

JRPP No.:	2010SYW042
Development Application No:	DA/832/2010
Description of Proposal:	Demolition of existing structures and construction of a seniors living development comprising 78 independent living units, a community centre and associated landscaping works
Property Description:	Lot 1 DP 654433, No. 392 Galston Road, Galston and Lot C DP 38865, No. 5 Mid Dural Road, Galston
Applicant:	Treysten Pty Ltd
Statutory Provisions:	Hornsby Shire Local Environmental Plan 1994 Rural BA (Small Holdings - Agricultural Landscapes) zone
Estimated Value:	\$23.7 million
Report Author:	Cassandra Williams - Team Coordinator
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EXECUTIVE SUMMARY

1. The application proposes the demolition of existing structures and construction of a seniors living development comprising 78 independent living units, a community centre and associated landscaping works.
2. The proposal complies with the requirements of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
3. The proposal is inconsistent with Council's Housing Strategy which seeks to locate additional housing within the Shire in close proximity to major services and infrastructure.
4. Fourteen submissions from nine residents/ groups have been received in respect of the application.

THE SITE

The site comprises two parcels of land. The first portion is known as No. 5 Mid Dural Road, Galston (Lot C DP 38865), which has an area of 2.023 hectares and the second parcel known as No. 392 Galston Road, Galston (Lot 1 DP 654433), which has an area of 1.982 hectares. The total site area is approximately 4 hectares.

The subject site is L-shaped in nature and is located on the southern side of Mid Dural Road and the western side of Galston Road. The site has a street frontage of approximately 132 metres in length to Mid Dural Road and 101 metres in length to Galston Road.

Existing development on No. 5 Mid Dural Road comprises a dwelling house, shed and large green house, with vehicular access via a driveway located towards the eastern end of the Mid Dural Road site frontage. Existing development on No. 392 Galston Road comprises a single dwelling house, shed and garage, and vehicular access via a driveway located midway along the Galston Road site frontage. The site has been used for agricultural purposes in the past, but in recent times has been largely vacant.

Surrounding development to the south, east and west is a combination of residential dwellings and agricultural activities. The site adjoins urban lands on the northern side of Mid Dural Road, known as Galston Village. The residential land uses on the northern side of Mid Dural Road are generally single detached dwellings up to two storeys in height.

THE PROPOSAL

The proposed development involves the demolition of the existing dwelling houses and buildings on the site to facilitate the construction of a new seniors living residential development.

A total of 78 independent living units are proposed in the new development as follows:

- 52 units that are 2 bedroom dwellings, average size 92m²; and
- 26 units that are 2 bedroom plus study dwellings, average size 104m².

A 320m² community centre is also proposed for the residents, which is to consist of a main recreation area, kitchen, dining area, storage and amenities. Off-street car parking is proposed for a total of 94 cars.

The proposal includes two main access points for vehicles and pedestrians, with one each at the Galston Road and Mid Dural Road frontages. The internal layout of the proposed development includes a single road, which provides a corridor for all vehicular and pedestrian movements.

Located off the main internal street are clusters of the proposed dwellings, consisting in total of nine dwellings, which provide small community burrows within the entire development. Vehicular and pedestrian access is provided to each cluster. Car parking is provided to each dwelling in a single car garage. Some on-street car parking is provided, which includes visitor car parking spaces.

The proposed development would also consist of the following works:

- Landscaping works;
- Installation of on-site wastewater treatment facility. Treated water would be reused for irrigation purposes; and
- Bus stops to utilise existing Hills Bus services.

ASSESSMENT

The development application has been assessed having regard to the '2005 City of Cities Metropolitan Strategy', the 'North Subregion (Draft) Subregional Strategy' and the matters for consideration prescribed under Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act). Subsequently, the following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy – (Draft) North Subregional Strategy

The Metropolitan Strategy is a broad framework to secure Sydney's place in the global economy by promoting and managing growth. It outlines a vision for Sydney to 2031; the challenges faced, and the directions to follow to address these challenges and achieve the vision. The draft North Subregional Strategy acts as a framework for Council in the preparation of a new Principal LEP by 2011.

The draft Subregional Strategy sets the following targets for the Hornsby LGA by 2031:

- Employment capacity to increase by 9,000 jobs; and
- Housing stock to increase by 11,000 dwellings.

Council has prepared a Housing Strategy which identifies areas suitable for the provision of additional housing to assist in meeting its obligations for 11,000 new dwellings under the Metropolitan Strategy.

In selecting suitable areas for consideration, Council has adopted a process of investigation responsive to the provisions of the Metropolitan Strategy and draft North Subregional Strategy. The process of investigation included consideration of all lands within Hornsby Shire based on agreed criteria, including proximity to commercial centres and transport nodes, economic feasibility, existing dwelling mix, and the absence of environmental constraints.

The Subregional Strategy aims to accommodate residential growth in existing urban areas. Council's new Housing Strategy identifies precincts suitable for additional housing within the urban areas of the Shire and aims to discourage further urban expansion. Based on Council's existing housing policy and planning controls, the expected dwelling yield in the rural areas to 2031 is 180 dwellings.

Currently, there is a disproportionate percentage of retirement housing in the locality (approximately 7% of all housing within the Galston Village area) and whilst the proposed development would be consistent with the draft Strategy by providing an additional 76 dwellings and would improve housing choice for seniors and people with a disability in the

locality, the development would lead to further urban expansion of the rural area and dramatically increase the expected dwelling yield in the rural area in the immediate future.

2. STATUTORY CONTROLS

Section 79C(1)(a) requires Council to consider any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and other prescribed matters.

2.1 Hornsby Shire Local Environmental Plan 1994

The subject land is zoned Rural BA (Small Holdings - Agricultural Landscapes) under Hornsby Local Environmental Plan 1994 (HSLEP). The objectives of the zone are:

- (a) to restrain population growth, maintain the rural character of the area and ensure that existing or potentially productive agricultural land is preserved.*
- (b) to promote agricultural use of land and provide for a range of compatible land uses which maintain the agricultural and rural environment of the area.*
- (c) to ensure development is carried out in a manner that improves the environmental qualities, and is within the servicing capacity, of the area.*

The proposed development is defined as 'housing for aged or differently abled persons' under the HSLEP and is prohibited in the zone. The proposed development is inconsistent with the zone objectives as follows:

With regard to objective (a), the proposed development would not restrain the growth of the population of the area and is inconsistent with the rural character of the area which is a mixture of parkland, recreational activity, rural residential development and some small scale agricultural pursuits.

With regard to (b), the site has been used as an orchard and for agriculture. The proposed development would inhibit the potential for future agricultural use.

With regard to (c), the proposed development in its current format would not retain and improve the environmental qualities identified on the site.

The application relies on Clause 17 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (SEPP HSPD) to permit the development.

The provisions of SEPP HSPD prevail to the extent of any inconsistency with Hornsby Shire Local Environmental Plan, 1994.

Clause 24 of SEPP HSPD requires Site Compatibility Certificate (SCC) to be obtained for the proposed development. Clause 25 of SEPP HSPD requires the SCC application to be made in writing and that the Director-General must not issue a SCC unless the Director-General:

- (a) Has taken into account the written comments (if any) concerning the consistency of the proposed development with the criteria referred to in paragraph (b) that are received from the relevant General Manager within 21 days after the application for the certificate was made, and*

- (b) *is of the opinion that the proposed development is compatible with the surrounding land uses having regard to (at least) the following criteria:*
- (i) *the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,*
 - (ii) *the impact that the proposed development is likely to have on the uses that, in the opinion of the Director-General, are likely to be the future uses of that land,*
 - (iii) *the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,*
 - (iv) *in the case of applications in relation to land that is zoned open space or special uses—the impact that the proposed development is likely to have on the provision of land for open space and special uses in the vicinity of the development,*
 - (v) *without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development,*
 - (vi) *if the development may involve the clearing of native vegetation that is subject to the requirements of section 12 of the [Native Vegetation Act 2003](#) - the impact that the proposed development is likely to have on the conservation and management of native vegetation.*

An application was made in April 2008 for a SCC and Council recommended that the SCC not be issued for the following reasons:

- The proposed use is not permissible in the zone and the property at No. 392 Galston Road does not directly adjoin the Residential AR Zone, and therefore the SEPP does not apply to this land.;
- The use is inconsistent with the zone objectives for the following reasons:
 - as the proposed development does not restrict the population growth and would result in a density of development greater than the adjoining residential zone.
 - The development would have an adverse visual impact on the rural character of the area and would not preserve the existing productive agricultural land.
 - The development is likely to adversely impact on the water quality of the nearby watercourse and the site cannot be adequately serviced.
- The land is unsewered and it is understood that the applicant proposes an on-site sewerage management system for any future development on site. Sydney Water should be contacted to confirm the adequacy and capacity of existing infrastructure to support the additional load should the development be approved.

- The proposed density of the development is not considered to be compatible with the surrounding rural environment. The proposal is an over-development for the site. The development will result in adverse impacts on privacy of the dwellings due to the distance between the developments.
- Council's mapping system indicates that there is a water course on adjoining land. Consideration would need to be given to the likely impacts of the development on water quality in the nearby stream.
- The site has a history of being used as agricultural land. Therefore soil contamination issues need to be addressed in the proposal.
- The proposed application form does not include the signature of both owners of the property at No. 5 Mid-Dural Road.

Despite Council's concerns, the SCC was issued on 5 November 2008 and is valid for two years. Due to the lapsing of the SCC prior to determination of the application, the applicant applied for a second SCC. Council provided comments concerning the proposed development in relation to the Site Compatibility Criteria contained within SEPP HSPD to the Department of Planning prior to the issue of a second SCC for the development as follows:

As noted in your letter, a Site Compatibility Certificate has previously been issued for the property and is due to expire in November 2010.

Council previously provided comments requesting that a Certificate not be issued for the site as the development is considered to be incompatible with the surrounding land uses, would have potential impact on the agricultural viability of the land and will be an overdevelopment of the site.

Council maintains its concerns regarding the application for another site compatibility certificate and provides the following comments:

Criteria 1 – The natural environment and the existing and approved uses of land in the vicinity of the proposed development.

Existing and approved uses to the west, east and south are rural uses. The expansion of urban development into the rural area may result in land use conflicts. The land is zoned Rural BA (Small Holdings – Agricultural Landscapes) under the HSLEP. Housing for aged or differently abled persons is prohibited within the rural areas of the Shire. Development involving the construction of up to 94 dwellings would be inconsistent with the objectives of the Rural BA zone, namely, to restrain population growth, maintain the rural character of the area and to ensure that existing or potentially productive agricultural land is preserved. The zone objectives also seek to promote agricultural use of land and provide for a range of compatible land uses which maintain the agricultural and rural environment of the area, with development that improves environmental qualities and is within the servicing capacity of the area.

The minimum allotment size for land zoned Rural BA under the HSLEP is 2 hectares. In 2003, Council consulted with the community on the issues associated with reduced rural allotment sizes in the suburb of Galston to facilitate the provision of additional housing. The results of the consultation revealed that 50% of Galston ratepayers

supported subdivision to reduced allotment sizes and 50% were opposed. Further, the results identified considerable community concern with ongoing temporary electricity service interruptions (also termed ‘brown-outs’, being less in duration than ‘black-outs’). Consultation with service providers and government agencies indicated that core infrastructure services including water and electricity are currently at capacity and that new development would be required to fund additional infrastructure. The Department of Planning indicated that any plan promoting additional subdivision would be contrary to the State Government’s housing strategies and would be unlikely to be supported. NSW Agriculture stated that it would not support the loss of potentially productive agricultural lands. Council resolved not to consider any review of allotment sizes for rural zoned lands for a range of reasons, in particular the need to retain agricultural lands, protect the environment and restrict urban development to existing areas adequately served by key infrastructure.

In summary, the current use of the land and uses within the surrounding area reflect Council’s land use controls which aim to ensure the rural character of the area is maintained. The controls facilitate agricultural and other compatible land uses that promote the agricultural and rural character of the area. The proposal is inconsistent with Criteria 1 as the proposed development involving the construction of 94 dwellings on the site would result in a medium density residential development in an area with a rural character.

Criteria 2 – The impact that the proposed development is likely to have on the likely future uses of the land.

Council records indicate that the site has previously been used for agricultural purposes, including a roadside stall. The proponent submits that the site “is past its value in terms of its previous agricultural use”. However, the proponent has not demonstrated whether other options for agriculture, including marketing, alternative crops or farming techniques, have been explored. There is a finite supply of land upon which agriculture depends. The proposed development would result in the loss of potentially productive agricultural land.

Agriculture on the urban fringe is becoming more intensive as the value of land increases and therefore, there is a need to use it for higher yielding commodities. However, the need to alter farming practices should not be used as justification to support the increasing trend towards the fragmentation of productive agricultural land which affects its capability to support agriculture in a sustainable manner.

In summary, the proposal is inconsistent with Criteria 2 as the proposed development would result in the fragmentation of rural land sterilising its future use for agricultural purposes and would increase the potential for land use conflict between residential uses and farming practices.

Criteria 3 – The services and infrastructure that are or will be available to meet the demands arising from the development and any proposed financial arrangements for infrastructure provision.

Correspondence from Energy Australia in the supporting information submitted by the proponent states that customer funded connection works, in particular a substation on the site, may be required. The proponent has not detailed any proposed

financial arrangements to ensure infrastructure provision; therefore, the proposal is inconsistent with Criteria 3.

Criteria 4 – not applicable

Criteria 5 – The impact that the bulk and scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.

The built form indicated on the concept plan submitted with the proposal is largely urban in nature. The scale of development represents an overdevelopment of the site. The medium density nature of the development means that it would be difficult to locate future dwellings away from any agriculture that is practiced on the adjoining land.

In summary, the proposed development would be inconsistent with the objectives of the Rural BA zone and Council's current planning controls, and Council's Housing Strategy. The proposal presents an overdevelopment of the site, which would result in the expansion of an urban built form detracting from the character of the rural area and conflicting with existing, approved and future uses of land in the vicinity of the development. Furthermore, the proposal does not comply with the Site Compatibility Criteria contained within SEPP HSPD.

Clause 10 of the HSLEP sets out provisions to ensure that all development within the Hornsby area has adequate water and sewerage services. The site has access to reticulated water but not sewer. The applicant has demonstrated that potable water supply is available to the site and that wastewater is proposed to be disposed of via a combination of pump out system and on site disposal.

Submissions received raised concern that the area is unsewered and that existing residents experience reduced water pressure which impacts on daily life. Furthermore, the ongoing and high cost for pump out may detrimentally impact on a lower income demographic that would reside at the site.

Previous consultation with service providers and Government agencies has indicated that core infrastructure services including water and electricity are currently at capacity and that new development would be required to fund additional infrastructure.

On this basis, it is considered that the application fails to satisfy that adequate water and sewerage services are available to the site. This matter is discussed further in section 2.3.4 of this report

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area. The site is not listed as a heritage item of local significance and is not located within a heritage conservation area.

2.2 State Environmental Planning Policy (Major Development) 2005

The proposed development as lodged has a capital investment value of \$23,700,000 thereby requiring referral to, and determination by, a Joint Regional Planning Panel in accordance with Clause 13B(1)(a) of SEPP (Major Development) 2005.

2.3 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

SEPP HSPD is the overriding planning instrument for the development of housing for aged and disabled people in NSW and provides for hostels, residential care facilities (nursing homes) self contained dwellings and multi-storey buildings. The SEPP is comprehensive in scope including land use planning provisions, design principles, development standards and standards specifically to meet the housing needs of aged and disabled people. The SEPP also includes design guidelines for infill development.

For the purposes of assessment against SEPP HSPD the proposed development is defined as ‘*self-contained dwellings*’. The following table sets out the proposal’s compliance with the relevant standards within the SEPP:

SEPP (Housing for Seniors or People with a Disability) 2004			
Control	Proposal	Requirement	Compliance
Site Area	40,050m ²	1,000m ²	Yes
Site Frontage - Galston Road - Mid-Dural Road	101m 132m	20m	Yes
Floor Space Ratio	0.2:1	0.5:1	Yes
Height	5.4m	8m	Yes
Private Open Space	15m ² - 30m ²	15m ²	Yes
Landscaped Area 1. Per dwelling 2. Site	min 35m ² 40%	35m ² 30%	Yes Yes
Deep Soil Landscaping	15%	15%	Yes
Solar Access	>70% of dwellings	70% of dwellings	Yes
Car parking (0.5 spaces per bedroom)	94 spaces (78 resident spaces + 16 visitor spaces)	91 spaces	Yes

As detailed in the above table, the proposed development complies with the prescriptive standards within the SEPP. A brief discussion on compliance with the relevant clauses of the SEPP is provided below.

2.3.1 Development on land adjoining land zoned primarily for urban purposes (Clause 17)

Clause 4(4) of SEPP HSPD states that for the purposes of this Policy, land that adjoins land that is zoned primarily for urban purposes includes (but is not limited to) land that would directly adjoin land that is zoned primarily for urban purposes but for the presence of a public

road to which there is direct vehicular and pedestrian access from the adjoining land. Land directly across Mid Dural Road from the subject site is zoned Residential AR (Low Density - Rural Village). In compliance with the definition, this land across Mid Dural Road is zoned primarily for an urban purpose and establishes dwelling houses as a permissible land use with consent.

Clause 17 states:

- (1) Subject to subclause (2), a consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land that adjoins land zoned primarily for urban purposes unless the proposed development is for the purpose of any of the following:*
 - (a) a hostel,*
 - (b) a residential care facility,*
 - (c) serviced self-care housing.*
- (2) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purposes of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that the housing will be provided:*
 - (a) for people with a disability, or*
 - (b) in combination with a residential care facility, or*
 - (c) as a retirement village (within the meaning of the [Retirement Villages Act 1999](#)).*

Note: Clause 13(3) defines serviced self-care housing as seniors housing that consists of self-contained dwellings where meals, cleaning services, personal care and nursing care are available on site. Clause 42 requires the consent authority to be satisfied that residents of such housing have reasonable access to services. Clause 42 also provides that if services are limited to those provided under Government provided or funded community based care packages, this does not constitute reasonable access to services.

The application proposes serviced self-care housing comprising 78 dwellings on the site. The development is not in combination with a residential care facility, however, the applicant states the housing would be provided as a retirement village within the meaning of the *Retirement Villages Act 1999*. To ensure compliance with this requirement, appropriately worded conditions are recommended to be imposed to address these requirements.

The proposal relies upon the consolidation of an allotment (Lot 1 DP 654433, No. 392 Galston Road) that would not otherwise be entitled to seniors living housing, thus circumventing the objectives of the SEPP HSPD. This portion of the site does not directly adjoin land that is zoned primarily for urban purposes as the land on the opposite side of Galston Road is also zoned Rural BA (Small Holdings - Agricultural Landscapes) zone. If more lots were to be consolidated in this manner to permit seniors living development, the cumulative impacts upon the surrounding locality would be detrimental and would alter the rural environment through increased densities and lowering of services available to the wider community.

2.3.2 Site Compatibility Certificate (Clause 24 and 25)

Clauses 24 and 25 refer to the requirement for a site compatibility certificate to be obtained for developments which are proposed upon land that adjoins land zoned primarily for urban purposes, land identified as 'special uses' and land that is used for the purposes of an existing registered club. As the subject site comprises land zoned Rural BA (Small Holdings - Agricultural Landscapes) a site compatibility certificate is required. Council, as the consent authority, is not able to grant consent for a development unless a site compatibility certificate has been provided. The applicant has provided a Site Compatibility Certificate from the Department of Planning dated 17 September 2010. Accordingly Clauses 24 and 25 have been addressed. As previously stated Council does not agree with the assessment of the Department of Planning and considers that a site compatibility certificate should not have been granted.

2.3.3 Location and access to facilities (Clause 26)

The table below provides an assessment of the location and access requirements to facilities for the proposed development. As indicated, the proposal complies with Clause 26 of the SEPP.

Development Standard	SEPP HSPD Requirement	Proposed Development	Compliance
Facilities	(a) Shops, banks and other retail and commercial services (b) Community services and recreational facilities (c) General medical practitioner	Within the locality all facilities and support services are available to residents, with services available at Galston Village and Round Corner and a major centre at Castle Hill (Castle Towers).	Yes
Location and access	Access is considered to comply if: (a) the facilities and services listed above are located at a distance of not more than 400m from the site and the overall gradient is no more than 1:14, with alternate acceptable gradients for short distances, or (b) there is a public transport service available to the residents who would occupy the	There are no facilities either existing or proposed within 400m of the site. (Note: Galston Village is approximately 600m from the site) The closest bus-stop to the site will be constructed adjacent to the development on Galston Road. The applicant has	No, however compliance with provision (b) is achieved. See below. Yes

	<p>development:</p> <p>(i) that is located at a distance of not more than 400 metres from the site of the development, and</p> <p>(ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the relevant facilities or services, and</p> <p>(iii) that is available both to and from the development during daylight hours at least once between 8am and 12pm and at least once between 12pm and 6pm from Monday to Friday (both days inclusive).</p>	<p>confirmed with Hills Bus that a regular service (638) will be provided to this bus stop which complies with the clause.</p> <p>There is a bus set down area located within the town centre of Castle Hill and also at Galston Village.</p> <p>Both Castle Hill and Galston Village provide all of the facilities listed in this section.</p> <p>The bus service to either Castle Hill or Galston Village will be regularly available during weekdays.</p>	
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As stated in the table the application includes the provision of bus stops to the site on both the Galston Road and Mid Dural Road frontages. As the main service is provided via Galston Road it is recommended that if consent is granted, the applicant is to construct bus shelters for weather protection on the eastern and western side of Galston Road adjacent to the site. Furthermore, the bus shelter located on the western side of Galston Road is to be located wholly within the subject site and future ongoing maintenance of the shelter is to be provided by the operator of the seniors living development.

2.3.4 Water and Sewer (Clause 28)

SEPP HSPD states that Council must not consent to a development application unless the Council is satisfied that the development will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage. In this respect, regard must be given to the suitability of the site and availability of services.

The site has access to reticulated water but not sewer. The applicant has a feasibility letter from Sydney Water (Case No. 120292) which confirms potable water supply is available from a single connection from the existing mains in either Galston Road or Mid Dural Road. The applicant has advised that Sydney Water will only confirm their requirements following an application for a Section 73 Certificate which can only be applied for following issue of development consent.

Wastewater is proposed to be disposed of via a combination of pump out system and on site disposal. Council's environmental assessment of the wastewater disposal system concluded that the site could theoretically be serviced subject to recommended conditions.

A number of submissions received raised concerns that the site is unsewered and the potential impacts of the ongoing wastewater management of the site. Concerns were also raised with regard to the ongoing maintenance and running costs of a pump-out system with regard to the impact on an area where residents have lower incomes.

Existing cost for pump-out for a conventional residential home is approximately about \$2.40 per 100 litres. Most calculations allow 145 litres per person per day which for a three person house would equate to about 3000 litres/week at a cost of approximately \$70 per week. Council is aware that it is common to hear of larger households spending \$100 per week. Council has come under considerable pressure from residents in Galston concerning the high cost of pump out systems. Council has contained the residential footprint in the village due to servicing constraints and the cost of pump out systems.

Based on these figures, it is estimated that for seniors living type developments, a cost of \$50 dwelling/week could be expected. There would also be an ongoing service and maintenance cost with a system such as the one proposed in this application which for a standard residential dwelling is in the order of \$400 per year, not including repair costs to pumps etc.

Whilst it is acknowledged that a commercial contract might get a less expensive rate with the contractor, this cost would ultimately be borne by the residents and not the retirement village operator. This is considered to be an onerous burden on future residents and has the potential to create significant hardship for this vulnerable demographic.

2.3.5 Neighbourhood amenity and streetscape (Clause 33)

The existing streetscape features rural landscapes to the south, east and west of the site and detached dwellings and low density housing on the northern side of Mid-Dural Road.

The proposal has attempted to address the neighbourhood amenity and streetscape within the site so as to be compatible with the existing natural and built environment. The design of the development incorporates single storey buildings, the use of articulated built form, large setbacks to the property boundary and significant landscape coverage of the site.

The proposal would significantly affect the corner lots, particularly No. 390 Galston Road, in so far that the development would surround that lot and result in loss of view lines and panoramas. This impact is exacerbated due to the proposed consolidation of Lot 1 into Lot C, giving it an urban development right that would not otherwise exist if the land was not consolidated. This outcome is considered to be an unreasonable burden on the residents of 390 Galston Road.

2.3.6 Visual and acoustic privacy (Clause 34)

The retention of existing established trees along Galston Road and Mid-Dural Road would provide some visual privacy for the proposed development. The proposal is generally well separated from its nearest residential neighbour and landscape planting is proposed along the perimeter of the site to screen the development and complement the building setbacks.

Visual privacy to new and existing dwellings is achieved by appropriate layout and design of the units, window location and position of private open space. Dwellings are single storey and courtyards are separated by dividing screens to minimise overlooking potential.

The siting of the dwellings away from Galston Road and Mid-Dural Road ensures that road noise would not detract from the residential acoustic environment.

However as stated above, the proposal would significantly affect the corner lots, particularly No. 390 Galston Road, in so far that the development would surround that lot and result in loss of visual and acoustic privacy.

2.3.7 Solar Access and design for climate (Clause 35)

Adequate consideration has been given for solar access to all dwellings with the development orientated toward the north to maximise solar access to individual dwellings. Over 70% of the dwellings achieve three hours sunlight to living areas in mid winter between 9am and 3pm. The design and location of windows within each dwelling provides for good cross ventilation.

2.3.8 Stormwater (Clause 36)

The proposed stormwater drainage system is designed to incorporate an on-site detention system and complies with Council's stormwater drainage requirements.

2.3.9 Crime prevention (Clause 37)

The proposed development is designed to provide a secure environment for residents, whilst the main public access to the development is clearly defined at both the Galston Road and Mid-Dural Road frontages.

The dwellings have been designed to ensure each unit entry is highly visible and identified clearly from the street. Front and rear courtyards allow for social interaction and passive surveillance to the street and the dwelling entries to promote safety and security for residents. Pathways have been designed to provide safe pedestrian movement within the site and to individual units using appropriate grading and are to be lit at night.

The proposal complies with the SEPP design principle.

2.3.10 Accessibility (Clause 38)

The development has a series of interlinking walkways and pedestrian tracks between the buildings and around the site. The access driveway to the community building and the individual residences has a separate pedestrian pathway, with associated landscaping to improve the aesthetic of the environment and to provide adequate sightlines to enhance visibility for motorists and pedestrians.

Schedule 3 of the SEPP address standards concerning access and useability for self-contained dwellings including wheelchair access, parking space dimensions, dwelling entrances, room dimensions, bathroom fittings etc. The proposed development complies or can be appropriately designed to comply with the criteria of the relevant standards.

2.3.11 Waste management (Clause 39)

A waste management plan has been submitted to provide an overview of anticipated construction management strategies for works associated with the demolition and construction of the development. Notwithstanding, a condition of consent is recommended requiring a detailed Waste Management Plan in accordance with the *Waste Minimisation and Management Development Control Plan*, covering the scope of this project (including *Section One - Demolition Stage*, *Section Two - Design Stage*, *Section Three - Construction Stage* and *Section Four - Use and On-going Management*) be submitted at construction certificate stage, if consent is granted.

The waste management plan provided for the use and on-going management of the site indicates that each dwelling would have its own set of bins, which would be stored in each garage and the applicant states that residents would bring their bins to the main internal road for servicing.

Garbage collection and general maintenance would be undertaken in accordance with the proposed site operations management plan to be prepared prior to the issue of an Occupation Certificate for the development. Notwithstanding the main internal road has been designed for heavy rigid vehicles and if consent is granted it is recommend that a condition be imposed requiring an easement for Council waste services.

2.3.12 Service self-care housing (Clause 42)

Clause 42 requires that for development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes, residents of the proposed development must have reasonable access to:

- home delivered meals, and
- personal care and home nursing, and
- assistance with housework.

Access to the above services is not considered reasonable if those services would be limited to services provided to residents under Government provided or funded community based care programs (such as the Home and Community Care Program administered by the Commonwealth and the State and the Community Aged Care and Extended Aged Care at Home programs administered by the Commonwealth).

The applicant has submitted written evidence that reasonable access to home delivered meals, personal care and home nursing, and assistance with housework can be provided to the proposed development over and above Government provided or funded community based care programs available in the area.

2.3.13 Transport services to local centres (Clause 43)

Clause 43 requires that a consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that a bus capable of carrying at least 10 passengers will be provided to the residents of the proposed development. The applicant has stated that this would be provided and included in any management plan for the site. This would be addressed by recommended conditions of consent.

2.3.14 Availability of facilities and services (Clause 44)

Clause 44 requires that a consent authority must be satisfied that any facility or service provided as a part of a proposed development to be carried out on land that adjoins land zoned primarily for urban purposes will be available to residents when the housing is ready for occupation. This would be addressed by a condition of consent to ensure that all facilities and services provided for the development are in place prior to an occupation certificate being issued.

2.3.15 Standards that cannot be used to refuse development consent for self-contained dwellings (Clause 50)

Clause 50 prescribes standards that cannot be used to refuse development consent for self-contained dwellings which includes serviced self-care housing. The table in Section 2.3 of this report demonstrates that the proposed development complies with these requirements

2.4 State Environmental Planning Policy No. 44 Koala Habitat Protection

The provisions of SEPP 44 apply as the site is greater than one hectare in size. The site is generally cleared land with exotic tree species prevalent in the plantings and does not represent a potential or core koala habitat. Accordingly, no further consideration of the policy is required.

2.5 State Environmental Planning Policy No. 55 Remediation of Land

The Policy provides guidelines for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Clause 7 of *State Environmental Planning Policy No. 55 - Remediation of Land* (SEPP 55) requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Should the land be contaminated Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land would be remediated before the land is used for that purpose.

The applicant submitted a Preliminary Environmental Site Assessment report prepared by Environmental Investigation Services (EIS) which considers that the potential for widespread contamination of the site is low and that the site is suitable for the proposed residential land use. Council's environmental review of the submitted information raised no objection to the proposed development.

2.6 State Environmental Planning Policy (Infrastructure) 2007

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

- *Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);*
- *Immediately adjacent to an electricity substation; or*
- *Within 5m of an exposed overhead electricity power line.*

The application was referred to *Energy Australia* to determine if the subject site was within or immediately adjacent to any of the above electricity infrastructure. Energy Australia has not responded to this letter. In this regard, the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

The application was referred to the *Roads and Traffic Authority* (RTA) with regard to Subdivision 2 Development in or adjacent to road corridors and road reservations of the SEPP and the comments provided are discussed in Section 5.2.1 of this report.

2.7 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The aim of this Policy is to ensure consistency in the implementation of the BASIX scheme throughout the State.

BASIX Certificates for the residential component of the development have been submitted. The certificates confirm that the proposed development meets the NSW government's requirements for sustainability. The development meets the water and energy performance targets, achieves a pass for thermal comfort and includes provision for 2000L rainwater tanks for each of the dwellings.

2.8 Sydney Regional Environmental Plans No. 20 - Hawkesbury-Nepean River

The site is located within the catchment of the Hawkesbury Nepean River. Part 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of this proposal on water quality, scenic quality, aquaculture, recreation and tourism.

Water quality is the only relevant consideration in the assessment of this proposal. Conditions of consent are recommended in relation to the installation and maintenance of sediment and erosion control devices, stormwater management and effluent and wastewater disposal to protect water quality and to achieve designated public health and river health outcomes which would ensure compliance with SREP No. 20.

2.9 Rural Lands Development Control Plan

The primary purpose of the DCP is to provide planning strategies and controls for development within the rural area. The objectives of this DCP are to provide land use direction for the rural area, measures to protect the natural and built environment, to enhance the established character of the rural areas; and to ensure development relates to site conditions.

The DCP has no specific land use controls relating to seniors living developments as the use is not permissible in the rural zone. The relevant performance and prescriptive design standards of the DCP have been addressed in the assessment of the application against the relevant SEPP's and REP'S with the exception of the following:

2.9.1 Population Strategy

The objectives of the strategy are:

“To limit population growth in the area in recognition of the transport, servicing and environmental constraints.

To protect existing and potential productive agricultural land and environmentally sensitive land from the pressures of population growth.”

The proposed development would result in a population increase that exceeds the provisions of existing services and infrastructure for the site and locality. Furthermore, the proposed development would replace potentially productive agricultural land with intensive residential development.

2.9.2 Rural Strategy

The objectives of the strategy are:

“To maintain the rural character of the area and promote the conservation and proper management of existing or potentially productive agricultural land.”

In order to meet the above objectives, the “Performance Criteria” state that:

“Land uses should be encouraged that are compatible with rural character to protect and enhance the agricultural and visual landscapes which are an attraction for visitors and residents.”

And the prescriptive measures include:

“Development proposals should be prepared and assessed with regard to the siting and design issues relevant to the applicable visual landscape character type.”

Submissions raised concerns relating to the compatibility of the proposed land use with the rural character of the area. The proposed development would reduce the availability of potential agricultural land in the locality and would increase the population and density of the development which is inconsistent with the rural character of the area.

The Rural Lands DCP provides nine visual environment character types. The subject site forms Type 1 - Mixed Intensive Agriculture. Appendix E of the DCP describes the characteristics of the area type and outlines detracting elements, things to encourage and things to discourage. Detracting elements include over-scale new residences of suburban form which do not compliment the rural setting, urban treatments of the streetscape which interrupt or restrict district views and excessive hard surfacing. Things to encourage include the maintenance of intensive horticultural and agricultural uses of the land, maintenance of natural road verges and the regeneration of remnants of natural vegetation, building sizes and styles which relate to the rural environment and a variety of building forms which relate to rural setting and local precedents. Things to discourage include excessive bulk and height, excessively urban street frontage treatments, prominent buildings located in highly visible locations or which interrupt sensitive sight lines and excessive manicured areas. The development would detract from views from adjoining properties and has not been designed in accordance with the abovementioned design principles.

2.9.3 Agriculture

The objective of the land use is:

“To ensure agriculture is conducted in a sustainable manner.”

Council’s records indicate that the site has previously been used for agricultural purposes, including a roadside stall. The application indicates that the site “is past its value in terms of its previous agricultural use”. However, the application has not demonstrated whether other options for agriculture, including marketing, alternative crops or farming techniques, have been explored. There is a finite supply of land upon which agriculture depends. The proposed development would result in the loss of potentially productive agricultural land.

Agriculture on the urban fringe is becoming more intensive as the value of land increases and therefore, there is a need to use it for higher yielding commodities. However, the need to alter farming practices should not be used as justification to support the increasing trend towards the fragmentation of productive agricultural land which affects its capability to support agriculture in a sustainable manner.

The proposed development does not conserve the potential for agricultural use of the land and is therefore inconsistent with the provisions of this land use element of the DCP.

2.9.4 Dwelling Design

The objective of the control element is:

“To promote housing design that is compatible with the character of the village and rural areas and has regard to the environmental constraints of sites”.

The proposed dwellings differ in form and character to those dwellings on immediately adjoining sites which are of a more modest nature. The dwelling design is of a large urban style that is incongruous with the rural environment.

The overall bulk and scale of the development is excessive and the proposed building form and siting is out of character with the dominant rural setting within the immediate area. The

development is considered to be incompatible with the landscape characteristics of the immediate area and would have a significant visual impact on surrounding properties.

2.9.5 Setbacks

The objective of the control element is:

“To provide setbacks that complement the rural and village character, provide for landscaping and protect the privacy of adjacent dwellings.”

The proposed development complies with the minimum setback requirement of 15 metres to side and rear boundaries and 30 metres to the Galston Road and Mid Dural Road frontages.

Based on the above assessment, the proposed development is inconsistent with the Rural Lands DCP. However, the provisions of SEPP (Seniors Living) prevail to the extent of any inconsistency with any other environmental planning instrument.

2.10 Car Parking Development Control Plan

The primary purpose of this DCP is to provide parking controls for development. Schedule A of the DCP requires that 1 car parking space is provided per dwelling with a floor area >85m². Accordingly, a minimum of seventy-eight car parking spaces are required for the development. The proposal includes the provision of ninety-four car parking spaces on site and exceeds the minimum requirements of the DCP. Notwithstanding, the provisions of SEPP HSPD prevail to the extent of any inconsistency with any other environmental planning instrument. The development proposes ninety-four car parking spaces which exceeds both the requirements of the Car Parking DCP and SEPP HSPD.

2.11 Access and Mobility Development Control Plan

The Access and Mobility Development Control Plan applies to the proposed development. The development control plan does not provide standards specific to Housing for Older People or People with a Disability. SEPP HSPD and Australian Standards AS1428 and AS4299, provides those standards. Subject to compliance with the requirements of the SEPP HSPD and Australian Standards AS1428 and AS4299, the proposed development would comply with the DCP.

2.12 Sustainable Water Development Control Plan

The primary objectives of this Plan, with respect to site specific development, are to adopt sustainable water practices, improve water quality, prevent flooding and maintain water balance by appropriate design, and use of natural drainage systems. The proposed development satisfactorily addresses the provisions of the DCP.

2.13 Waste Minimisation and Management Development Control Plan

The primary purpose of this Development Control Plan is to provide planning strategies and controls to promote waste minimisation and management.

A waste management plan has been submitted to provide an overview of anticipated construction management strategies for works associated with the demolition and construction of the development.

To enable the development to accommodate any future changes to waste collection servicing by either private contractors or Council, the accessways/ internal roads are designed such that the property is able to be serviced by waste collection vehicles (9.7 metre long) with a 22.5 metre diameter turning circle in accordance with Council's Waste Minimisation and Management Development Control Plan.

2.14 Development Contributions Plan 2007-2011

The applicant would be required to make a payment of a contribution towards the cost of transport and traffic management, library and community facilities, civic improvements, stormwater drainage, bushfire protection and Section 94 administration in accordance with Sections 94, 94B and 94C of the Environmental Planning and Assessment Act 1979 and Hornsby Shire Council's Development Contributions Plan 2007-2011. A condition would be imposed to ensure the payment of s94 contributions for the development.

3. ENVIRONMENTAL IMPACTS

Section 79C(1)(b) of the Act requires Council to consider "*the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*".

3.1 Natural Environment

3.1.1 Trees

The proposed development would necessitate the removal of 34 trees from the site. The application has been supported by an arborist report that assesses the existing trees to be removed as either undesirable species or noxious weeds.

The report concludes that:

'The proposed plans have accommodated the majority of trees on the site. There are only 34 trees that are impacted by the proposed plans out of 138. The 34 trees that are being removed are an insignificant number compared to those that are being retained (104 trees).

With suitable TPZs in place the retained trees on the site will have a long SULE and provide long term amenity and wildlife resources. The retained trees on the Mid Dural Road are a recognisable remnant of an Endangered Ecological Community and would not be impacted by the proposed development. These trees will benefit greatly when the Bush Regeneration works are completed.'

Council's assessment of the proposal included a detailed examination of the existing trees on site. It is considered that the removal of the trees is acceptable in the circumstances of the case as there is sufficient area on-site to provide for replacement tree planting and appropriate conditions can be imposed if consent is granted.

3.1.2 Flora and Fauna

The site contains a remnant of Sydney Turpentine Ironbark Forest (STIF) Endangered Ecological Community (EEC) which is listed under the *Threatened Species Conservation Act 1995 (TSC Act)*.

The STIF remnant on site is considered to be in good condition due to the variety of age, class of canopy trees, presence of under-storey vegetation and high resilience as result of the likelihood of an intact original soil seedbank being present. Roadside remnant vegetation strips also function as an important habitat corridor within the context of surrounding cleared rural lands. The proposed development would retain and enhance the STIF area as remnant bushland incorporated into landscaping.

Concerns have been raised that the applicant has not addressed all flora and fauna that may be found in the area, (eg 'Little Eagle'). The Bushland and Biodiversity Team have reviewed the *Flora and Fauna Assessment* prepared by Clarke Dowdle and Associates and the *Arboricultural Impact Assessment* prepared by Advanced Treescape and Consulting, and all relevant threatened species issues have been addressed in the application and considered by Council including the recent listing of Little Eagle under the *TSC Act*.

3.2 Built Environment

The proposed development is single storey and incorporates screen planting around the perimeter of the site which would minimise the visual impact of the development from the Galston Road and Mid Dural Road frontages.

Submissions raised concern regarding traffic management for Galston Road and Mid Dural Road, traffic and access impacts, vehicular and pedestrian safety.

Council's engineering assessment of the traffic impacts of the development concludes that traffic generation is not considered to be an issue with the proposed development. The proposed development includes adequate car parking provision and appropriate conditions can be imposed if consent is granted.

The RTA also raised no concerns with regard to the proposed development subject to recommended conditions. This matter is discussed further in Section 5.2.1 of this report.

3.3 Social Impacts

The proposed dwellings provide serviced self care accommodation for independent living of seniors or people with a disability, in close proximity to shops, medical services, public transport, community and recreation facilities.

The proposal would be of positive social benefit in increasing the range of well located housing designed specifically to meet the housing needs of people over 55 or people with a disability.

3.4 Economic Impacts

The proposal would have a minor positive impact on the local economy in conjunction with other new residential development in the locality by generating an increase in demand for local services.

Submissions raised concern regarding the potential adverse impacts upon the land values of adjoining properties. This is not a relevant matter for consideration under section 79C of the *Environmental Planning and Assessment Act 1979*. No evidence has been submitted to indicate that an adverse impact on land values would occur. It is considered that the proposal would not result in a negative economic impact on the locality.

4. SITE SUITABILITY

Section 79C(1)(c) of the Act requires Council to consider “*the suitability of the site for the development*”.

There is no known hazard or risk associated with the site with respect to landslip, subsidence, flooding and bushfire that would preclude development of the site.

Submissions raised concern that no provision has been made for the *NSW Rural Fire Service* to comment. As the subject site is not identified as bushfire prone land, the proposed development is not required to be notified to the *NSW Rural Fire Service*.

As previously stated, Council has concerns with the strategic justification of the proposed development. There is a disproportionate percentage of retirement housing in the locality (approximately 7% of all housing within the Galston Village area) and Council has rejected a number of enquiries for rezoning due to lack of sewer availability to the rural areas of the Shire. Previous consultation with service providers and Government agencies has indicated that core infrastructure services including water and electricity are currently at capacity and that new development would be required to fund additional infrastructure.

The proposed development would be inconsistent with the objectives of the Rural BA zone and Council’s current planning controls, and Council’s Housing Strategy. The proposal presents an overdevelopment of the site, which would result in the expansion of an urban built form detracting from the character of the rural area and conflicting with existing, approved and future uses of land in the vicinity of the development. Furthermore, the proposal does not comply with the Site Compatibility Criteria contained within SEPP HSPD.

Site suitability is also questioned with regard to the Galston Road lot only being suitable when consolidated with the Mid Dural Road lot as that portion of the site does not adjoin land zoned for urban purposes in accordance with the SEPP HSPD requirements.

5. PUBLIC PARTICIPATION


Section 79C(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 27 July 2010 and 17 August 2010 in accordance with Council’s Notification and Exhibition Development Control Plan. During this period, Council received eight submissions. A further six submissions were received after the notification period ended. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
FOUR SUBMISSIONS RECEIVED OUT OF MAP RANGE			

Thirteen submissions from eight residents/ groups objected to the development, generally on the grounds that the development would result in:

- Adverse impact on the natural and built environment
- The development is inconsistent with the zoning of the land
- Density of the development
- Site is not connected to sewerage service
- Wastewater and stormwater management impacts
- Limited provision and frequency of public transport to the site
- Ability of pedestrian refuges to accommodate motorised scooters
- Use of rainwater tanks in the development
- Access to medical facilities
- Flora and fauna impacts
- Access to potable water
- Trees along the site frontage should be retained and adequately protected both during construction and in the future, particularly as they are an endangered ecological community and provide screening of the development.
- Non compliance with the Statement of Joint Intent (SOJI) Agreement
- Application should be assessed as Designated Development
- Land should be preserved for agricultural potential
- Proposal is inconsistent with the State Government's Urban Consolidation Strategy
- The proposal will not provide affordable housing as stated by the applicant in the submitted Statement of Environmental Effects
- The site is located greater than 400 metres from the Galston Village Shopping Centre
- Impact of adjoining agricultural uses (eg spraying of chemicals) on the proposed residential development.
- Traffic impacts
- Impact on land values
- Potential downstream flooding impacts of the existing stormwater system
- No provision has been made for the NSW Rural Fire Service to comment

One submission supported, or was neutral to the development.

The merits of the matters raised in community submissions have been addressed in the body of the report with the exception of the following:

5.1.1 Statement of Joint Intent (SOJI Agreement)

A submission raised concern that the proposed development is inconsistent with the Statement of Joint Intent (SOJI Agreement) and that the legally binding agreement prohibited the rezoning of land for residential purposes in the Hornsby Council area where Sydney Water is unable to provide sewerage service.

The SOJI Agreement was signed by the Department of Planning, the Environment Protection Authority, the Hawkesbury-Nepean Catchment Trust, Hornsby Council and the Water Board

on 27 April 1994. These signatories agreed to work together to achieve the ecologically sustainable development of Berowra Creek and the recovery of the creek's environmental health.

The SOJI Agreement states that the Department of Planning undertakes that it would not introduce any planning measures that are incompatible with the ecological sustainability of Berowra Creek.

The subject site has not been rezoned for residential purposes; however the application relies on Clause 17 of SEPP HSPD to permit the development. As previously stated, the provisions of SEPP HSPD prevail to the extent of any inconsistency with the HSLEP.

Notwithstanding the proposed development has demonstrated that subject to the recommended conditions, it can sustainably manage the effluent produced through an effective on-site system in combination with a pump-out system and the proposed stormwater management and drainage provisions for the development would not have a detrimental impact upon the catchment.

5.1.2 Designated Development

A submission received raised concern that the proposed development should be assessed as designated development. Schedule 3 Part 1 of the *Environmental Planning and Assessment Regulation 2000* (Regulation) lists development that is 'designated development'.

Whilst the application includes a sewerage system that meets the requirements of Schedule 3 Part 1 Clause 29(b) of the Regulation, Schedule 3 Part 3 Clause 37A Ancillary development states:

- (1) Development of a kind specified in Part 1 is not designated development if:*
 - (a) it is ancillary to other development, and*
 - (b) it is not proposed to be carried out independently of that other development.*

Accordingly, as the proposed sewerage system is ancillary to the use of the site for housing for seniors and differently abled persons, the proposed development is not designated development under the Act.

5.1.3 The proposal will not provide affordable housing as stated by the applicant in the submitted Statement of Environmental Effects

The proposed development seeks consent under the provisions of SEPP HSPD which does not specify requirements for affordable housing. Notwithstanding, the applicants states that the proposed development would allow persons that have lived in the area and are now in their senior years to remain in the area and it is on this basis that the applicant provides that the proposal is considered to be affordable in comparison to other land and housing development in the area.

5.1.4 Potential downstream flooding impacts of the existing stormwater system (particularly flooding in Sylvan Street)

Two submissions received raised concern with regards to the causes of flooding of properties in Sylvan Street during the heavy rains on 6 and 7 February 2010 and the potential for the proposed development to exacerbate this in the future.

Council's engineering assessment provided the following comments in relation to the submissions:

'Based on data from the automated rain gauge at Hornsby Pool, the rains on 6 and 7 February were in the order of a 1 in 100 year ARI storm. This would have caused flows in excess of the pipe system capacity, resulting in major overflows.'

The stormwater pipeline in Sylvan Street does not divide and flow two ways - there are two separate systems. The pipeline from Mid-Dural Road and Devon Place continues down the western side of Sylvan Street to the northern end of the street and conveys the majority of flows. There is an older short section of pipeline and pits on the eastern side of Sylvan Street that drains through No. 16 Sylvan Street to Forest Place and Glen Street. It would appear that the map extract supplied by Council and attached to the submissions has been misinterpreted.

It is stated that Nos. 12, 14, 16 and 18 Sylvan Street experienced flooding in the storms in February 2010 and claimed this is due to the Council system overflowing. Given that the majority of flows in the Council system would be draining along the western side of Sylvan Street, it is not believed that the flooding of these properties was due to the Council system. Rather, looking at the fall of the land in the properties on the eastern side of Sylvan Street and the western side of Forest Place, the flooding of Nos. 12, 14, 16 and 18 Sylvan Street would most likely have been from overland flows from these properties.

The flooding noted at No. 11 Sylvan Street would have been due to runoff from properties uphill and to the west, not from the Council system in Sylvan Street.

The damage at No. 39 Sylvan Street was mainly due to scour of filling placed along the main creek line. The flow in the main creek was considerably more than the flow down Sylvan Street.

The proposed restrictions on discharge of stormwater from the subject site are considered adequate to ensure no increase in flows in the downstream system.'

5.2 Public Agencies

The application was referred to the following Agencies for comment:

5.2.1 Roads and Traffic Authority

The application was referred to the *NSW Roads and Traffic Authority* (RTA) pursuant to Section 138 of the *Roads Act 1993*.

The RTA advised it had no objections to the proposed development and recommended conditions in respect to traffic safety at both the Galston Road and Mid Dural Road frontages.

The application also referenced Lot 6 DP 226407, which was originally vested as Public Road. The Lot has subsequently been cancelled (P647455) and the referral comments from the RTA advise that the RTA has no further approved proposal that requires any part of the subject property for road purposes.

5.2.2 Energy Australia

No response was received.

6. THE PUBLIC INTEREST

Section 79C(1)(e) of the Act requires Council to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed the SEPP HSPD and relevant agencies’ criteria and would provide a development outcome that at a micro planning level, would result in a positive impact. However, the application is inconsistent with Council’s strategic planning for Galston, does not comply with the HSLEP and relevant DCPs and the community has expressed concern with regard to the proposed development. On balance, it is considered that the development is not in the public interest.

CONCLUSION

The proposal has been assessed having regard to the provisions of Section 79C of *Environmental Planning and Assessment Act 1979* and *State Environmental Planning Policy Housing for Seniors or People with a Disability 2004* and is considered to be satisfactory.

The proposal complies with the provisions of SEPP HSPD and would provide an additional serviced self-care facility for residents within the Shire. Appropriate access is available for residents to local services such as the shopping centres and other retail and commercial development via bus services.

The external design and appearance of the development is consistent with the adjoining low density residential development in Mid Dural Road. A variety of external colours and finishes have been utilised which are in keeping with the character of the area and with the addition of a high quality landscape setting the development would provide a positive contribution to the locality.

However, Council raises concerns with regard to the strategic justification of the proposed development given that Council’s strategic planning objectives are for increasing housing in close proximity to major services and infrastructure as detailed in this report. It is considered that the proposed servicing of the site is unacceptable and would create unnecessary hardship for future residents. In addition, the proposal relies upon the consolidation of an allotment that would not otherwise be entitled to seniors living housing, thus circumventing the objectives of the SEPP HSPD

The application was placed on public exhibition for a period of twenty-one days with eight submissions received. A further six submissions were received after the notification period ended. The issues raised within the received submissions have been addressed within the body of this report and are not considered to warrant refusal of the application. A number of conditions of consent have been recommended to address the issues raised within the submissions.

RECOMMENDATION

THAT:

Development Application No. 832/2010 for the demolition of existing structures and construction of a seniors living development comprising 78 independent living units, a community centre and associated landscaping works at Lot 1 DP 654433, No. 392 Galston Road, Galston and Lot C DP 38865, No. 5 Mid Dural Road, Galston be refused for the reasons detailed in Schedule 1 of this report.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 147(3) of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

Attachments:

1. Locality Plan
2. Site Plan
3. Typical Floor Plans & Elevation
4. Elevations & Sections
5. Landscape Plan

SCHEDULE 1

1. The portion of the site identified as Lot 1 DP 654433, No. 392 Galston Road, Galston does not comply with Clause 4(4) of State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004, as the site does not adjoin land that is zoned primarily for urban purposes.
2. The proposal does not comply with the Site Compatibility Criteria contained within State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004. In particular, the proposed development would be inconsistent with the objectives of the Rural BA zone and Council's current planning controls, and Council's Housing Strategy; the proposal presents an overdevelopment of the site, which would result in the expansion of an urban built form detracting from the character of the rural area and conflicting with existing, approved and future uses of land in the vicinity of the development
3. Council is not satisfied that the development will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage in a cost effective manner for future occupants of the retirement village.
4. The proposal is unsatisfactory with respect to the aims and objectives of the Hornsby Shire Local Environmental Plan to protect and enhance the environmental qualities of the area and to provide for ecologically sustainable development.
5. The bulk and scale of the proposed development is excessive and will detract from the rural views from surrounding properties.

- END OF REASONS FOR REFUSAL -