason: Ensure compliance)

53. S88B/88E(iii) Instrument

Create Positive Covenant and Restriction on the Use of Land on the Title in favour of Council as the benefiting authority for the as-built OSR & OSD systems. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council's Technical Standards.

The above instruments shall be created under Section 88B of the Conveyancing Act 1919 for newly created lots. For an existing lot, the instruments can be created under Section 88E (3) of the Conveyancing Act 1919 using Form 13PC and 13RPA respectively. The request forms shall be lodged together with Council's Standard Lodgement Form which is available from Council upon request. The relative location of the OSR & OSD systems, in relation to the building footprint, must be shown on a scale A\$ sized sketch, attached as an annexure to the request forms.

Documentary evidence of registration of these instruments with the Department of Property Information shall be submitted to Council.

(Reason: Maintenance requirement)

54. Sign for On site Retention & Detention (OSR & OSD) system

An aluminium plaque measuring no less than 400mm x 200mm is to be permanently attached and displayed within the immediate vicinity of the OSR & OSD system.

The wording for the plaque shall state *“This is the OSR & OSD system required by Willoughby City Council. It is an offence to alter any part of the system without written consent from Council. The registered proprietor shall keep the system in good working order by regular maintenance including removal of debris”*.

(Reason: Prevent unlawful alteration)

55. Confined Space Sign

Securely install an approved standard confined space danger sign in a prominent location within the immediate vicinity of access grate of the OSR & OSD systems.

(Reason: Safe access to tank)

56. Certification of OSR & OSD systems

A suitably qualified and experienced civil engineer (generally CP Eng. Qualification) shall certify on Council’s standard certification form that the as-built OSR & OSD system is in accordance with the approved plans and complies with Council’s DCP and Technical Standards. Council’s standard certification form is available in the appendix of Council’s Technical Standard No.1.

(Reason: Legal requirement)

57. Documentary Evidence of Positive Covenant, Engineers Certificate

The following documentary evidence of the completed drainage works shall be submitted to Principal Certifying Authority and Council: -

- Registered Positive Covenant and Restriction on the Use of Land by way of the Title Deed.
- Certification from a suitably qualified and experienced civil engineer (generally CP Eng. Qualification) for the as-built OSR & OSD systems and/or plumber’s certification of the as-built rainwater reuse system.
- Work-as-Executed plans highlighting in red based on the approved stormwater management plans from a registered surveyor for the as-built OSR & OSD systems.

(Reason: Public record)

58. Works As Executed Plans – OSR & OSD

Upon completion of the OSR & OSD System, the following shall be submitted to the Principal Certifying Authority:

- Work-as-Executed plans based on the approved stormwater management plans from a registered surveyor to verify that the volumes of storage, PSD, water and floor levels are constructed in accordance with design requirements. Any minor changes or variations to the approved plans should be highlighted in red on the approved stormwater plans.
- Engineer's certification of the OSR & OSD system together with the completed Council's standard form for On-Site Detention Record of Installation.

(Reason: Record of works)

59. Works As Executed Plans – Rainwater Reuse

Upon completion of the Rainwater Re-use System, the following shall be submitted to the Principal Certifying Authority:

- Work-as-executed plans based on the approved stormwater plans from a registered surveyor to verify that the volume of storage, invert levels of inlet, overflow pipes and discharge outlet are constructed in accordance with design requirements. Any minor changes or variations to the approved plans should be highlighted in red on the approved stormwater plans.
- Plumber's certification that the Rainwater Re-use system has been fitted with proprietary first flush device and connected to non-potable use including toilet flushing, laundry and landscape irrigations. All works completed shall comply with the current plumbing requirements of Sydney Water and Committee on Uniformity of Plumbing and Drainage Regulations of NSW.

(Reason: Record of works)

60. Rainwater Retention & Re-use – Major

The applicant shall supply and install rainwater re-use tanks with a minimum storage volume of 129 m³ in accordance with the approved stormwater management plans, Sydney Water's requirements and Council's DCP and Technical Standards.

All roof water from the development shall be connected to this system prior to overflow into the OSD tank. The rainwater reuse system shall be sufficiently filtered before usage and be connected to supply non-potable uses including, but not limited to laundry, toilet flushing and landscape irrigation. The system must be periodically inspected and maintained to ensure proper function.

(Reason: Ensure compliance and conserve natural resources)

61. Grated Box Drain

For stormwater control a 250 mm wide grated trench drain with a heavy duty removable galvanised grate is to be provided in front of the garage door/basement parking slab to collect driveway runoff. The trench drain shall be connected to the basement pump out drainage system and must have an

outlet of minimum diameter 150 mm to prevent blockage by silt and debris.
(Reason: Proper disposal of stormwater)

62. Construction of Kerb & Gutter

Construct new kerb and gutter for the full frontage to **Sailors Bay Road** together with any necessary associated pavement restoration in accordance with Council's specification for the full frontage of the development site with associated half road pavement restoration.
(Reason: Public amenity)

63. Concrete Footpath

Construct a 1.2m wide concrete footpath 600mm off the alignment of the property boundary for the full frontage of the development site in **Sailors Bay Road**. All works shall be carried out in accordance with Council's standard specifications and drawings.
(Reason: Public amenity)

64. Performance Bond

The Applicant shall lodge with the Council a performance bond of \$31,000 against defective public civil works undertaken by the main Contractor for a period of twelve (12) months from the date of the completion certificate issued by Council as the road authority under the Roads Act 1993. The bond shall be lodged in the form of a cash deposit, cheque or unconditional bank guarantee which will be refundable subject to the approval of Council's Engineers at the end of the maintenance period. In this period, the Applicant is liable for any part of the work which fails to achieve the design specifications. Council shall be given full authority to make use of the bond for such restoration works within the maintenance period as deemed necessary.
(Reason: Ensure compliance and specification)

65. Removal of Redundant Crossings

Remove all redundant crossings together with any necessary works and reinstate the footpath, nature strip and kerb and gutter accordingly. Such work shall be carried out in accordance with Council's specification.
(Reason: Public amenity)

66. Sweep & Clean Pavement

Sweep and clean pavement surface adjacent to the ingress and egress points of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council.
(Reason: Legal requirement)

67. Turfing of Nature Strip

Trim the naturestrip of land between the property boundary and the kerb, spread topsoil on top of the trimmed surface and lay approved turfing on the

prepared surfaces for the full frontage of the site along **Sailors Bay Road**. The turf shall be protected from vehicular traffic and kept watered until established.

(Reason: Public amenity)

68. Adjustment to Electricity supply

All existing and proposed overhead electricity supply mains and other overhead services around the street frontage of the site shall be relocated underground to the specification of Energy Australia and Willoughby City Council at full cost to the applicant. The Applicant shall consult with Energy Australia for the removal of two power poles in front of the site along Sailors Bay Road.

(Reason: Public amenity)

69. Noise Emission – Equipment

Certification from a suitably qualified Acoustic Engineer certifying that the noise from all sound producing plant, equipment, machinery, mechanical ventilation and/or the refrigeration system complies with the terms of the development consent.

(Reason: Amenity)

70. Internal Noise Criteria

To minimise noise intrusion from any external noise source onto the occupants of the development, the building shall be designed and constructed to comply with the requirements of Australian Standard AS2107-2000 – Acoustics – Recommended design sound levels and reverberation times for building interiors.

Certification from an appropriately qualified acoustic consultant that the building has been designed to meet this criteria shall be submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

(Reason: Amenity)

71. Certification – Ventilation

Submit a Certificate from a suitably qualified mechanical engineer certifying that all work associated with the installation of the mechanical and/or natural ventilation systems has been carried out in accordance with the conditions of the development consent.

(Reason: Compliance)

72. Garbage Rooms

Garbage rooms must be large enough to store the generated waste from the proposed uses and allowance should be made for separation of putrescible waste from waste suitable for recycling, to the satisfaction of Council.

(Reason: Ensure compliance)

73. Waste/Garbage storage and removal

Arrangements being made to the satisfaction of Council for the storage on the site and regular removal of garbage, recycling and trade wastes.

(Reason: Health and amenity)

74. Garbage container room

The garbage container room shall be constructed to comply with all the relevant provisions of Council's "Waste Minimisation Policy" and in particular :-

- a) The floor being graded and drained to an approved drainage outlet connected to the sewer and having a smooth, even surface, coved at all intersections with walls.
- b) The walls being cement rendered to a smooth, even surface and coved at all intersections.
- c) Hot and cold water through a mixer being provided in the room with the outlet located in a position so that it cannot be damaged and a hose fitted with a nozzle being connected to the outlet.
- d) An overhead type door being provided to the room having a clear opening of not less than 1.8m.
- e) A galvanised steel bump rail at least 50 mm clear of the wall being provided at the height of the most prominent part of the garbage containers.
- f) Mobile containers having a capacity suitable for connection to the garbage collection vehicle being provided in the room. In addition suitable recycling containers must also be provided in the room.

(Reason: Health and amenity)

75. Medical/Health – Storage and disposal of special waste

Contaminated, clinical or pathological waste shall be stored within the premises, handled, transported, stored and disposed of in accordance with the Department of Environment and Climate Change - DECC and the NSW Department of Health requirements.

(Reason: Compliance)

76. Medical/Health – Storage of all waste

All waste including medical waste and sharps containers shall be stored in a secure area which is not accessible to the general public.

(Reason: Compliance and Safety)

77. Public Tree Maintenance

The applicants arborist or landscape designer is to certify that:

- i. All trees on public land have been adequately maintained, that there has been no net deterioration in health and condition, and that any remedial work complies with the industry standards AS 4970-2009 Protection of

trees on development sites. and AS 4373 -1996 "Pruning of Amenity Trees".

(Reason: Tree management, Public Asset Management)

78. Completion of Landscape Works

The approved landscape works are to be consistent with the approved design, completed to a professional standard, consistent with industry best practice and published standards. All planted trees cannot be pruned unless such pruning complies with Council's Tree Preservation order or removed without a permit issued under Council's Tree Preservation Order.
(Reason: Landscape amenity)

79. Weed Removal

All noxious and environmental weeds shall be removed from the property prior to completion of building works. Documentary evidence of compliance with this condition shall be submitted to the Principal Certifying Authority prior to the release of the final Occupation Certificate.
(Reason: Environmental Protection; landscape Amenity)

80. Screening of rooftop plant/structures

Any rooftop or exposed structures including lift motor rooms, plant rooms etc., together with air conditioning, ventilation and exhaust systems, are to be suitably screened and integrated with the building in order to ensure a properly integrated overall appearance.
(Reason: Visual amenity)

ADDITIONAL CONDITIONS

The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land, and relevant legislation.

81. Road and Footpath

Council's footpath, nature strip or roadway not being damaged and shall be kept clear at all times.
(Reason: Maintain public safety)

82. No storage on foot/roadway

Building materials, plant and equipment and builder's waste, are not to be placed or stored at any time on Council's footpath, nature strip or roadway adjacent to building sites unless prior written approval has been granted by Council.
(Reason: Safety)

83. Skips and Bins

Rubbish skips or bins are not to be placed on Council's footpath, nature strip or roadway unless prior written approval has been granted by Council.
(Reason: Safety)

84. Removal of Material

Remove all excess excavation and construction material from the site at the completion of works to the satisfaction of the Principal Certifying Authority.
(Reason: Environmental protection)

Excavations and Backfilling

All excavations and backfilling associated with the erection or demolition of a building must be executed safely, and must be properly guarded and protected to prevent them from being dangerous to life or property.
(Reason: Safety)

85. Support for Neighbouring Buildings

- (1) If development involves an excavation that extends below the level of the base of the footings of a building on an adjoining property, the person having the benefit of the development consent must, at the person's own expense:
 - a) protect and support the adjoining premises from possible damage from the excavation, and
 - b) if necessary, underpin and support the adjoining premises to prevent any such damage, and
 - c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (2) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
- (3) In this clause, "allotment of land" includes a public road and any other public place.
(Reason: Safety)

86. Temporary Toilet Facilities

Temporary toilet facilities shall be provided to the satisfaction of the Principal Certifying Authority.

The provision of toilet facilities must be completed before any other work is commenced on site. NOTE: Portable toilet facilities are not permitted to be placed on public areas without prior approval having been obtained from

Council.
(Reason: Health and amenity)

87. Erection Wholly within the Boundaries

All works including footings, shall be erected wholly within the boundaries of the property.
(Reason: Ensure compliance)

88. Asbestos Removal

Works involving the removal of asbestos must comply with Councils Policy on handling and disposal of asbestos, and must also comply with the Code of Practice for Safe Removal of Asbestos (National Occupational Health and Safety Committee 2002).

Demolition is to be carried out in accordance with the applicable provisions of Australian Standard AS 2601 – The Demolition of Structures.
(Reason: Public Health & Safety/Ensure Compliance)

89. Asbestos Disposal

All asbestos laden waste, including bonded or friable asbestos must be disposed of at a waste disposal site approved by the NSW Department of Environment, Climate Change and Water.

Upon completion of the asbestos removal and disposal the applicant must furnish the Principal Certifying Authority with a copy of all receipts issued by the waste disposal site as evidence of proper disposal.
(Reason: Environmental Protection/Public Health and Safety)

90. Street Signs

The applicant is responsible for the protection of all regulatory / parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works are to be replaced at full cost to the applicant.
(Reason: Protection of Public Assets)

91. Noise Control – Offensive Noise

To minimise the noise impact on the surrounding environment, the use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to an “offensive noise” as defined under the provisions of the Protection of the Environment Operations Act 1997.
(Reason: Amenity)

92. Mechanical Ventilation Systems Comprising Water Cooling

Mechanical ventilation systems comprising water cooling, and/or evaporative cooling systems shall be registered with Council on completion of the installation in accordance with the requirements of the Public Health Act. (Reason: Health Protection)

93. Ventilation – Operation

To ensure adequate ventilation within the building all mechanical and/or natural ventilation systems shall be operated and maintained in accordance with the provisions of:

- a) the Building Code of Australia
- b) AS1668.1 – 1998 – Use of Ventilation and Air Conditioning in Buildings
- c) AS1668.2 – 1991 – Use of Ventilation and Air Conditioning in Buildings
- d) The Public Health Act 1991
- e) The Public Health Act (Microbial Control) Regulation 2000
- f) AS3666.1 – 2002 – Air Handling and Water Systems in Buildings
- g) AS3666.2 – 2002 – Air Handling and Water Systems in Buildings

(Reason: Health Protection)

94. Dust Control

The following measures must be taken to control the emission of dust:

- dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work
- any existing accumulation of dust (eg. in ceiling voids and wall cavities) must be removed using an industrial vacuum cleaner fitted with a high efficiency particulate air (HEPA) filter.
- all dusty surfaces must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be allowed to enter the street or stormwater system.
- all stockpiles of materials that are likely to generate dust must be kept damp or covered.
- demolition work must not be carried out during high winds, which may cause dust to spread beyond the boundaries of the site.

(Reason: Amenity)

95. Waste Classification

All materials excavated from the site (fill or natural) shall be classified in accordance with the NSW Department of Environment, Climate Change & Water, Waste Classification Guidelines (2008) prior to the material being disposed to an approved landfill or to a recipient site.

(Reason: Environmental Protection)

96. Likely Land Contamination

Notification of any likely contamination shall be immediately made to Council, in the circumstance that any person becomes aware during the construction stage that the subject land is likely to be contaminated.
(Reason: Environmental Protection)

97. Trees on Adjoining Properties

No approval is given for the removal or pruning of trees on the nature strip, adjoining reserves, or neighbouring private land.
(Reason: Environmental protection)

98. Allocation - Car spaces

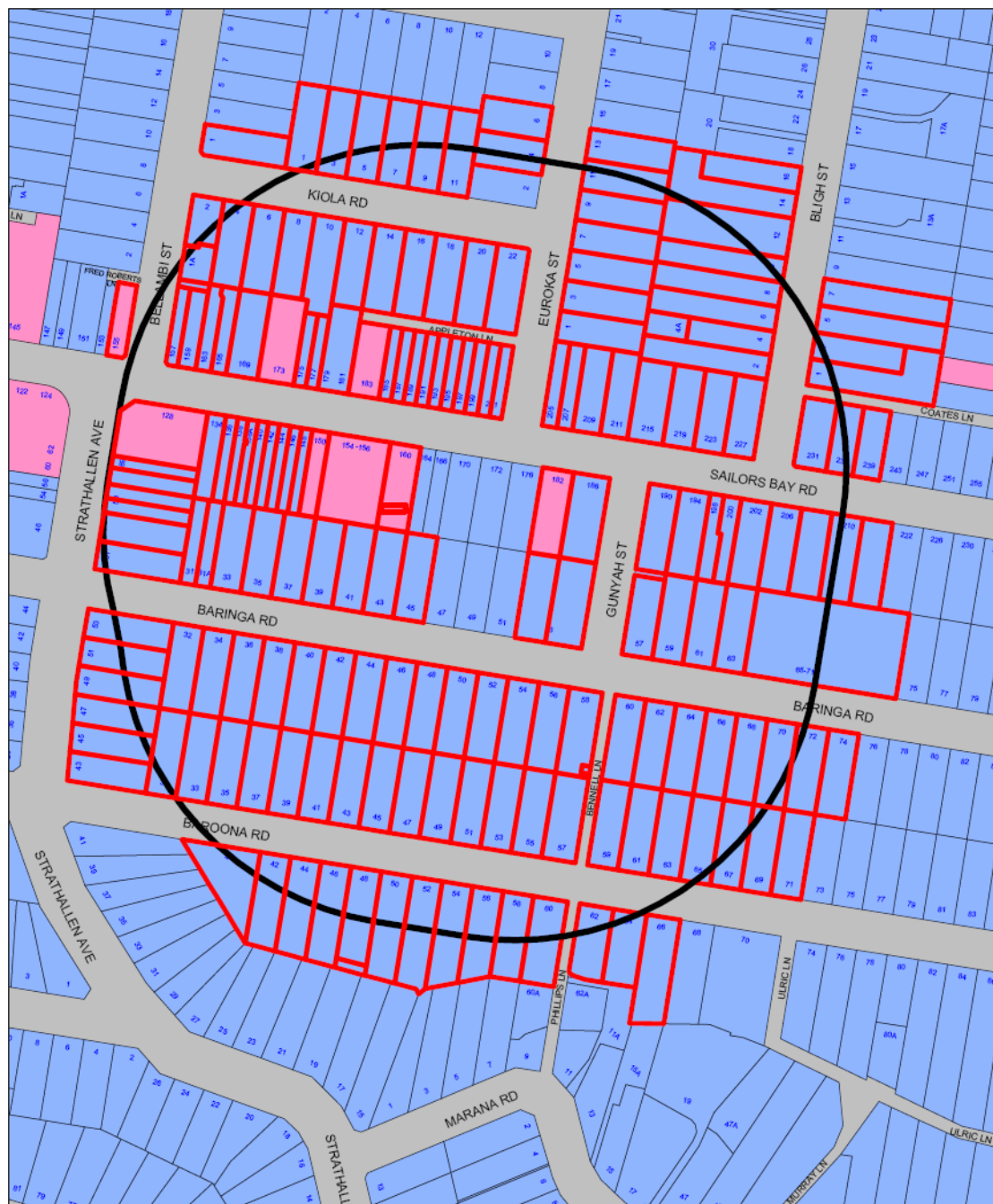
All cars spaces must be allocated in accordance with the approved plans of the development. No car spaces are to provided to residents of the approved residential care facility.
(Reason: Parking & Ensure Compliance)

99. Cafeteria

The cafeteria within the approved development is to service the residential care facility only. No direct entry to the Cafeteria is permitted from the street.
(Reason: Ensure compliance)

Attachment 1 - NOTIFICATION MAP

Map Showing Location of Properties Notified



DA NUMBER

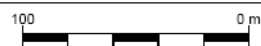
2010/575

PROPERTY ADDRESS FOR DA

164, 166, 170, 172, 176 Sailors Bay Rd and 47, 49, 51 Baringa Rd, NORTHBRIDGE

NB: All land parcels depicted herein are representations only of lands which are truly defined by their registered Linen Plans. Overlaying/overlapping Strata and Stratum cannot be truly depicted and may be represented only as stylised polygons.

This is done solely to highlight the existence of such lands and all accurate positional details should be taken from the registered Linen Plans.



Scale 1:2,620



Properties Notified of DA

DP 4241

Cadastral title detail label

26

Property street address label

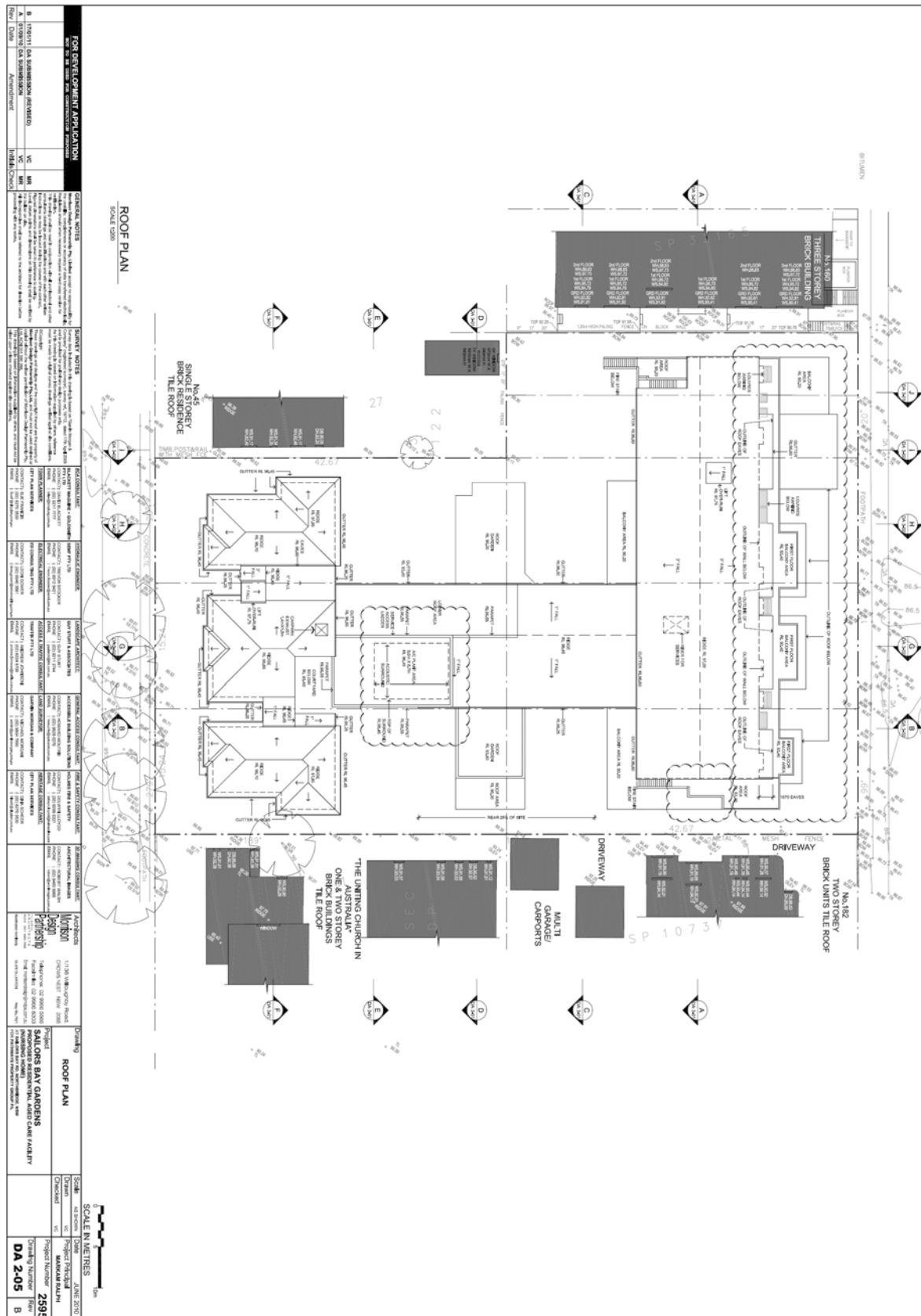
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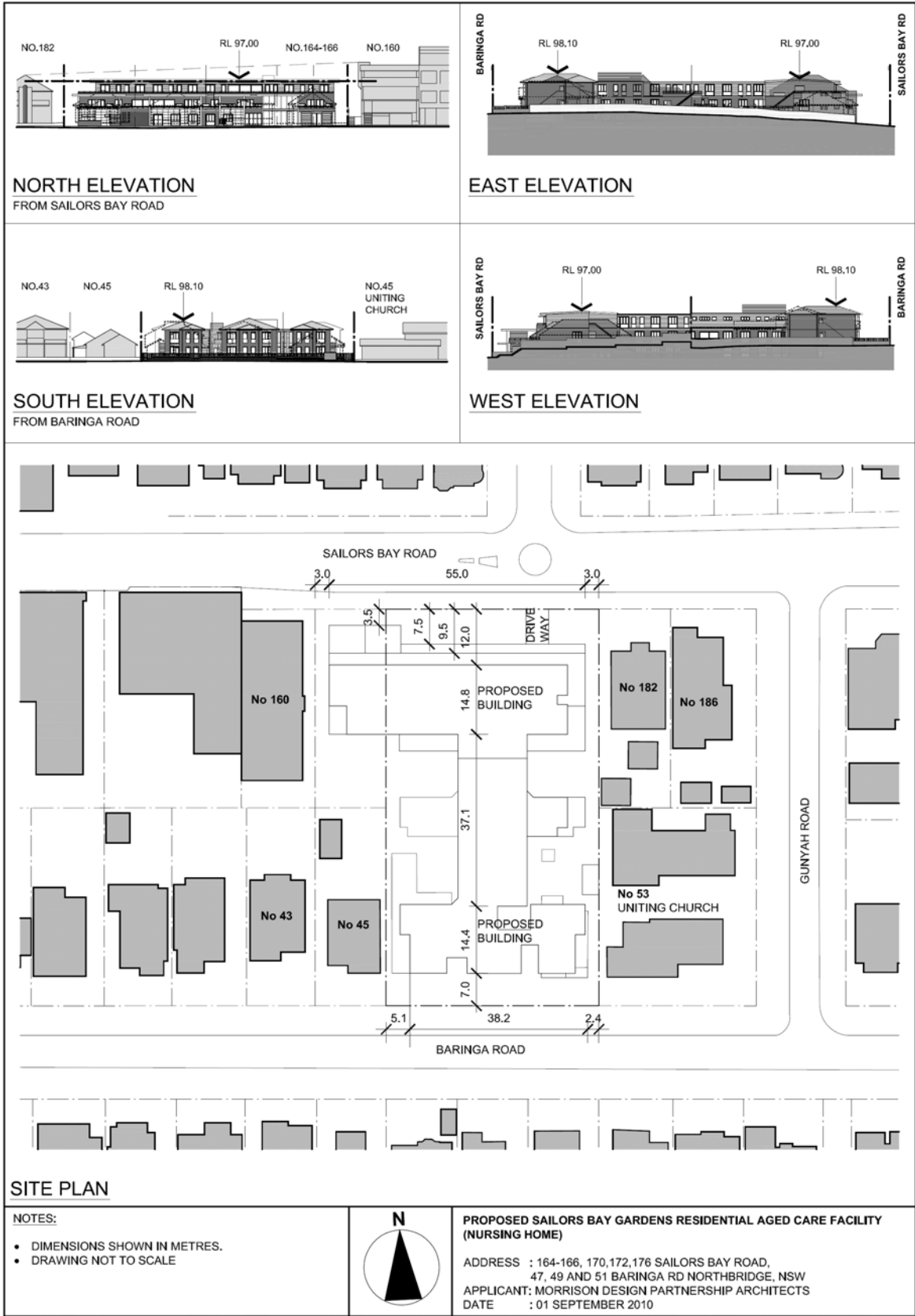
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Author:

DR

Attachment 2 – Plans and Elevations





Attachment 3 – SEPP 1 Objections

**STATE ENVIRONMENTAL PLANNING POLICY 1
OBJECTION TO
DEVELOPMENT STANDARDS
CLAUSE 40(4) OF
SEPP (HOUSING FOR SENIORS OR PEOPLE WITH A
DISABILITY) 2004**

**To Accompany a
Development Application
For Sailors Bay Gardens Nursing Home**

1. INTRODUCTION

In general, the application and interpretation of SEPP 1 have been considered many times by the Land and Environment Court and the NSW Court of Appeal. A recent decision, *Wehbe v Pittwater Council* [2007] NSW LEC 827, has shed light on the planning test generally applied when seeking an exemption from a particular development standard.

Chief Justice Preston, set out a new **test** which can be summarised as follows:-

1. The applicant must satisfy the consent authority that:
 - a. "the objection is well founded", and
 - b. compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. The consent authority must be of the opinion that granting consent to the development application would be consistent with aim of the SEPP 1 (Clause 3) of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and

Chief Justice Preston, expressed the view that there are 5 methods in which an objection may be "**well founded**" (**Test 1A**) and that approval of the objection may be "**consistent with the aims** (**Test 2**) of the policy by:-

- (i) the objectives of the standard are achieved notwithstanding non-compliance with the standard;
 - (ii) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
 - (iii) the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
 - (iv) the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and
 - (v) the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.
3. It is also important to consider:
 - a. whether non-compliance with the development standard raises any matter of significance for State or regional planning; and
 - b. the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

The degree of variation of a development standard is not the determining consideration. The SEPP 1 Objection may be upheld by Council and the development standard relaxed if the tests outlined above are seen to be satisfied. For example, to quote the Law Book Company's Planning and Development Service (4030):-

"...There is no mention of the words "major" or "minor" in the SEPP No. 1. What the council, and hence the court, has to consider is whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case.

"The purpose of the policy is to provide flexibility in the application of planning controls to give effect to the objects specified in ss 5(a)(i) and (ii) of the Act which include the "orderly and economic use and development of land" Michel-Projects Pty Ltd v Randwick MC (1982) 46 LGRA 410. Nor does a departure from a development standard which may not be, on the facts, "to a minor extent" as permitted under a local environmental plan, such a circumstance as to preclude the application of SEPP No. 1".

Specifically, this application seeks consent by way of a formal objection under SEPP 1 for a variation to the following three (3) development standards:-

Part 4 Clause 40(4) of SEPP (Housing for Seniors)

"40 Development standards—minimum sizes and building height

(1) General

A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.

(4) Height in zones where residential flat buildings are not permitted

If the development is proposed in a residential zone where residential flat buildings are not permitted:

*(a) the height of all buildings in the proposed development must be **8 metres or less**, and*
Note. Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

*(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be **not more than 2 storeys in height**, and*

Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

*(c) a building located in the **rear 25% area of the site must not exceed 1 storey in height**".*

Emphasis added

It is noted that the Draft WLEP 2009 retain the prohibition of RFB's within the R2 zone (fronting Baringa Road) however the draft instrument seeks to permit RFB's; RACF and Seniors living within the R3 zone (fronting Sailors Bay Road). Accordingly, upon gazettal of the Draft WLEP 2009, Clause 40 of SEPP (Housing for Seniors) will no longer apply to Nos. 166, 170, 172 & 174 Sailors Bay Road thus eliminating the need for a SEPP 1 to Clause 40(4)(a) and Clause 40(4)(b). A SEPP 1 for Clause 40(4)(c) fronting Baringa Road would still be required. Accordingly, on gazettal of the Draft LEP only one (1) SEPP 1 would be required relating to the 25% single storey provision.

2. PART 4 CLAUSE 40(4)(A) OF SEPP (HOUSING FOR SENIORS)

Proposed:

The proposed development results in a maximum 8.5m height to the underside of the topmost floor ceiling at the Sailors Bay Road frontage.

Variation:

Variation is thus sought to **Clause 40(4)(a)** to vary the 8m to the underside of the topmost ceiling for this small component of the building.

2.1 Consideration against Planning Principle

TEST 1A + 1B: IS THE OBJECTION WELL FOUNDED AND IS STRICT COMPLIANCE WITH THE CONTROLS, UNREASONABLE OR UNNECESSARY?

The non-compliance with the numerical requirement of the development standard **Clause 40(4)(a)** is to be considered on its merits. SEPP 1 provides that an application may be varied if it satisfies the underlying planning objective or purpose behind that development standard. It is noted that there is no objective or purpose specified for **subclause 4(a)** for this development standard. In the absence of any planning objectives for this development standard it is assumed that the intent/purpose of this control is as follows:-

- *to ensure that the development does not dominate the streetscape by virtue of its bulk;*
- *to ensure compatibility with the streetscape and existing context; and*
- *not cause unreasonable amenity impacts on adjoining developments.*

Comment:

The proposed development results in a minor non-compliance with the 8m ceiling height as demonstrated in **Figures 1 & 2** below. The extent of the non-compliance (0mm to 500mm over a distance of 6.5m) is limited to the Sailors Bay Road frontage. The non-compliance is as a direct result of the topography falling steeply to the street.

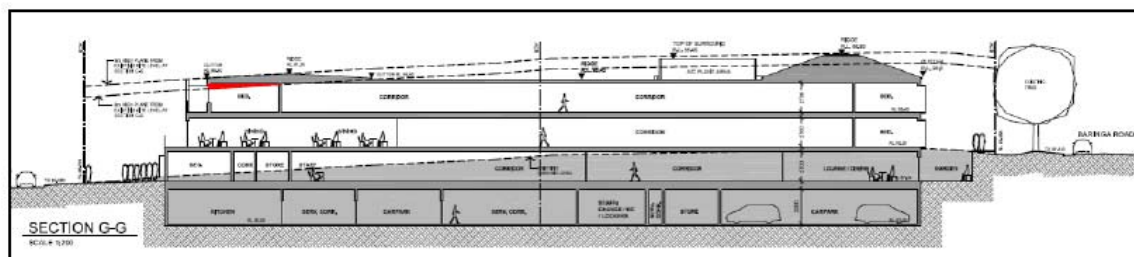


Figure 1: Long section (red infill demonstrating non-compliance)

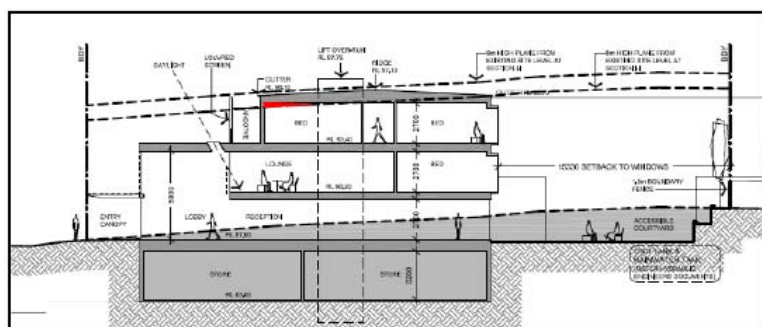


Figure 2: Long section (red infill demonstrating non-compliance)

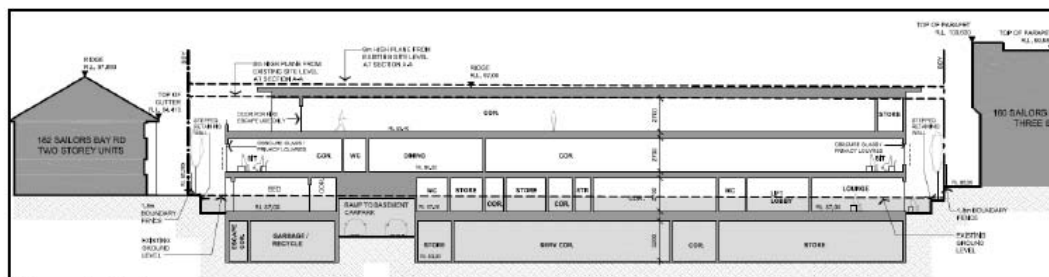


Figure 3: Sailors Bay Road frontage Section

The subject development recognises the change of scale that occurs in the built form along the western edge of Sailors Bay Road between higher existing development within the Neighbourhood Village and the lower rise built form of the existing residential premises to the east. It is noted that the

proposed development is located approximately 0.8m lower than No. 182 Sailors Bay Road (RL97.8) and 3.6m lower than No. 160 Sailors Bay Road (RL100.63) (see **Figure 4**).

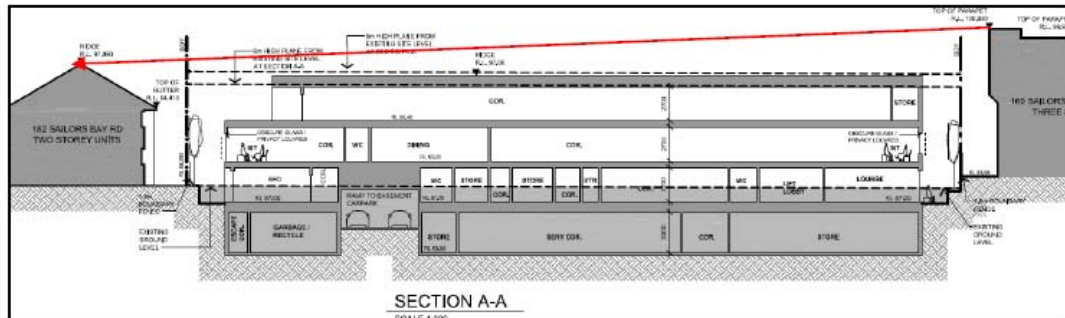


Figure 4: Transition in built form

Further, Council has acknowledged the proximity of the sites fronting Sailors Bay Road to the centre and its relationship with the adjoining larger commercial development by up-zoning the parcels of land fronting Sailors Bay Road to **R3 Medium Density Residential** under the Draft LEP 2009. Further the Draft LEP allows a maximum height of 9m which could translate to a 3 storey development (flat roof).

It is considered that the up-zoning from low density residential to medium density residential is appropriate to achieve a transition from the existing commercial zone (now B2 local centre zone) and the existing lower residential buildings along the southern side of Sailors Bay Road further east of the subject site. In this regard the proposed built form generally complies with the 9m height requirement with the exception of the lift overrun fronting Sailors Bay Road (which is not visible from a public place).

The proposed height and massing of the building ensures that:

- solar access and overshadowing objectives for adjoining properties are complied with;
- views from neighbouring dwellings are not unduly compromised; and
- the building height does not overwhelm the public street and is of compatible scale with surrounding developments.

Accordingly, notwithstanding the non-compliance with the numerical standard the proposed development achieves the objectives of the standard as well as being consistent with the future planning controls and thus the objection is well founded. Strict compliance in the circumstances of this case is unnecessary and unreasonable to achieve the specified objective of the standard.

TEST 2: IS THE DEVELOPMENT APPLICATION CONSISTENT WITH AIM OF THE SEPP 1 (CLAUSE 3) OF PROVIDING FLEXIBILITY IN THE APPLICATION OF PLANNING CONTROLS WHERE STRICT COMPLIANCE WITH THOSE CONTROLS WOULD, IN ANY PARTICULAR CASE, BE UNREASONABLE OR UNNECESSARY OR TEND TO HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN S5(A)(I) AND (II) OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979?

The variation to the ceiling height control ensures flexibility, so as not hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979* as indicated below.

In addition, the proposed development intent is to provide a nursing home (residential aged care facility) consistent with the bulk and scale of the existing commercial and residential character of the Sailors Bay neighbourhood village, thereby achieving transition in scale and providing a development that is appropriate in its context, which does not adversely impact on the amenity of the area. The proposed development does not hinder the achievement of a well designed, functional and viable development with good internal amenity. The redevelopment of the site, will contribute to the growth in the area through employment opportunities and providing aged care in close proximity to support services such as public transport and the neighbourhood village.

The objectives of the Act are:-

“(a) to encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land”

The proposal is consistent with the objects of the Act as:

- The proposed development will promote the social and economic welfare of the local community through the provision of housing for an ageing population (aging in place) as well as the creation of jobs;
- The proposal will result in the orderly and economic use and development of land as the site is of an appropriate size, location and land use zoning to enable the proposed development;
- Appropriate utility services will be provided; and
- There will be no unreasonable adverse impacts on the environment.

TEST3A: DOES THE NON-COMPLIANCE WITH THE DEVELOPMENT STANDARD RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL PLANNING?

The non-compliance with the development standards raises no matters of significance for State or Regional planning other than to allow for the development of a nursing home within an existing centre, where residents would be able to integrate with the existing community, consistent with the state policy.

TEST 3B: WHAT IS THE PUBLIC BENEFIT OF MAINTAINING THE PLANNING CONTROLS ADOPTED BY THE ENVIRONMENTAL PLANNING INSTRUMENT?

The proposed development is a direct response to the important demographic trends of an identified ageing population. The proposed housing for the aged and specifically housing for the frail will make a significant contribution to the social need for accommodation for aged persons in a suitable location close to transport links and other services.

Accordingly, no public benefit is achieved by maintaining strict compliance with the ceiling height standard within the SEPP (Housing for Seniors).

3. PART 4 CLAUSE 40(4)(B) OF SEPP (HOUSING FOR SENIORS)

Proposed:

The proposed development results in 2.5 storeys adjacent to the boundary at No 160 Sailors Bay Road.

Variation:

Variation is thus sought to **Clause 40(4)(b)** to vary the 2 storeys in height to a boundary, to allow for a 2.5 storey building in this case adjacent to a 4 storey commercial building.

3.1 Consideration against Planning Principle

TEST 1A + 1B: IS THE OBJECTION WELL FOUNDED AND IS STRICT COMPLIANCE WITH THE CONTROLS, UNREASONABLE OR UNNECESSARY?

The non-compliance with the numerical requirement of the development standard **Clause 40(4)(b)** is to be considered on its merits. SEPP 1 provides that an application may be varied if it satisfies the underlying planning objective or purpose behind that development standard. With respect to **subclause 4(b)** the SEPP (Housing for Seniors) states that: *"the purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape"*.

Comment:

The subject development recognises the change of scale that occurs in the built form along the western edge of Sailors Bay Road between higher existing development within the Neighbourhood Village and the lower rise built form of the existing residential premises to the east (See **Figure 5** below).

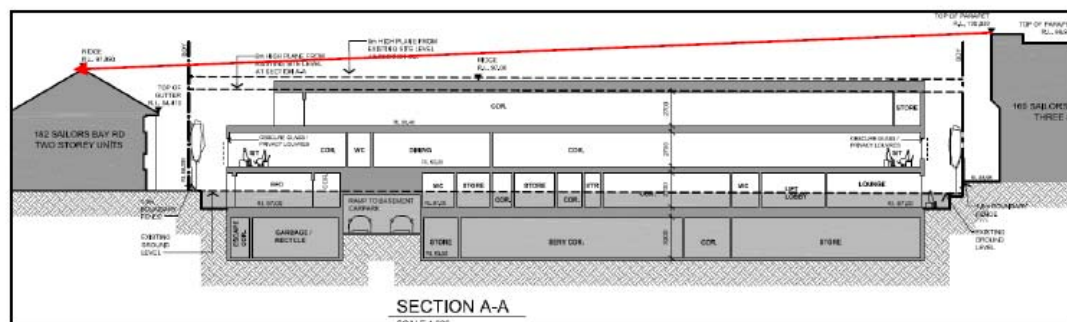


Figure 5: Transition in built form

The site provides the opportunity to resolve the transitional built form, by developing a building mass which translates in height from the existing 4 storey building to the west of the subject site (No. 160 Sailors Bay Road – see **photo 2**), to the existing two storey residential flat premises east of the subject site (No. 182 Sailors Bay Road see **photo 1**). The proposed built form and development character has been developed to be sympathetic to the character of lower scale development to the east in terms of massing, fenestration and materials, and which is relative to the height established by the existing two storey buildings.



Photo 1: No 182 (left) & No. 176 Sailors Bay Rd



Photo 2: No. 164-166 and No. 160 Sailors Bay Rd

In the context of the development of the site, it is relevant to note that the site falls significantly from Baringa Road to Sailors Bay Road. As a consequence and in conjunction with the need to ensure a level and accessible floor plan throughout the nursing home, two (2) storeys at Baringa Road results in three (3) levels at Sailors Bay Road (See **Figure 6 below**).

In relative terms the proposed development is only half a storey greater than the development standard as demonstrated on **Figure 5** above. The increased side setbacks, together with the proposed landscaping, will ensure that contextually the proposal is consistent with the existing streetscape and does not result in any abrupt change in scale.

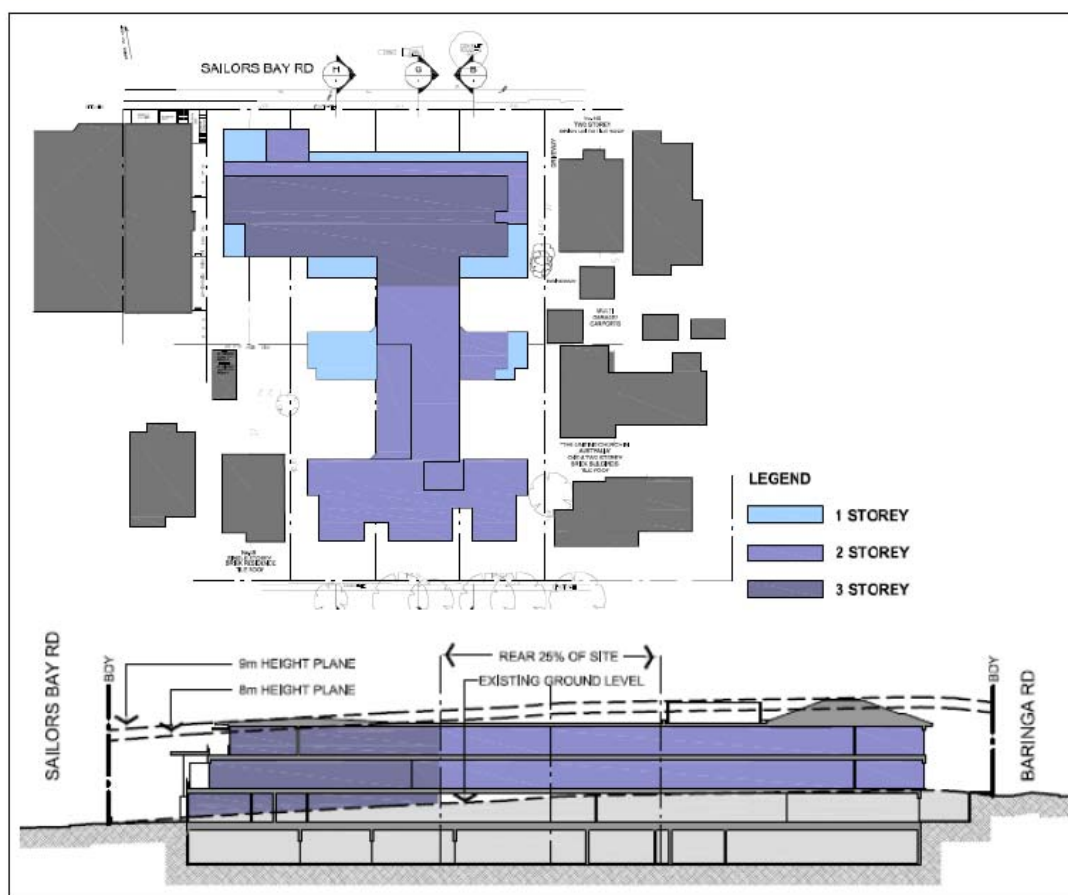


Figure 6: Storey analysis

In determining whether larger seniors living development is compatible with existing low density residential development the LEC established a planning principle. The Planning principle for seniors living in low density zones as identified by Senior Commissioner Roseth during **GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) NSWLEC 268** states as follows:-

1. The first principle is that buildings in a seniors living development do not have to be single-storey to be compatible with the streetscape.

The 3 levels nature of the building fronting Sailors Bay Road, in itself does not render the proposal unacceptable. It is considered that compliance with the numerical storey control cannot be considered in isolation from other aspects of the proposal. The building presents as a 2 storey development to the street with the 3rd level setback 9.5m to the balconies and 12m to the building facade on the northern elevation (Sailors Bay road) and 3m to the commercial 4 storey building on

the west and 6.5m on the eastern elevation (not subject to a SEPP 1). The proposed 3rd level does not result in any adverse impact by way of overlooking and overshadowing.

Moreover, the proposal has a similar appearance and scale to the existing buildings (at No. 160 Sailors Bay Road) within the streetscape and is considered compatible with the existing streetscape character.

2. **The second principle is that where the size of a seniors living development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building.**

The well articulated street facade, together with materials and finishes result in the building appearing like three individual building elements. The visual mass to the street has been broken up so that it does not appear as one building.

The building is considered consistent with the existing streetscape character and provides the opportunity to resolve the transitional built form, by developing a building mass which translates in height from the existing 4 storey building to the west of the subject site (No. 160 Sailors Bay Road – see **photo 2**), to the existing two storey residential flat premises east of the subject site (No. 182 Sailors Bay Road see **photo 1**). Accordingly, the proposal is consistent with the bulk and character intended by the new draft planning controls.

3. **The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved.**

Council has acknowledged the evolving character of the lots fronting Sailors Bay Road by seeking to up-zone the parcels of land to **R3 Medium Density Residential** under the Draft LEP 2009. It is considered that the up-zoning from low density residential to medium density residential establishes the desired new character for this side of Sailors Bay Road. The proposed development is consistent with the new character as established by the Draft LEP and as such will not visually dominate the streetscape.

4. **The fourth principle is that a Seniors Living development should aim to reflect the materials and building forms of other buildings in the street.**

The chosen materials are face-brick timber and sandstone, sympathetic to the existing domestic building palette.

Accordingly, notwithstanding the non-compliance with the numerical standard the proposed development achieves the objectives of the standard and thus the objection is well founded. Strict compliance in the circumstances of this case is unnecessary and unreasonable to achieve the specified objective of the standard.

TEST 2: IS THE DEVELOPMENT APPLICATION CONSISTENT WITH AIM OF THE SEPP 1 (CLAUSE 3) OF PROVIDING FLEXIBILITY IN THE APPLICATION OF PLANNING CONTROLS WHERE STRICT COMPLIANCE WITH THOSE CONTROLS WOULD, IN ANY PARTICULAR CASE, BE UNREASONABLE OR UNNECESSARY OR TEND TO HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN S5(A)(I) AND (II) OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979?

The variation to storey control ensures flexibility, so as not hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979* as indicated below.

In addition, the proposed development intent is to provide a nursing home (residential aged care facility) consistent with the bulk and scale of the existing commercial and residential character of the Sailors Bay neighbourhood village, thereby achieving transition in scale and providing a development that is appropriate in its context, which does not adversely impact on the amenity of the area. The proposed part 2 and part 3 level development does not hinder the achievement of a well designed, functional and viable development with good internal amenity. The redevelopment of the site, will contribute to the growth in the area through employment opportunities and providing aged care in close proximity to support services such as public transport and the neighbourhood village.

The objectives of the Act are:-

“(a) to encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(iii) the promotion and co-ordination of the orderly and economic use and development of land”

The proposal is consistent with the objects of the Act as:

- The proposed development will promote the social and economic welfare of the local community through the provision of housing for an ageing population (aging in place) as well as the creation of jobs;
- The proposal will result in the orderly and economic use and development of land as the site is of an appropriate size, location and land use zoning to enable the proposed development;

- Appropriate utility services will be provided; and
- There will be no unreasonable adverse impacts on the environment.

TEST3A: DOES THE NON-COMPLIANCE WITH THE DEVELOPMENT STANDARD RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL PLANNING?

The non-compliance with the development standards raises no matters of significance for State or Regional planning other than to allow for the development of a nursing home within an existing centre, where residents would be able to integrate with the existing community, consistent with the state policy.

TEST 3B: WHAT IS THE PUBLIC BENEFIT OF MAINTAINING THE PLANNING CONTROLS ADOPTED BY THE ENVIRONMENTAL PLANNING INSTRUMENT?

The proposed development is a direct response to the important demographic trends of an identified ageing population. The proposed housing for the aged and specifically housing for the frail will make a significant contribution to the social need for accommodation for aged persons in a suitable location close to transport links and other services.

Accordingly, no public benefit is achieved by maintaining strict compliance with the storey standards within the SEPP (Housing for Seniors).

4. PART 4 CLAUSE 40(4)(C) OF SEPP (HSPD)

Proposed:

The proposed development provides for a 2 storey element within the rear 25% part of the site.

Variation:

It is noted that the site has dual street frontages (Sailors Bay Road and Baringa Road) and technically has no “rear” boundary, the site being consolidated by the development. In as much as the control applies to the rear 25% of the existing lot boundaries this SEPP 1 is provided for **Clause 40(4)(c)** to vary the single storey height requirement within the rear 25% of the site to allow for a 2 storey building within the rear 25% of that part of the site at No. 172 Sailors Bay road and No. 45 Baringa Road.

4.1 Consideration against Planning Principle

TEST 1A & 1B: IS THE OBJECTION WELL FOUNDED AND IS STRICT COMPLIANCE WITH THE CONTROLS, UNREASONABLE OR UNNECESSARY?

It is noted that there is no objective or purpose specified for **subclause 4(c)** for this development standard. In the absence of any planning objectives for this development standard it is assumed that the intent/purpose of this control is as follows:-

To ensure a compatible relationship of building mass and amenity impact by way of privacy, views and sunlight where development share a rear common boundary and relative to neighbouring development.

Comment:

Firstly it needs to be appreciated that the assumed principle intent of this standard is to maintain a relationship to developments which share a common rear boundary as identified in **Figure 7** below. In this case, there is no common rear boundary thus the assumed purpose and intent of this subclause is to maintain an appropriate relationship and amenity to adjoining developments.

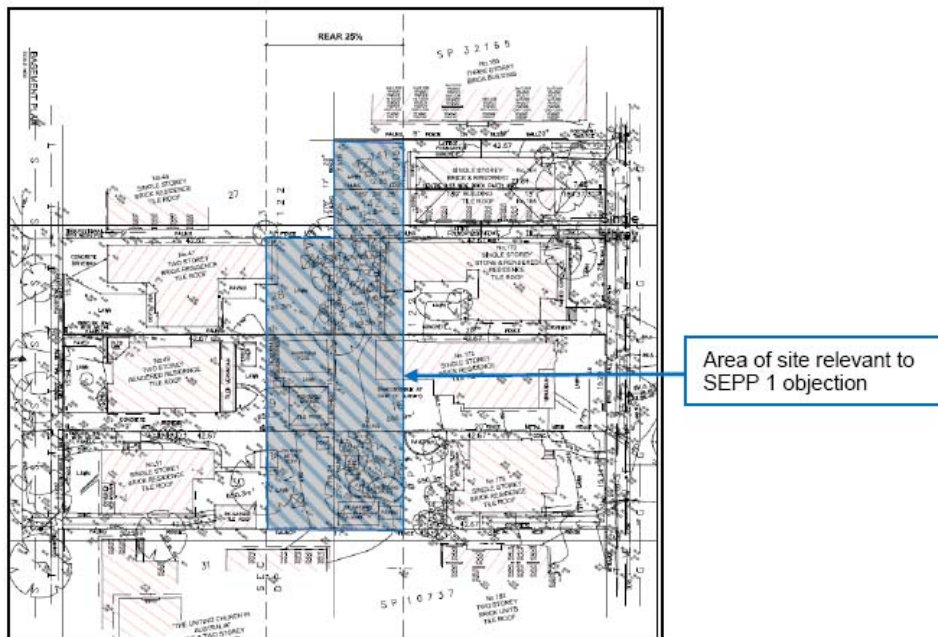


Figure 7: Rear boundary relationship – rear 25% of existing allotments

- **Privacy**

Inasmuch as this development standard seeks to maintain privacy between sites, the openings along the lower ground floor have limited opportunity for overlooking due to the floor level at RL87.00 relative to the existing ground level at RL89.00 and the proposed 1.8m high boundary fence. The windows on the proposed ground floor level are limited to common sitting rooms (located within the built form fronting Sailors Bay Road) with significant planting in between to mitigate any overlooking.

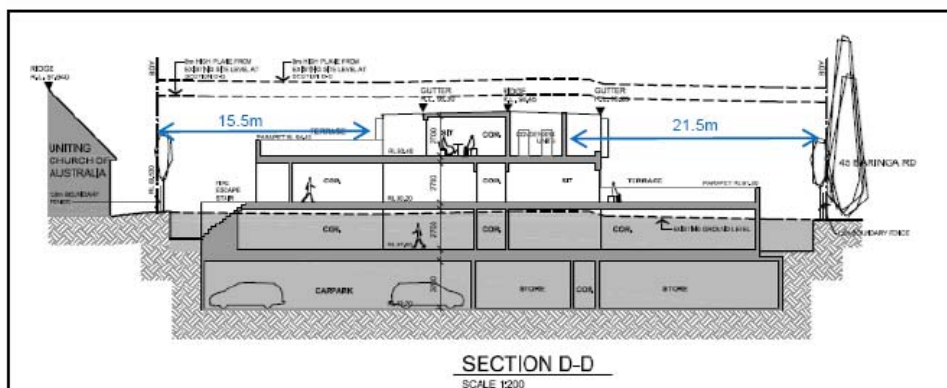


Figure 8: Part Sections

The proposed built form on the first floor plan, located within the centre of the site is setback 21.5m from the western common boundary (no. 45 Baringa Road) and 15.5m from the eastern common boundary (Uniting Church) ensuring adequate separation (see **Figure 8**). The above separation together with the proposed mature canopy trees will reduce the potential for overlooking.

In addition openings on the ground and 1st floors related to fire stair doors. The stairs provide a service function only with low frequency of use and limited opportunity for overlooking.

The proposed deck on the first floor is setback in excess of 7m from the common eastern side boundary, and includes screen planting which will mitigate any potential for overlooking. Moreover, it is noted that the residents of a nursing home usually have a deteriorated visual ability reducing the opportunity for overlooking from what might be expect of other types of residential development. Accordingly, the proposal does not cause unreasonable direct overlooking of habitable rooms and principal private open spaces to the side boundaries.

- **Building mass**

The site has dual street frontages and technically has no rear boundary. The built form to the secondary street frontage (Baringa Road) which may be construed as the rear of the property is consistent with the existing two storey residential character of the street.

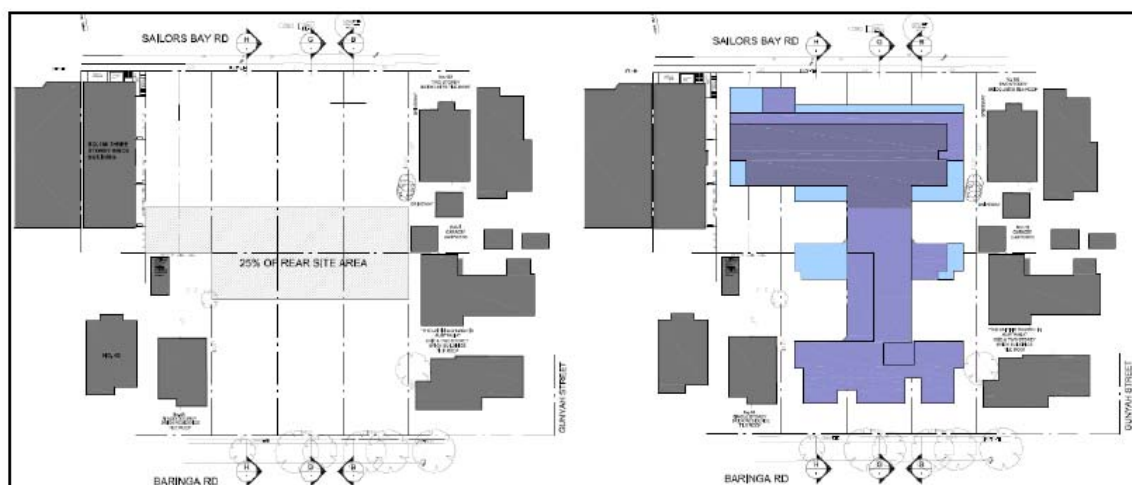


Figure 9: Rear 25% area and storey analysis

The bulk, scale and form of the proposed development is designed to maintain the building mass of the existing streetscape which is a mixture of single and larger 2 storey dwellings. Notwithstanding the non-compliance with the numerical single storey requirement, the visible

scale and bulk of the proposal is more appropriate having regard to the predominant scale and bulk of the development within the locality and specifically the Baringa Road streetscape. Moreover the building mass is located 21.5m from the rear private open space of No. 45 Baringa Road directed towards the existing larger built form of the Church at No. 53 Baringa Road.

The surrounding allotments are characterised by existing structures within the rear 25% area (see **Figure 9** above). The presence of existing structures demonstrates the visual continuity and pattern of buildings and the appropriateness of a reasonable bulk and scale within this rear boundary area.

Potential impact by way of visual mass is generally considered above natural ground level consistent with **Edgar Allan Planning Pty Limited v Woollahra Municipal Council (2006) NSWLEC 790**. In this matter, Commissioner Watts found that despite the proposals breach of the FSR (massing) control, as long as those areas of the proposal in breach of the FSR do not add to the visual bulk of the building refusal on numerical exceedance alone are not warranted.

The table below demonstrates the GFA within the rear 25% area.

GFA within rear 25%	LG	GF (1 st storey)	FF (2 nd storey)	Total
Fronting Sailors Bay Road	159m ²	159 m ²	158 m ²	476 m ²
Fronting Baringa Road	160 m ²	159 m ²	93 m ²	412 m ²
Total	319 m²	318 m²	251 m²	888 m²

Inasmuch as the 2nd level within the rear 25% (at No. 172 Sailors Bay Road and No 45 Baringa Road) adds to the FSR and bulk and mass of the development the following should be noted:-

- The total above ground GFA of the development is 3,544m² (FSR = 0.78:1);
- The total above ground GFA of the development within the rear 25% area is 569m² (FSR = 0.12:1); and
- The 2nd storey element within the rear 25% area No. 172 Sailors Bay Road and No 49 Baringa Road is 251m² which represents an FSR of 0.05:1.

Accordingly, the GFA of the 2nd storey element within the rear 25% does not materially add to the visual mass.

The reduced GFA fronting Baringa Road, the separation between buildings as well as location of building mass within the centre of the site and sufficiently setback from No. 45 Baringa Road demonstrates the “*compatible relationship*” of the building mass with existing lower scale residential properties within Baringa Road.

It is considered that the deletion of the 2nd storey element within the rear 25%, would severely impact on the functionality of the Nursing Home. Removing this element or splitting the building would negatively impact on the operation of the Nursing Home. The proposal ensures appropriate and necessary linkages between the dementia wing and the remainder of the nursing home ensuring that staff and visitors can move freely between wings.

Moreover, upon gazettal of the Draft WLEP 2009, Clause 40(4)(c) of SEPP (Housing for Seniors) will no longer apply to Nos. 166, 170, 172 & 174 Sailors Bay Road eliminating the need for a SEPP 1 to that part of the site.

- **Sunlight access**

The proposed development does not visually dominant the surrounding spaces. As a result of the building orientation, the proposed bulk within the rear 25% area does not result in any overshadowing of the adjoining development at No. 45 Baringa Road and no unreasonable overshadowing of No. 53 Baringa Road (Uniting Church).

The shadow diagrams demonstrates 3 hours of sunlight to north facing windows and primary open spaces of the adjoining properties between 9am and 3pm mid winter (See **Appendix 2**). Accordingly, the proposal does not adversely impact on the sunlight amenity of adjoining properties.

It is submitted that the proposed development notwithstanding the non-compliance with the numerical development standard still achieves the intent of maintaining amenity to backyards of neighbouring properties. This being the case it is considered that strict compliance with the development standard, if applicable is unreasonable and unnecessary.

TEST 2: IS THE DEVELOPMENT APPLICATION CONSISTENT WITH AIM OF THE SEPP 1 (CLAUSE 3) OF PROVIDING FLEXIBILITY IN THE APPLICATION OF PLANNING CONTROLS WHERE STRICT COMPLIANCE WITH THOSE CONTROLS WOULD, IN ANY PARTICULAR CASE, BE UNREASONABLE OR UNNECESSARY OR TEND TO HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN S5(A)(I) AND (II) OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979?

The variation to the single storey within the rear 25% of the site control ensures flexibility, so as not hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979* as demonstrated below.

In addition, the proposed development intent is to provide a nursing home (residential aged care facility) consistent with the bulk and scale of the existing commercial character of the Sailors Bay neighbourhood village, thereby achieving transition in scale and providing a development that is appropriate in its context and which does not adversely impact on the amenity of the area. The proposed development does not hinder the achievement of a well designed, functional and viable development with good internal amenity. The redevelopment of the site, will contribute to the growth in the area through employment opportunities and providing aged care in close proximity to support services such as public transport and the neighbourhood village.

The objectives of the Act are:-

“(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (iv) the promotion and co-ordination of the orderly and economic use and development of land”*

The proposal is consistent with the objects of the Act as:

- The proposed development will promote the social and economic welfare of the local community through the provision of housing for an ageing population (aging in place) as well as the creation of jobs;
- The proposal will result in the orderly and economic use and development of land as the site is of an appropriate size, location and land use zoning to enable the proposed development;
- Appropriate utility services will be provided; and
- There will be no unreasonable adverse impacts on the environment.

TEST3A: DOES THE NON-COMPLIANCE WITH THE DEVELOPMENT STANDARDS RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL PLANNING?

The non-compliance with the development standards raises no matters of significance for State or Regional planning other than to allow for the development of a nursing home within an existing centre, where residents would be able to integrate with the existing community, consistent with the state policy.

TEST 3B: WHAT IS THE PUBLIC BENEFIT OF MAINTAINING THE PLANNING CONTROLS ADOPTED BY THE ENVIRONMENTAL PLANNING INSTRUMENT?

The proposed development is a direct response to the important demographic trends of an identified ageing population. The proposed housing for the aged and specifically housing for the frail will make a significant contribution to the social need for accommodation for aged persons in a suitable location close to transport links and other services.

Accordingly, no public benefit is achieved by maintaining strict compliance with the single storey within the rear 25% of the site standards within the SEPP (Housing for Seniors).

5. CONCLUSION

In these circumstances, it is thus considered that a variation to the standards as prescribed by **Clause 40 sub-clause 4(a);(b) & (c)** of SEPP (Housing for Seniors), in this particular case, would be:-

- consistent with the aims of SEPP 1;
- the site provides the opportunity to resolve the transitional built form, by developing a building massing which translate in height from the existing 4 storey building to the west of the subject site (No. 160 Sailors Bay Road), to the existing two storey residential premises east of the subject site;
- the proposed use is compatible with the bulk and scale of the existing commercial character of the Sailors Bay Neighbourhood Village, and will have no adverse impact on the surrounding development;
- The proposal is consistent with the anticipated future character and future planning controls under the Draft LEP 2009; and
- the proposal will result in the orderly and economic use and development of land as the site is of an appropriate size, location and land use zoning to enable the proposed development.

To require compliance with the standard would be unreasonable and unnecessary in the circumstances of the case. It is therefore requested that the SEPP No. 1 Objections made herein for a variation to the relevant development standards be supported.

Attachment 4 – List of Amendments (18 Jan 2011)

Amendments as quoted from the applicant's letter dated 18 Jan 2011

“Architectural Plans:

- 1. A varied setback was provided on the Lower Ground Floor providing projections & indents to the Sailors Bay Road (SBR) façade in order to break-up the length and scale of the general building appearance to the street (SBR);*
- 2. This revised geometry is carried vertically up the façade to create distinct vertical elements with wider breaks between the elements than the previous proposal;*
- 3. Material treatments to these elements have been varied with face brick & sandstone to the projections and a light coloured render to the indents (a revised sample board will be provided in before the JRPP meeting);*
- 4. The First Floor balcony balustrade steps to follow the new line as opposed to the complete straight run of the previous and the roof overhangs to the Ground Floor balconies have been reduced in order to reduce visual bulk further;*
- 5. The lightweight First Floor wall is also stepped in sympathy with the projecting elements & the main roof above has pronounced overhangs in these locations – also refer to amended photomontage and sketches;*
- 6. Where the roof has no eave overhang in the vicinity of the indents, awnings have been introduced over the windows, as opposed to the continuous line of awnings of the previous scheme;*
- 7. Masonry sidewalls of the main Entry Lobby have been replaced by lightweight cladding to reduce the visual impact to Sailors Bay Road with vertical glazed openings;*
- 8. Similarly, the adjoining parapet to the Cafeteria has lightweight cladding in lieu of brickwork, with the parapet height reduced at the façade line to enable plants to soften the elevation at the Western end;*
- 9. Masonry support columns beneath the cafeteria parapet which were a feature of the previous scheme have been deleted;*
- 10. The roof over the Ground Floor balcony at the Eastern end has been reduced so that it doesn't extend right to the end of the building, with the associated masonry support blade eliminated;*
- 11. The First Floor balcony at this Eastern end no longer returns around the side, enabling the former brick balustrade to become a lower height parapet; and*
- 12. The Ground Floor Sitting Area at this Eastern end has been reduced in size to enable the side wall to step in at this level consistent with No 182 Sailors Bay Road, with a narrow high level window replacing the previous full height unit & this new recessed wall clad in lightweight material in lieu of brickwork.*

Landscaping plans:

- 1. A 600 wide planter (landscape edge) has been introduced behind the low brick wall on the Sailors Bay Road boundary in front of the Cafeteria for the full length of the wall;*
- 2. Planting has been introduced behind the new low parapet above the Cafeteria across the front & returning along the Western side;*
- 3. Two (2) canopy trees have been proposed adjacent to No. 182 SBR, whilst the existing trees on that boundary have not been retained;*

4. The setout of the retaining wall of the western accessible courtyard (on the southern side), has been increased from the boundary to allow for greater width and soil volume so as to better support the proposed tree planting; and
5. "Grasscel" has been deleted from the area adjacent to the driveway and replaced with turf.

Other ancillary amendments:

1. The proposed roof top plant has been relocated further to the north in order to improve solar access to the courtyard area immediately to the south (see attached shadow diagram);
 2. Privacy screening and/or party walls (not higher than the balustrade) have been included on the plans between proposed private balconies in order to maintain privacy;
 3. A tree retention plan and survey for No. 164-166 SBR were submitted with the original Statement of Environmental Effects (refer to **Appendix 1** for a survey plan and **Appendix 3** for the tree retention / removal plan), however an updated version of the tree retention/removal plan is attached;
 4. The representation of the awnings on the uppermost level of the Sailors Bay Road frontage has been updated / clarified on the amended photomontage (see attached);
 5. Additional stormwater information is required by Council's Development Engineer as specified within the email dated 11 January 2011. The applicant's Hydraulic Engineer, Mr Garey Sparks has been in touch with Mr Brian O'Connell. It is understood that they have agreed on the required level of detail and documentation required. The required information is likely to be provided by the end of next week;"
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