

JRPP No	2011HCC011
DA Number	DA/263/2011
Local Government Area	Lake Macquarie
Proposed Development	Seniors Living Housing
Street Address	11A Dobell Drive, Wangi Wangi
Applicant/Owner	Wangi District Workers Club
Number of Submissions	Sixteen
Recommendation	<p>It is recommended:</p> <p>(A) That DA/263/2011 be deferred for a period of up to twenty eight days to permit:</p> <ol style="list-style-type: none"> 1. The lodgement of amended plans with the deletion of units 30, 37 and 8; 2. The lodgement of amended plans showing the retention of tree No 10, adjacent Building J; 3. The lodgement of plans showing the location of any required sub-station on the site; and 4. The lodgement of plans / information showing details of retaining walls and fencing. <p>(B) After consideration of the requested details, conditions of approval be drafted by LMCC for JRPP members consideration</p> <p>(C) If the applicant fails to submit plans or the requested details are not supported, reasons for refusal be drafted by LMCC for JRPP members consideration.</p>
Report by	Andrew Leese, Senior Development Planner

DEVELOPMENT ASSESSMENT REPORT

DA/263/2011

JRPP – 2011HCC11

Proposal:	Seniors Living Housing - under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
Address:	11A Dobell Drive, Wangi Wangi Lot 1 DP 652386
Applicant:	Wangi District Workers Club
Owner:	Wangi District Workers Club
Lodged:	3 March 2011
Value:	\$11 million
Consent Authority:	Joint Regional Planning Panel (JRPP)
Referral Agencies:	Mine Subsidence Board
Exhibition:	14 March 2011 to 28 March 2011

Precis

It is proposed to construct 61 x 2 bedroom (with study) units within seven buildings (Buildings A, B, C, H, I, J and K) and an associated community centre, car parking and swimming pool.

The land is presently occupied by 32 x 2 bedroom (with study) units within four buildings (Buildings D, E, F and G) that have been constructed under DA/2956/2002. The area where works are proposed as part of this present DA have a valid consent for 46 units under DA/2956/2002. There is a near decade long development history associated with this site, which is detailed below.

The land is zoned 2(1) Residential under the Lake Macquarie Local Environmental Plan 2004. The use is permissible on the site under the zoning, as Seniors Housing, added to the permitted uses under LMLEP Amendment No 33 on 25 June 2010 and under SEPP Housing for Seniors or People with a Disability. The application is being considered under the SEPP.

The cost of works exceed \$10 million and as such, the JRPP is the consent authority.

DA History

This site was previously a caravan park. On 14 July 2003, DA/2956/2002 for 78 senior's living units on the entire site was approved by Council. Thirty two units on the lake side of the site have been completed and are now occupied. The caravan park was relocated to a site just to the north-west of this location, at 4 Summerhill Road, Wangi Wangi, under DA/2731/2002.

A section 96 application approved the staging of DA/2956/2002 in March 2006. Stage 1 being initial site and infrastructure works, Stage 2 being construction of buildings D, E, F and G and Stage 3 being the completion of the remaining buildings and site works.

DA/2615/2006 was lodged in December 2006 for an additional 26 units (to the approved 78 units), by adding an additional level to approved single level buildings. This proposal was not supported by staff and a modified plan for 14 additional units was submitted. This modified plan was supported by staff, but was refused by Council on 18 December 2007.

An appeal against the refusal to the Land and Environment Court commenced in December 2008. Hearings to these proceedings commenced in early 2009 and ended with the case being withdrawn by the applicant in November 2009.

Subsequently, a modification to the original DA for an additional sixteen units and re-design was lodged, (DA/2956/2002/D). This modification was ultimately withdrawn in late 2010, after concerns were raised with the ability to consider the proposal as a modification, given section 96 modifications are required to be substantially the same development as approved and environmental impacts.



Figure 1 – Overview of approved plans (DA/2956/2002)

Proposal

The proposal is for a Seniors Living Housing development, comprising:

- Eight buildings, comprising 61 x 2 bed units, (each unit contains an additional 8sqm study), within seven residential buildings and a community building;
- Swimming pool;
- Vehicular entries from Puna Road and two from Dobell Drive;
- Basement parking for 84 vehicles; and
- At grade parking for 12 vehicles and ambulance bay.

This will result in a total of 93 units on the site, with 32 units already completed on the site in four buildings. In greater detail the proposal is as follows:

Building A: Vehicular access off Dobell Drive to a basement car parking level for sixteen vehicles and two levels of units above, each with 4 x 2 bedroom (with study) apartments. The building is setback 4 to 6.4 metres from the Dobell Street frontage and 19 to 27 metres from the north-western boundary, (with balconies extending into this setback). The basement level is RL18 and the ridge RL28.8. The existing ground level over in this area varies from RL18.5 to RL20.3.

Building B: Basement car parking for fifteen vehicles and two levels of units above, each with 4 x 2 bedroom (with study) apartments. The building is setback 6 to 17.5 metres from the north-western boundary, (with balconies extending into this setback). The basement level is RL18 and the ridge RL28.8. The ground level over in this area varies from RL17.5 to RL 20.2.

Building C: No basement car parking. Two levels of units above, each with 4 x 2 bedroom (with study) apartments. The building is setback 6 to 17 metres from the Market Street frontage, (with balconies extending into this setback) and 5 to 10 metres from the north-western boundary. The basement level is RL18 and the ridge RL25.8. The ground level over in this area varies from RL16 to RL19.8.

Building H: Vehicular access off Puna Road (at the corner of Puna Avnue) to a basement car parking level for fourteen vehicles and two levels of units above, the lower level with 5 x 2 and the upper level 4 x 2 bedroom (with study) apartments. The building is setback 5 metres from the Puna Road Street frontage. The basement level is RL18.5 and the ridge RL29.3. The ground level over in this area varies from RL17 to RL22.

Building I: Vehicular access off the main driveway to a basement car parking level for twenty four vehicles and two levels of units above, each with 6 x 2 bedroom (with study) apartments. The building setback closest to the Dobell Street boundary is 8 metres and 3.5 metres for the access structure. The basement level is RL21.5 and the ridge RL32.3. The ground level over in this area varies from RL23 to RL24.5

Building J: Basement car parking level for fifteen vehicles and two levels of units above, each with 4 x 2 bedroom (with study) apartments. The building is setback 9 metres from the Puna Avenue boundary, (with balconies extending into this setback). The basement level is RL18.5 and the ridge RL29.3. The ground level over in this area varies from RL19 to RL22.8.

Building K: Basement car parking level for sixteen vehicles and two levels of units above, each with 4 x 2 bedroom (with study) apartments. The building is setback 9 metres from the Puna Avenue frontage, (with balconies extending into this setback)

and 4 metres from Dobell Drive boundary. The basement level is RL18.5 and the ridge RL29.3. The ground level over in this area varies from RL21 to RL24.

Community Facility: Basement workshop and community hall, meeting rooms, kitchen, library and reception. The basement level is RL18.5 and the ridge RL28.3. The ground level over in this area varies from RL19 to RL22.5.

Site Access and communal domain: The main street entrance and visitor parking area are accessed from Dobell Drive. Landscaped gardens surround the site and a communal swimming pool is adjacent to the community facility.



Figure 2 – Overview of proposed layout
(Note: Buildings D, E, F and G are completed and not part of this DA)

Comparisons with approved DA

A comparison to the approved development is provided as follows:

Use: The use remains the same, but as a percentage increase, 78 units to 93 units is a 19.2% increase in unit numbers in the overall numbers of approved units on this site and a 32.6% increase in this stage of the development (46 units to 61 units).

Building envelope/volume/height: There are additional levels to three buildings (B, J and K) and buildings L, M and N are replaced with one Building (I), which will also be

two storeys in height compared to the approved single level buildings. The approved FSR of approximately 0.50:1 is increased to approximately 0.64:1 with this proposal.

Orientation: Blocks on the site boundaries have been re-sited and the centre of the site, where buildings L, M and N were approved are now replaced with one building.

Design: While internally, most units are similar to that approved, and the external appearance of the buildings are similar, the positioning, levels, network of internal paths, upper level connections and access to units has been reorganised.

Traffic/Access: There is an additional driveway crossing from Dobell Drive and the main public access from Dobell Drive and visitor parking layout has been altered to that approved. There is also additional basement car park under Building I with 24 car parking spaces. This proposal increases parking in this stage from 64 spaces (56 basement parking spaces and 8 on-grade) to 96 spaces, an increase of 50%. The overall number of spaces will be increased from 102 to 131 spaces, a 31% increase.

Extent of Cut and Fill

Building	DA/2956 /2002	Proposed Maximum Cut	Difference
A	<i>Nil</i>	<i>-2.5m</i>	+2.5m
B	<i>-0.8m</i>	<i>-2.2m</i>	+1.4m
C	<i>-3m</i>	<i>-1.8m</i>	-1.2m
Centre	<i>-6.7m</i>	<i>-4m</i>	-2.7m
H	<i>-5.7m</i>	<i>-3.5m</i>	-2.2m
J	<i>-3.3m</i>	<i>-4.3m</i>	+1.1m
K	<i>Nil</i>	<i>-5.5m</i>	+5.5m
L M N	<i>Nil</i>	<i>-1.5m</i>	+1.5m

There is additional excavation to Buildings, A, B, J, K and I, and reduced excavation to Buildings C, Community Centre and H.

Proposed Building A: New basement car parking level, with a new driveway access from Dobell Drive and new positioning on site. Now set between 19 to 27 metres away from the western boundary, compared to 3 to 7 metres. Ridge approximately 3 metres higher than approved.

Proposed Building B: New second residential level, with additional 4 x 2 bed units and new positioning on site altering the setback from 8 to 11 metres to 6 to 17.5 metres away from the western boundary. Ridge approximately 2.5 metres higher than approved.

Proposed Building C: Slightly re-orientated building altering the setback to the north west from 5 to 7 metres to 5 to 10 metres and the Market Street setback from 6 to 10 metres to 6 to 17 metres. Ridge approximately 2.3 metres higher than approved.

Proposed Building H: Increase in size to accommodate nine units instead of eight units. Ridge approximately 3 metres higher than approved.

Proposed Building I: New twelve unit two storey building, with basement car parking, to replace buildings L, M and N, which were single storey buildings comprising 4

units, 2 units and 4 units respectively. Ridge approximately 3.5 to 4 metres higher than approved buildings in this location.

Proposed Building J: New second residential level with additional 4 x 2 bed units and new positioning on site increasing setback from 3 to 6 metres to 9 metres away from the eastern boundary. Ridge approximately 3.5 metres higher than approved.

Proposed Building K: New second residential level with additional 4 x 2 bed units and new positioning on site increasing setback from 3 to 6 metres to 9 metres away from the eastern boundary. Ridge approximately 2 metres higher than approved.

Community Facility (Club House): Reduced overall size and removal of basement bowls area. Ridge approximately 3.5 metres higher than approved.

Site Access and communal domain: Re-routing of the main public vehicle access and visitor car parking arrangement. Removal of bowling green/lawn.

Location and Surrounding development

The development is located on a steeply sloped site on the western side of Wangi Bay on the Wangi Peninsula. The site has an address to Dobell Drive, the main vehicular access to the Wangi Peninsula. The site is also accessed from Market Street, Puna Road, Puna Avenue and by pedestrians from the lakefront reserve.

The site has an area of 18,660m², (including the existing developed area). The lakefront area of the site has now been developed and the 32 units completed are occupied (or available for occupation). Access to the car parking associated with these units is from Market Street.

The area is predominately a low density residential area, with the Wangi Workers Club and other recreational facilities (eg. bowls club) located to the north-west of the site. There is a child care centre opposite and further to the west is the old Wangi Power Station.

The site is identified as being in the coastal zone. The local Wangi Wangi shopping centre is approximately 1km to the east of the site.



Figure 3 – 2010 Site Aerial Photograph showing completed works.

Recommendation

After assessment, the application is not supported, due to the excessive bulk and scale of the proposed development. It is acknowledged that with the removal of three of the proposed 41 units, namely units 30 (Building A), 37 (Building B), 8 (Building C), the application could be supported.

These units create three level elevations at the site boundaries (a development standard of the SEPP HSPD), impact on privacy and or fail the Council setback provisions for Developments at the 2(1) and 2(2) residential zone interface, which has been used to provide a guide to acceptable development. A fourth unit considered problematic in terms of the three storey presentation to the street is considered acceptable on the basis of the retention of a tree on site to reduce visual impact.

The applicant does not support these changes, providing other methods to reduce the impacts of these units, (eg additional landscaping, mounding and privacy screens), which are not supported by staff.

Energy Australia has also indicated the possibility that a sub-station may be required for the development. Council requires to see its proposed location prior to determination, so that its location will not adversely affect the streetscape, local or internal residential amenity.

Council's Landscape Architect has also requested plans / details of fencing and retaining walls.

Accordingly, the application is recommended to the JRPP for deferral, to permit the applicant to lodge amended plans, which address Council staff concerns and the removal of three of the proposed forty one units, namely units 30 (Building A), 37 (Building B), 8 (Building C) and

the provision of documentation to enable staff to assess the impacts associated with utilities required by Energy Australia.

The Assessment

This report provides an assessment of the material presented in the application against the relevant State and local planning legislation and policy.

Section 79C: Potential Matters for Consideration

79C(1)(a)(i) the provisions of any Environment Planning Instrument (EPI)

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

Appendix B details the matters raised in this SEPP. It is noted that the proposal does not comply with a number of development standards set out in this SEPP. As such, the applicant has lodged a SEPP 1 objection to these development standards. These objections are considered in this report below.

State Environmental Planning Policy 1 - Development Standards

The aim of the policy is to provide flexibility in the application of planning controls in circumstances where strict compliance with those standards would be unreasonable or unnecessary, or hinder attainment of the objectives of the Act. The policy outlines that where except for a development standard, a development application could be made, an application can be submitted to Council so long as it is supported by a written objection stating that compliance with the development standard is unreasonable or unnecessary in the

circumstances, and specifying the grounds of that objection. Accordingly, the applicant submitted such an objection.

The proposal does not comply with the following development standards from clause 40 of SEPP Housing for Seniors or People with a Disability (HSPD):

- (4)(a) *the height of all buildings in the proposed development must be 8 metres or less,*
- (4)(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,*
- (4)(c) *building located in the rear 25% area of the site must not exceed 1 storey in height.*

As such, the SEPP 1 objection submitted by the applicant applies to vary the above development standards on the basis that compliance with those standards would be unreasonable or unnecessary.

The SEPP 1 objection tests the non-compliance with the development standard against two previous judgements of the Land and Environment Court: *Winten Property Group Ltd v North Sydney Council* [2001] LGERA 79 and *Wehbe v Pittwater Council* [2007] NSW LEC 827.

Until recently the assessment of the merits of a SEPP 1 objection relied upon what was termed the 5 part test established in the Land and Environment Court in *Winten Property v North Sydney (2001) 130 LGERA 79*.

Under the case of *Winten Property Group Ltd* the SEPP 1 addresses the following questions which are not recognised in the new test under *Wehbe*:

2. *Is the planning control in question a development standard?*

The numerical standards identified in the clause 40 of the SEPP is headed "Development Standards". The requirements can therefore be varied by the consent authority pursuant to the provisions of the Policy.

3. *What is the underlying object or purpose of the standard?*

The SEPP does not explicitly state the principal purpose or objectives of these standards, though it does note for (4)(b) "**Note.** *The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape,*" and sets out general aims as follows:

2 Aims of Policy

(1) *This Policy aims to encourage the provision of housing (including residential care facilities) that will:*

- (a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) *make efficient use of existing infrastructure and services, and*
- (c) *be of good design.*

(2) *These aims will be achieved by:*

- (a) *setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*
- (b) *setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and*

- (c) *ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.*

The submitted SEPP 1 objection also notes the objective relating to Seniors housing development defined at clause 14 of the SEPP, which reads as follows:

14 Objective of Chapter

The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.

The remaining tests of the *Winten* case (as follows) are considered by the SEPP 1 objection in relation to the new test by *Wehbe* and therefore won't be discussed here for the purposes of repetition:

4. *Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act?*
5. (a) *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

(b) *Is a development which complies with the development standard unreasonable or unnecessary?*
6. *Is the objection well founded?*

More recently, the Honourable B J Preston, Chief Judge of the Land and Environment Court, in *Wehbe v Pittwater Council* [2007] NSW LEC 827, revisited the *Winten* test and in his judgement set out 3 requirements, which should be satisfied in order for a consent authority to uphold a SEPP 1 objection. In addition, the Chief Judge listed 5 ways of establishing that compliance with a development standard is unreasonable or unnecessary. The three requirements to be satisfied are as follows:

1. *The applicant must satisfy the consent authority that the objection is well founded, the objection is to be in writing and must be an objection that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and it must specify the grounds of the objection.*

The applicant has submitted a written objection under SEPP 1 which stipulates that it has objections to the strict application of the development standards for the 8 metres height limit, two storey limit adjacent to a boundary of the site and one storey height limit in the rear 25% of the site, under Clause 40 the SEPP (Housing for Seniors or People with a Disability) 2004. The SEPP 1 objection specifies the grounds of the objection and states that adherence to the development standards to which the development does not comply is unreasonable and unnecessary on the following grounds, extracted from the full objection by Council's Planner:

Avoid an abrupt change in the scale of development in the streetscape

- Number of frontages, characterised by different scale and intensity of development.
- Due to slope of land, present as 3, 2 and 1 storeys, which is similar to development in the area.
- Existing vegetation (Puna Avenue) is retained.

- Additional excavation to reduce height of a number of buildings.

Control the potential adverse impacts of the development on adjoining properties (privacy loss/overshadowing/views-vistas/bulk-scale)

- No adverse impacts in terms of overshadowing or access to sunlight.
- No impact in terms of overlooking or privacy.
- Increased setbacks provided compared to approved development.
- Existing vegetation (Puna Avenue) is retained.
- Proposal aims to increase view corridors for adjoining dwellings where reasonable.

Maintain residential amenity and character of the area

- Bulk and scale of buildings are minimised by generally maintaining a 2 storey appearance to street frontages.
- Negligible impact on the residential character and amenity of the locality.

2. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the Policy's aims of providing flexibility in the application of planning controls operating by virtue of development standards where strict compliance with those standards 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 and Assessment Act 1979.*

The specifics of these objects 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 applicant has noted the following in relation to the objectives of the Act:

The proposed development would achieve the objects specified in Section 5(a)(i) and (ii) of the Act in the following way:

- *The subject land is demonstrated in the accompanying SEE to be physically suitable for the proposed development, which will increase the supply and diversity of dwellings that meet the needs of seniors or people with a disability and make efficient use of existing infrastructure and services. The proposal will also be consistent with the zone objectives and represents the proper management and development of cities and towns for the purpose of promoting the social and economic welfare of the community; and*
- *The proposal promotes the orderly and economic use and development of the land for the purpose of much needed Seniors Housing in the broader locality and region, with access to the necessary services and infrastructure for such development.*

3. *It is also important to consider:*

- 1) *Whether non-compliance with the development standards raises any matter of significance for State or regional planning; and*
- 2) *The public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

It could be considered that non-compliance with the standards would not raise any matter of significance for State or regional planning. The applicant has made the following comments:

Non-compliance with the development standard would not raise any matters of significance for State or regional planning. The proposed development has demonstrated consistency with aims and objectives of SEPP (HSPD), LM LEP 2004 and other State Environmental Planning Policies. The proposal is also consistent with the Lower Hunter Regional Strategy which clearly identifies a shortage of, and the need for, further housing that is suitable for seniors or people with a disability. The region has an increasing and already higher than average ageing population which will only serve to create more pressure on services for seniors. The proposed development will not have any adverse environmental impact in the locality and will not set an undesirable precedent as previously discussed.

It is considered that there would be no public benefit in strictly applying or maintaining the subject planning control as it has been demonstrated to be unreasonable and unnecessary in the circumstances of this particular case, and strict compliance would tend to hinder the attainment of the objects of Section 5(a)(i) and (ii) of the Act. The non-compliance with the development standard would not undermine the standard itself or the provisions of Part 3 of the Act.

As identified by Preston, there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. 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;
5. 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.

Development Planner's Conclusion:

1. Height and Levels adjacent the boundary:

Buildings A, B, C, H and J exceed the 8 metres height limit (height being defined as per cl 3 of the SEPP HSPD, being the ceiling of the topmost level.) Buildings A, B, C and J which all align with side boundaries also exceed two storeys in height in part. The applicant has argued that the proposed areas of non-compliance will have minimal visual impact and are caused by virtue of the slope of the land, as noted in the SEPP 1 objection.

Comment:

Given the non-compliance with Building H is within the site, having limited external impacts, the height of this building is considered acceptable. The building has had a unit 'removed' from the upper level adjacent the boundary to reduce visual impacts from Puna Road.

Council, however, raised concerns with the applicant at a meeting in July 2011 regarding the three storeys elevations to the boundary of Buildings A, B, C and J. In particular the elements that have the most significant non-compliance, being units 30 (Building A), 37 (Building B), 8 (Building C), and 42 (Building J) and the possible removal of these four units to reduce the most significant impacts.

The applicant responded with plans / details for landscaping treatments and privacy screening to argue the retention of these units. When viewed from neighbouring properties and site boundaries these buildings will present as three storeys. The intent of this SEPP is to integrate higher density development into low density developments, with the aim of limiting the height, particularly along the site boundaries to two storey to help with this integration. Buildings presenting three storey elevations to the site boundaries fail to integrate the site into the local context and have an unsatisfactory visual impact. Greater compliance with this standard is considered necessary.

Accordingly, units 30, 37 and 8 should be removed, resulting in an end treatment that is proposed on building H. Unit 42 can be retained, but subject to the retention of the tree (No 10), which will reduce the visual intrusion of the building's proposed height at this location. This unit is also separated from neighbouring properties by a roadway. (It is noted that Council's Tree Officer independently recommended retention of this tree given its distance from the proposed buildings.)

It is also noted, that as a guide to acceptable development, Council has considered the setback provisions applicable at the 2(1) and 2(2) zone interface. These controls, found in Section 3.4.1 of DCP No 1, establish a recession angle that sets a building envelope based on a compass tool and the sites orientation. Units 37 (Building B) and 8 (Building C) do not comply with the envelope control established.

2. Rear 25% Single Storey: The applicant has argued that the rear of the site is towards the Lake and the area of the site associated with this application is not the rear and this standard does not apply.

Comment:

While it could be argued that the 'rear' of the site, which has a Dobell Drive address is the area to the Lake, the original approval had two storey buildings towards the Lake and single level buildings along Dobell Drive, providing a significant area of the site with single level buildings. This proposal has no single level residential buildings.

However, the site is a stand-alone site and is not part of a standard subdivision pattern, where this standard is aimed to protect the rear yards of neighbouring residential properties. Strict compliance with this condition is not considered necessary, but does not outweigh the concerns raised with the non-compliance with the other two standards.

With respect to the development application and the submitted SEPP 1 objection it is determined that the objection is generally well founded for the following reasons:

- the objectives of the EPA Act, SEPP HSPD and 2(1) Residential Zone are achieved by the proposed development, subject to the removal of three proposed units;
- the proposed development, with the removal of three units, will be more compatible with the low density residential character.

Development of the land for seniors housing on a large sized allotment, which is in a zone that permits seniors housing, will allow for development in an orderly and economic way. The development will not hinder the attainment of proper management and development of the site.

The development of the site would neither undermine the planning objectives for the zone, nor create a precedent for undermining the minimum height controls located in the SEPP owing to the particular circumstances of the development application at hand, which are individual and unique to this development application. Furthermore, the subject land has an area of 18,660m², representing serviced urban land, a resource which is becoming increasingly scarce.

Therefore, as the objection is well founded, any requirement for strict compliance with the provisions of cl 40 of SEPP HSPD (2004), is considered to be unreasonable and unnecessary having regard to the specific circumstances relating to the subject land, the proposed development and the recommended changes.

Clause 21 of the LMCC LEP 2004 has also been considered in relation to this SEPP 1 objection below.

State Environmental Planning Policy 71 Coastal Protection

Clause 8 of the SEPP raises 'Matters for Consideration' for developments within the coastal zone. A SEPP 71 assessment is attached in Appendix A.

Lake Macquarie Local Environmental Plan 2004 (LMLEP)

Clause 16 Development Consent – matters for consideration

(a) Lifestyle 2020 Vision, Values and Aims

In considering this application Council must have regard to the following vision, values and aims of the Lifestyle 2020 Strategy as expressed in Part 2 of the LMLEP:

Vision

The vision for land to which this plan applies is described in the Lifestyle 2020 Strategy, which is available from the office of the Council.

Values

The 4 core values of that strategy are sustainability, equity, efficiency and liveability.

Aims

The aims of the Lifestyle 2020 Strategy are to:

- (a) *provide the community with realistic expectations about the future development patterns for land in Lake Macquarie City, while retaining flexibility for land use decision making in the longer term, and*
- (b) *reinforce and strengthen centres so that a wide range of commercial and community services may be provided in a timely and accessible manner, and*
- (c) *provide local employment opportunities for residents and promote economic development consistent with the City's natural, locational and community resources, and*
- (d) *guide the development of urban communities that are compact, distinct and diverse and include a range of housing types and activities, and*
- (e) *achieve a strong sense of positive community identity, through the development of local communities that are safe and liveable and offer a diversity of uses, economic opportunities and ready access to services, and*
- (f) *develop an attractive urban setting for the City which reflects its physical and natural environment, and visual character, and*
- (g) *manage the City's natural environment so that its ecological functions and biological diversity are conserved and enhanced, and contribute to the City's overall well being, and*
- (h) *manage the City's heritage and economic resources in a way that protects the value of these resources and enhances the City's character, and*
- (i) *integrate land use with the efficient provision of public and private movement systems.*

The proposal provides local housing for seniors. The site already has approval for such a use, with this redesigned application proposing an additional fifteen units to the site. It is considered that the development will not adversely detract from the visual setting or affect surrounding communities to a degree that will impact upon the quality of life of residents in the locality or have a significant environmental impact, subject to removal of three units.

(b) Objectives of Zone

The land is zoned 2(1) Residential, (see Figure 3 below). The objectives of this zone are to:

- (a) *permit development of neighbourhoods of low-density housing, and*
- (b) *provide for general stores, community service activities or development that includes home businesses whilst maintaining and enhancing the residential amenity of the surrounding area, and*
- (c) *ensure that housing development respects the character of surrounding development and is of good quality design, and*
- (d) *provide for sustainable water cycle management.*

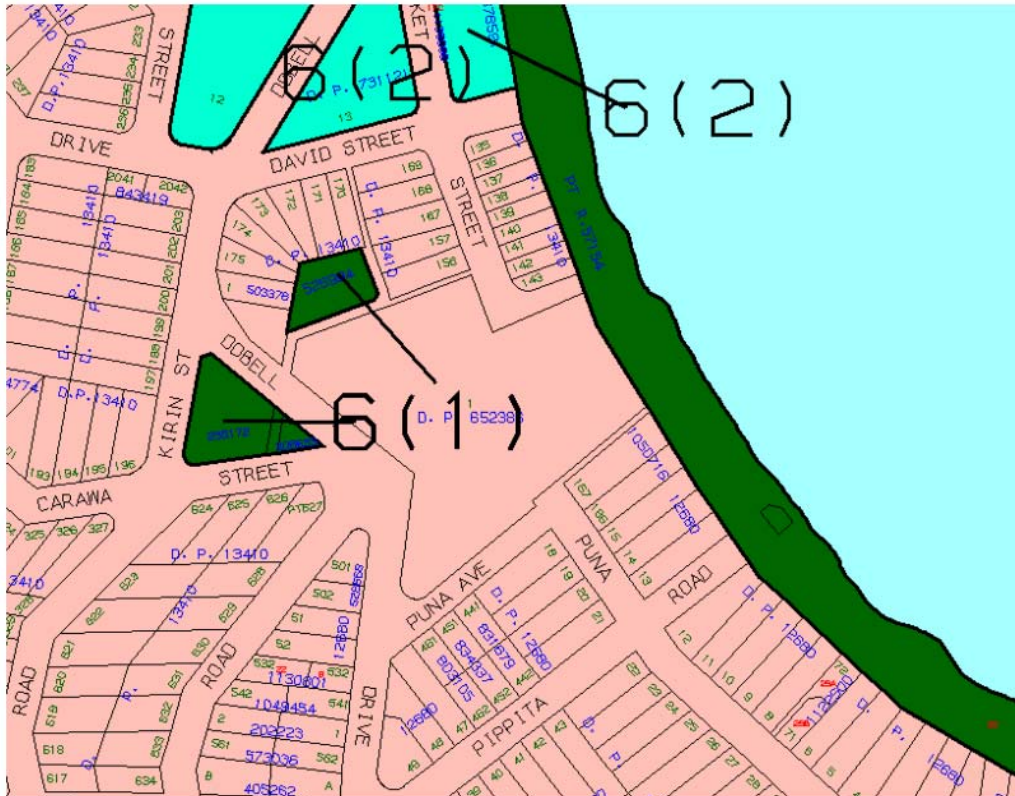


Figure 4 – Zoning of the land / locality – LMLEP 2004

The design internally, architectural style and liveability for future residents of the site is significantly improved on that already approved, particularly given the site constraints i.e slope of the land. The proposal will not totally complement the locality given the existing neighbourhood, which is one of low density residential dwellings. Council's Urban Design officer has made the following comments in this regard:

- *The scale of the buildings is larger than the existing residential development surrounding however there are also other larger scale buildings in the locality.*
- *Whilst the buildings are of a larger scale, they do propose a more dense form of accommodation and as such you would expect a different and probably larger building form.*
- *The separation provided between the buildings in my view assists to break up the built form and reduces the dominance of the scale proposed. The spaces in and around the buildings are generous for the most part, when considered against previous designs and also other larger forms in the locality.*
- *The spaces in and around the buildings provide adequate curtilage to cater for the design as proposed.*

While these comments are supportive of the proposal, they were made on an assessment of the proposal in the larger scale of the development. On a more detailed assessment staff have raised concerns with elements of the proposal that have lead to the recommendation for deferral.

Clause 17 Provision of essential infrastructure

The site is fully serviced by essential infrastructure.

Clause 21 Development the subject of SEPP 1 application

The application proposes to vary development standards located in SEPP HSPD. The specifics of this variation, height above 8 metres, three storey development at the site boundaries and single storey development at the rear 25% of a site, have been previously detailed in this report above.

Clause 21 requires Council to consider the underlying objectives of the development standard and the issues prescribed in Clause 21 when determining an application the subject of an objection. While there are no defined objectives of the development standards, the matters relating to Clause 21 are discussed below:

a) Neighbourhood and local context

The subject site is zoned 2(1) Residential, which supports low-density housing. The neighbouring and local context is mainly characterised by one to two storey detached dwellings. However, the use is now a permissible use in the zoning and as noted by Council's urban design officer, the separation provided between the buildings assists to break up the built form and reduces the dominance of the scale proposed.

b) Topography

Natural topography and landforms are maintained through landscaping features and the setbacks from the site boundary.

c) Solar orientation

The proposal has good solar access. The proposed departure from the development standards will have no unreasonable impact on solar access.

d) Neighbourhood amenity and character

In regards to neighbourhood amenity, the proposed departure from the SEPP controls will not unreasonably impact upon the residential amenity of adjoining properties. The design of the proposed dwelling will maintain acceptable solar access for existing dwellings in the neighbourhood. Views will be affected, but these impacts are not considered detrimental. Character can be maintained by removing units that most significantly present as three storeys at the site's boundaries.

e) Privacy

It is considered that the proposed building sitting, setbacks and window locations of the proposed buildings will have no unreasonable impact on acoustic or visual privacy, subject to screening and the deletion of unit 37 (Building B).

f) Overshadowing

The proposed departure from the development standard will have no unreasonable impact on overshadowing. Shadow diagrams submitted with the application demonstrate that there is no unreasonable impact on solar access or shadowing to adjoining dwellings.

g) Security, safety and access

The proposed departure from the development standard will have no impact on security or safety.

h) Local infrastructure

Local infrastructure such as roads, reticulated water and sewer, rubbish removal, electricity and telecommunication facilities are available to the site.

i) Landscape design

The proposed departure from the development standard will have no unreasonable impact on landscape design. Landscape plans were submitted with the application and are considered suitable for the development proposed. The proposed landscaping will enhance the amenity of the existing site.

j) Waste disposal

The proposed departure from the development standard will have no unreasonable impact on waste disposal. A suitable condition will be issued on any development consent granted to ensure that building waste is managed appropriately during construction.

It has been demonstrated that the development standards are unnecessary because of the site area and design. Therefore it would be unreasonable to prevent the development based on the non compliance with the standards within SEPP HSPD.

Clause 22 Foreshore Building Line

A 6 metres foreshore reserve building line is applicable to the site. The proposal does not affect the buildings already located adjacent the lakefront reserve.

Clause 29 Building heights

Proposed Heights

As the height* exceeds 8 metres, for five of the eight buildings, consideration must be given to whether the height is compatible with the heights of other buildings in the vicinity or locality.

Surrounding buildings

Development within the immediate vicinity of the site includes detached residential dwellings, predominantly single storey, though many with undercroft areas given the topography. The Wangi Workers Club is located to the north west of the site, and is also primarily single storey. The completed buildings on the site, present as two/three storey buildings from neighbouring properties. The applicant has noted, and it has been noted in the area that more recent developments have been two storey with a third level garage, particularly on steep sloped sites.

Compatibility with surrounding buildings and site attributes

Given the area does not have any existing multiple dwelling units, it is important that the dwellings integrate satisfactorily into the landscape. The slope of the land does not help the development, as a number of buildings present as three storeys where they exceed 8 metres. This height is not considered compatible with the local area and will be visible from the public sphere. In this regard it is considered that the proposal will cause unreasonable impact on the surrounding built environment unless units are removed to reduce the most significant impacts and the tree on site adjacent Building J is retained.

Issues with buildings/units that present as three storeys and exceed 8 metres in height have discussed in detail above.

*** NB: The definition of height in the SEPP HSPD is different to the definition of height in the LMCC LEP 2004. The discussion above has been related to the height as defined by the SEPP HSPD, as the application is being considered under the SEPP.**

Clause 30 Control of pollution

Conditions of any consent will require appropriate construction methods to be used and all waste is appropriately disposed of.

The application was referred to Council's Environmental Health Officer. No objections were raised but concerns were raised with the potential noise levels from the workshop located under the community building. The applicant has indicated this workshop will be used by staff only. A number of standard noise related conditions would be included in a recommendation for approval.

Clause 31 Erosion and sediment control

The site has a T2A and T3A geotechnical zoning. Council's Erosion Officer requested more detail than originally lodge. Additional information was received. Recommended conditions for any consent will require appropriate means are taken to ensure no issues arise with erosion and sedimentation during construction. The plans, (which will still require amendment), will need to be independently certified.

Clause 32 Flood prone land

The land is not flood prone.

Clause 33 Bush fire considerations

The land is not bush fire prone.

Clause 34 Trees and native vegetation

A number of trees need to be removed for the already approved development. The site not in any identified ecological corridor

Council's Tree officer has raised no objections to the proposal, but requested the retention of tree '10' adjacent building J. This tree has been recommended to be retained as a measure to reduce the visual impact of the northern end of Building J.

Clause 35 Acid Sulfate Soils

The site is identified as class 5, land being within 500 metres of an area of having a higher risk of acid sulfate soils. Council's standard condition in relation to low risk ASS areas would be imposed if approval was granted.

Clauses 36 - 62

Not applicable.

79C(1)(a)(ii) the provisions of any draft EPI

There are no amendments that have any impacts in relation to this particular lot or use.

79C(1)(a)(iii) the provisions of any Development Control Plan (DCP)

Development Control Plan No. 1 – Principles of Development

Section 1.8 – Development Notification Requirements

Mines have provided a letter of approval dated 14 March 2011.

Hunter Water have stamped the plans dated 3/2/11.

Adjoining and adjacent neighbours were notified of the proposal. Sixteen submissions were received in response to the notification. These objections are addressed at section 79C(1)(d) of this report.

2.1.1, 2.1.2, and 2.1.4 Ecology

The site is not located within any identified ecological corridor. It is considered that this proposal will have no adverse impacts on native flora and fauna.

2.1.3 Scenic Values

The site is located within a Zone A scenic management area. Zone A is identified as having the highest valued scenic quality.

The nature of the development will impact on the scenic quality of the area given the development proposed and its proximity to the Lake. A visual analysis was undertaken on behalf of Council. This analysis concluded

“..the complete project is likely to become the single largest mass of the building in that part of the lake and visually quite distinctive from the generally smaller scale and discrete built form that generally characterises the Wangi Wangi Peninsulahowever, ...the development will not mask out the dense canopy trees of the Wangi ridgeline immediately behind and above the site.....secondly the current application will credibly retain most of the highly important line of dense trees along its Puna Avenue frontage, whereas the current third stage consent will almost certainly result in the loss of those highly valuable trees.”

2.1.5 Bushfire Risk

See comments at ‘Clause 33’ above.

2.1.6 - 2.1.7 Waterbodies

Initial sediment control plan submitted were considered insufficient, given the scale of the development and the past history of erosion from the site. Amended plans were received that are still considered unsatisfactory. However, conditions in relation to sediment control have been recommended for any approval, including rectifying the sediment control plans and having them independently certified prior to issue of any CC.

2.1.9 Sloping Land and Soils

The land has a slope and is identified as having and T2A and T3A geotechnical zoning. Geotechnical engineers Douglas Partners have certified the plans in relation to slope and geotechnical issues, which has been noted by Council’s Development Engineer.

While Council’s DCP identifies an acceptable solution of max 1 metre cut / fill, the site has a significant slope and the changes in the extent of excavation / fill is not considered to be substantially different from that approved or the impact this level of excavation / fill would cause.

2.1.10 Acid Sulfate Soils

See comments Clause 35 above.

2.1.11 Erosion Prevention and Sediment Control

See comments at Clause 31 of this report, above.

2.1.12 Mine Subsidence

The Mine Subsidence Board approved of the proposal on 14 March 2011 and provided General Terms of Approval which would be attached to any development consent issued.

2.1.13 Contaminated Land

Given the past use/s of the site and the existing approval, it is considered that contamination is not likely on this site.

2.1.14 Energy Efficiency

Complying Basix Certificates were lodged with the application. (Cert no 356695M 24 Jan 2011)

2.1.15 Noise and Vibration and 2.1.16 Air Quality and Odour

It is considered that the finished development will not generate adverse levels of noise or vibrations.

Construction noise and use (mechanical ventilation/air conditioning/lifts) can be kept within acceptable limits through conditions of consent and satisfying the relevant Australian Standard and EPA Regulations.

The proposal will not have an adverse impact on the air quality of the area, subject to mechanical ventilation, air conditioning etc complying with the relevant Australian Standard and future compliance with EPA Regulations.

2.1.17 Building Waste Management

Council's standard condition regarding building waste would be included in any approved application.

Section 2.2 – 2.4 Social, Economic and Heritage
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Social impact: There is a strong need for more housing of this nature. However, it should be located in areas with good transport, access to services and medical needs. The applicant has provided details of available medical services in the area. Four local medical centres were contacted in late 2010 to confirm availability of services. Their responses were as follows:

Morisset Medical Clinic: Three doctors available for patients

Westlakes Medical Centre (Rathmines): Preference for patients from Rathmines and Arcadia Vale, but would consider new patients from Wangi.

Toronto General Practice: Seven doctors all closed books.

Wangi Surgery: Single doctor whose books are presently open to new residents of the area, but not large number of places remaining.

Council's Coordinator Social & Community Planning made the following referral comments:

I refer to the subject application and advise that given that the proposal is only for an additional 15 units above what is already approved, I do not believe that the proposal will have any significant social impacts.

In conclusion it is considered that the social impacts caused by the application would not be adverse.

Economic impact: It is considered that there is no adverse economic impact caused by this development.

Heritage Impact: Nil

Section 2.5 – Stormwater Management, Infrastructure and On-site Services

2.5.1 Essential Infrastructure

The site is fully serviced with essential infrastructure.

2.5.2 On-Site Wastewater Treatment

Not applicable.

2.5.3 Stormwater Management (Drainage System Design) and 2.5.4 On-Site Stormwater Harvesting (Source Controls)

Council's Development Engineer requested additional stormwater plans and information. The applicant provided this information and the Development Engineer has signed off on the information.

2.5.5 Waste Management fro Multi-Unit Dwellings

A waste Management Plan was submitted for the site with the application. This indicated that Veolia Environmental Services (private contractors) are seeking to manage the site in relation to waste removal.

Section 2.6 – Transport, Parking, Access and Servicing

2.6.1 Movement System

Not applicable.

2.6.2 Traffic Generating Development

The additions are under the figure (i.e. 300 dwellings) identified as Traffic Generating Development under SEPP (Infrastructure) 2007. The application was referred to Council's Traffic Engineer for comment and no objection to the proposal was raised.

2.6.3 Road Design

Not applicable.

2.6.4 - 2.6.5 Pedestrian / Public Transport

The site is within walking distance of a local club and private bus routes that connect the Wangi peninsula with the Rathmines and Toronto commercial centres.

2.6.6 Vehicle Parking Provision

The parking requirements for this development are stipulated under the SEPP HSPD and have been satisfied.

Council's controls would require 61 resident parking spaces (1 per 2 bed unit) and 31 visitor parking spaces (0.5 per unit). This is 92 in total.

96 spaces have been provided, 84 spaces for residents and 12 allocated to visitors.

2.6.7 Car Parking Areas and Structures

The car parking spaces and manoeuvring areas are considered satisfactory.

2.6.8 Vehicle Access

Sight lines to the new driveway crossing off Dobell Drive have been a concern. The applicant was requested to provide additional information on site lines and the issue is now considered satisfactory by Council's Asset Management staff.

2.6.9 Access to Bushfire Risk Areas

The proposal will not adversely affect access to bushfire risk areas.

2.6.10 Servicing Areas

Adequate areas are provided on site for service vehicles.

2.6.11 On-Site Bicycle Facilities

Although not specifically indicated on the plans, suitable areas for on-site bicycle facilities can be provided within the car parking areas.

2.6.12 Non-Discriminatory Access and Use

An access audit was requested and provided. It was referred to Council's Access Officer who made these final comments:

I've looked at the statement supplied by Lindsay Perry in relation to circulation spaces. She believes that compliance with AS 1428.1 (2009) can be achieved within the existing building footprint. Please condition this application to include compliance with AS 1428.1.

Information supplied about the community bus is satisfactory but its frequency and use needs to have a monitoring process in place. Whilst management makes the decisions about the use of the village resources and residents need to have a documented process about how they can have input.

Community centre and support services satisfactory.

These issues can be conditioned. Concerns raised by existing residents are discussed in the public submissions section of this report.

Section 2.7 – Streetscape and the Public Realm

2.7.1 Streetscape and Local Character

The locality predominantly consists of detached dwellings. In this situation the site will present a different style of development to the area and Dobell Drive.

While the development is not dominated by garages or vehicular entrances, potentially found in a standard residential subdivision, there is an element of a 'walled in' environment. The Council's urban design officer has commented that, "*The spaces in and around the buildings are generous for the most part, when considered against previous designs and also other larger forms in the locality.*" The removal of three units and additional tree retention will reduce the most significant impacts.

2.7.2 Landscape

While there are no objections to the landscaping scheme. Greater details in relation to fencing are retaining walls were requested as follows:

All the fencing and retaining wall structure that visible from the streets should be detailed in the landscape documentation, including heights, materials, and finishes.

These have been requested as part of the information requested in the deferral.

2.7.3 - 2.7.4 Public Open Space

A section 94 contribution is applicable. The proposal includes fifteen additional units to the approved DA for the site. No section 94 contribution was levied against DA/2956/2002, the original DA for this site. Section 94 contributions were imposed on DA/2731/2002 for the new caravan park site at Summerhill Drive. With this knowledge, Council's S.94 officers have made the following comments:

I refer to the subject application known as 11A Dobell Drive, Wangi Wangi and advise that the proposed development falls within the Lake Macquarie Section 94 Contributions Plan No. 1 – Citywide (2004) – Toronto Catchment.

The proposed development was anticipated in the section 94 Citywide contributions plan. The development will generate a demand for the facilities and services as identified in the contributions plan and it is recommended that the development be levied a section 94 contribution for the 61 seniors living units.

The levying of 61 seniors living units is based on the outcome of Valhalla Village Pty Ltd v Wyong Shire Council [2009] NSWLEC 1355 (27 October 2009).

There are many similarities between the subject development application and a development proposal as outlined in Valhalla Village Pty Ltd v Wyong Shire Council [2009] NSWLEC 1355 (27 October 2009). Similarities include:

- 1. Previous consent issued for the development of residential dwellings on an existing caravan park,*
- 2. At the time of consent, a section 94 contributions plan was in place, and nil s94 contributions were imposed as a condition of consent,*
- 3. The development of residential units was not fully completed, and*
- 4. A new development application was lodged for the component of the development not completed, together with, additional residential dwellings.*

The proponent acknowledges that the subject development is not substantially the same as that development approved under DA/2956/2002.

It is recommended that the levies as outlined in Table 1 (over page) be applied to the subject development. Please note the levies recommended in Table 1 are subject to indexation and are valid until the close of business on 14 August 2011.

The contribution was calculated at \$477,935.

While no contribution was applied to the original DA, Council's s.94 officer has made their recommendation, based on the precedent discussed above, to impose the contribution. Their recommendation is not opposed. A section 94 levy would be recommended with any approval.

2.7.5 Light, Glare and Reflection

Council's standard conditions in relation to light and glare would be included in any recommended conditions of consent. A colour palate has been submitted with the application. The colour palate is generally of earthy tones, which is Council's preferred colours in a lake front area.

2.7.6 Views

A number of properties to the west of the site enjoy views of Lake Macquarie over the site. The Land and Environment Court has established a set of planning principles in relation to views, where the extent of view, the importance of the view and compliance with applicable planning controls and development standards are all considered.

An assessment of the view loss indicates that views will be lost by the approved development and if the site had been developed as a standard residential subdivision. Views have also been opened by the removal of amenities and caravans from the existing site. Would stricter compliance with the development standards help ensure some view corridors for these properties are retained? The planning principles are outlined in the judgement *Tenacity Consulting v Waringah* [2004] NSWLEC 140 – judgement date 07/04/2004. The relevant part of the judgement is as follows:

26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Planners Comment

There are four properties that are most potentially affected by view loss. These are:

- 14 Dobell Drive; This property will lose scenic views to the north and north east, while retaining those to the east.
- 16 Dobell Drive; This property will lose scenic views to the north and north east, while retaining those to the east.
- 41 Carawa Street; This property will lose most scenic views to the north, and
- 43 Carawa Street; This property will lose most scenic views to the north and north east.

The majority of the views available to these properties are over the air space of the development site. In terms of the *Tenacity* case the following comments are made:

Step 1: The views are not considered iconic and the views are only partial, ie they are distant views of the lake, not the waterfront area. (The applicant has also indicated the views have been improved with the removal of caravans and an amenity block from the site.)

Step 2: The views are visible sitting and standing at these sites, (though better standing). The property that would lose the most views (No 43 Carawa Street) has a front balcony to access the views. The views are generally from the front boundaries of these neighbouring properties.

Step 3: The view loss has been considered from the external aspects of the neighbouring properties, as this is where the views are most accessible. The view loss for No 14 and 16 Dobell Drive and 41 Carawa Street is considered moderate, and severe for No 43 Carawa Street

Step 4: The buildings that most affect views, Buildings I and K comply with the 8m height limit development standard, (with height defined by the SEPP). It is considered that a single storey development, as already approved on the site will have as significant an impact on view loss as this proposal, with most concentrated views set low in the horizon.

While the existing view loss will be significant, in particular for 43 Carawa Street, the property has had a benefit of an empty site for a number of years (approx 6-7 years). The buildings that most impact on the view comply with the height controls for the development and the property is on level with the highest point of the development site, not set above it. If the development site had detached dwellings fronting Dobell Drive in a standard residential subdivision, there would be area for approximately ten dwellings that would have a similar view impact.

A view corridor has been provided by the design, between Buildings A and I, to provide an opportunity for distant views from the Carawa Street properties, so an outlook is retained.

2.7.7 Signs

No signs are proposed as part of this application.

2.7.8 Fences

Open palisade and wire fencing is used for the lakeside boundary. Additional information is requested (as part of the deferral) to ensure this fencing will continue to be used around the site boundary.

2.7.9 Safety and Security

The application was referred to Council's Community Safety officer who made the following comments:

I refer to the subject application and advise that, the crime risk assessment provided by Jillian Kral from WorleyParsons is a comprehensive document which adequately summarises the crime risks in the proposed location. However, as often the case when applicants enlist the services of qualified Safer by Design practitioners, the applicant has not provided further comment on the crime risk assessment provided. The crime risk assessment has many recommendations for the consideration of the applicant to implement. Therefore the following options exist for a solution to this situation;

- 1. The recommended actions as documented in section four (4) of the report at pages 12 -16 be conditioned as a requirement prior to occupation certificate, or*
- 2. The applicant provides additional information by identifying the proposed recommendations from section four (4) for implementation and consideration by Council for further assessment.*

The issues raised by the officer can be conditioned as per option 1.

Section 3.1 - Lake, Waterway and Coastline Development

3.1.1 - 3.1.2

The site does not directly adjoin the Lake or a waterways zone. It is considered that the proposal will not have an adverse impact on the aquatic or ecological impact on the coastal zone, (subject to good erosion control). Nor have an adverse impact on the scenic quality given the additional heights proposed.

Section 3.2 – Subdivision – Not applicable

Sections 3.3 – Urban Centre Development – Not Applicable

Section 3.4 and 3.5 - Housing

Considered under SEPP HSPD.

79C(1)(a)(iiia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

Not applicable.

79C(1)(a)(iv) any matters prescribed by the regulations

The Regulation 2000 provides:

- (1) *For the purposes of section 79C (1)(a)(iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:*
- (a) *in the case of a development application for the carrying out of development:*
 - (i) *in a local government area referred to in the Table to this clause, and*
 - (ii) *on land to which the Government Coastal Policy applies,**the provisions of that Policy,*
 - (b) *in the case of a development application for the demolition of a building, the provisions of AS 2601.*

The application is not for the demolition of a building. The Government Coastal Policy applies. As noted elsewhere the site is at the close to the Lake and it is considered the proposal will have an adverse visual impact on this zone.

79C(1)(b) the likely impacts of the development

The following matters were considered and, where applicable, have been addressed elsewhere in this report.

Context & Setting	Waste
Access, transport & traffic	Energy
Public domain	Noise & vibration
Utilities	Natural hazards
Flora & fauna	Technological hazards
Other land resources	Safety, security & crime prevention
Water	Social impact on the locality
Soils	Economic impact on the locality
Air & microclimate	Site design
	Construction

79C(1)(c) the suitability of the site for development

Does the proposal fit the locality?

The site has a valid approval for a seniors living development. The development will be one of the non-standard built forms found in the locality, such as the club, disused power station, child care centre and mobile home/caravan park.

Are the site attributes conducive to development?

The site attributes are conducive to the proposed application, subject to the removal of three units and tree retention.

79C(1)(d) any submissions made in accordance with this Act or the Regulations?

Public submissions:

A total of sixteen submissions were received from the public.

	Address	Date Correspondence Lodged
1	36 Puna Avenue, Wangi Wangi	15 March 2011
2	43 Carawa Street, Wangi Wangi	16 March 2011
3	33 Market Street, Wangi Wangi	23 March 2011
4	14 Dobell Dr, Wangi Wangi	24 March 2011
5	7 Dobell Dr & 20 Puna Road, Wangi Wangi	28 March 2011
6	29 Market Street, Wangi Wangi	28 March 2011
7	43 Puna Road, Wangi Wangi	28 March 2011
8	11a Dobell Drive, Wangi Wangi	28 March 2011
9	27 & 31 Market Street, Wangi Wangi	28 March 2011
10	41 Carawa Street, Wangi Wangi	29 March 2011
11	3 David Street, Wangi Wangi	29 March 2011
12	34 Puna Road, Wangi Wangi	29 March 2011
13	47 Puna Road, Wangi Wangi	29 March 2011
14	PO Box 48 Wangi Wangi	29 March 2011

15	7 David Street, Wangi Wangi	5 April 2011
16	30 Market Street, Wangi Wangi	27 April 2011

The submissions noted concerns regarding:

Concave Nature of Bay and Alignment of Building C

Comment:

The proposal aligns Building C with the completed buildings on the site, where the approved Building C is more closely aligned with the front setbacks of the properties in Market Street.

While this argument can be appreciated, the property is a stand alone site and the units are not accessed from Market Street, where the building sits above a sharp rise. Aligning the building with the properties in Market Street would bring the bulk of the building forward of that proposed, having a greater (and more negative) visual impact. The issue was not raised as a concern by Council during the 2009 Court case.

Loss of Views

Comment:

The issue of views and the Land and Environment Court's Planning Principle in relation to views has been discussed in detail in the body of the report. It was noted that there was loss of views with the approved plans and the proposed buildings with the most impact on view lines (I and K) complying with the height limitation for the site.

Loss of Property Values

Comment:

Property values are not a planning consideration as detailed under s.79C of the Environmental Planning and Assessment Act 1979.

Loss of Breezes

Comment:

The proposal will add second levels to a number of buildings presently approved as single storey. While this proposal will affect breeze/wind movements, the impact can not be considered adverse given the separation of the buildings and proposed heights.

Council Refusal of an Additional 14 units [DA/2615/2006], now 15 Proposed

Comment:

This is a new DA and it is considered on its merits. There has been a considerable redesign between the application refused by Council (DA/2615/2006) and the present application. The recommendation for deletion of three units would see an overall increase of 12 units.

Noise

Comment:

The proposal will result in additional noise within the area, from a greater number of residences, mechanical plant (to the new basement car park) and air conditioning. These have been considered Council's Environmental Health Officer who raised no objections to the proposal subject, (excluding the work shed, which the applicant has indicated is for staff use only).

It is also noted that the additional units are generally separated from neighbouring residential properties by the road reservation, which will reduce noise levels received from the proposed

units. As the development will be restricted to residents over 55 or those with a disability, it is anticipated the greatest noise control will come from residents within the site.

Overshadowing

Comment:

Shadow diagrams were provided by the applicant. These indicate that overshadowing will begin to occur on properties to the south east in Puna Road/Avenue, eg No 34 and 36, after 1pm on the winter solstice. Based on these diagrams the level of overshadowing to neighbouring properties can not be considered adverse. The properties most affected will not be affected before this time, providing them with a minimum 3 hours solar access between 9.00am to 3.00pm on the winter solstice.

Loss of Privacy

Comment:

The proposal will have impacts on neighbouring levels of privacy, in particular buildings B, C J and K. Buildings J and K are now provided with additional setback and the retention of the trees along Puna Avenue will see a greater level of privacy provided. Building C will have no greater impact than that approved and on its own is not considered adverse given it does not directly overlook properties, (being separated by a roadway to the northern neighbours).

Building B will impact on No 30 Market Street, overlooking that properties rear yard. This is a concern of Council and the applicant has added privacy screens to northern view lines in an attempt to address these concerns and increase privacy. The screening does not provide a sufficient reduction in the ability to overlook the neighbouring property.

The unit that directly overlooks the rear yard of No 30 Market Street has been recommended for deletion. The adjacent unit, (unit 36) which will directly overlook the rear garage, will have a less adverse impact.

Waste

Comment:

The applicant has indicated that waste will be removed from the site by private contractors. Waste collection areas have been provided on site and in the garage levels.

Increase in Traffic

Planning Comment

The proposed 61 units will not add significant levels of traffic to the existing road network as assessed by Council's Traffic Engineer.

Additional Access Points - Additional Entrance off Dobell Drive and Dangerous Vehicle Entry

Comment:

The new driveway crossings off Dobell Drive have been considered by Council's Traffic and Transportation Engineer and no objection to the proposal has been raised by Asset Management.

The sight lines are considered satisfactory and no objections to their proposed use has been raised by Council's Traffic Engineer.

Lack of Parking – Congestion evident in Market Street

Planning Comment:

The proposal complies with the SEPP HSPD parking provisions. As such, parking can not be used as a reason for refusal (CI 50(h) of SEPP HSPD). While the level of visitor's parking spaces is considered insufficient for the number of units, in comparison to Council's requirements for a multi-unit development, the overall number of spaces complies with the Council's DCP controls based on 2 bed unit calculation.

The present concern of the objector is noted, as presently there is no on-site visitor car parking. The development of visitor car parking spaces on site would help to alleviate parking congestion, especially on weekends, in Market Street.

Club House now Converted to Community Centre (loss of Services)

Comment:

The community facility has been considered by Council's Community Planner and no objection has been raised regarding the reduction in the size compared the approved facility, given the proximity to the Lake and Wangi Wangi Workers Club.

The change in description from Club House to Community Centre has no significant impact.

Height/Bulk/Scale/Appearance as Three Storeys

Comment:

This has been discussed in detail above. The proposed heights are supported, subject to the deletion of three units from the proposal and the retention of a tree shown to be removed.

Rear 25% not Single Storey

Comment:

This has been discussed in detail above. The proposed levels are supported, subject to the deletion of three units from the proposal.

FSR

Comment:

The SEPP sets a standard that cannot be used to refuse development consent for self-contained dwellings density and scale when expressed as a floor space ratio is 0.5:1 or less. The proposed FSR is approximately 0.64:1. The 2002 DA approved a FSR of approximately 0.5:1.

The above report details the non-compliances with the SEPP in relation to height, storeys along boundaries, bulk and scale and has found these to be acceptable. Given this, no objection is raised to the proposed FSR of the site, subject to the deletion of three units from the proposal. (This would result in the FSR falling to 0.62:1)

Excessive Cut and Fill / Geotechnical Concerns

Comment:

As noted in the report, the level of cut and fill, though in excess of 1 metre is not considered to be adverse given the sites topography and the intent to reduce height and visual impacts.

Inconsistent with Objective (c) of 2(1) Zone

Comment:

The objective (c) of the zone is as follows:

(c) ensure that housing development respects the character of surrounding development and is of good quality design, and

The proposal is not fully in character with the area given the lack of medium density type developments in the locality. However, the site itself, in terms of size and configuration is not in character with the area, nor was the previous caravan park use. Council's Urban Design Officer has raised no significant issues with the proposal.

Lack of and Poor Documentation

Comment:

The notification plans, which at a smaller size (A4) lack finer detail, as is often the case with larger developments. Larger more detailed plans and elevations were available for interested parties to view on-line or at Council.

Additional information was requested from the applicant and has been received from the applicant. Inadequate information has been supplemented or revised so that the relevant referral officers are now satisfied or have recommended conditions for any approval.

Accuracy of Montages

Comment:

Residents and Council's Landscape Architect have noted some issues with the photo montages. Council's visual analyst noted that they consider the montages to be reasonably accurate, thought taken from advantageous positions.

Specialist Services Inadequate

Comment:

The applicant has provided details of available services. These have been confirmed and this matter is not raised as a point of concern. This issue has been discussed further in the body of the application.

Flora and Fauna Impacts – Grey Headed Flying Fox Communities

Comment:

This matter has been considered by Council's Ecology planner in the past and no objections have been raised to the proposal in relation to endangered species.

Loss of Trees

Comment:

The trees along Puna Avenue are required to be retained. This proposal proposes a greater setback from the trees/boundary than presently provided. Other trees over the site will be removed, including two along Dobell Drive and one within the road reservation to increase site distances for vehicles entering and leaving the site. Two of these trees are camphor laurels and one is a fig. Replanting and landscaping of the site will occur before occupation to compensate for tree loss.

Stormwater – Overflow Issues

Comment:

Council's Development Engineer is now satisfied with the submitted stormwater plans and documentation.

Ambulance Stretcher in Lift

Comment:

The applicant has indicated that the proposed lifts can cater ambulance stretchers. This is, however not a SEPP requirement.

Walkways Exposed to Weather

Comment:

An access audit has been submitted with the application and found to be acceptable, subject to some minor modifications in the travel routes through the site. There is no legal requirement for the walkways to be covered.

Pathways Unable to Cater for Turning of Motorised Wheelchairs (radius)

Comment:

An access audit has been submitted with the application and found to be acceptable. Again compliance with the Australian Standard or SEPP HSPD may not cater for the turning of motorised wheelchairs.

Lack of Notification to Existing Residents of Development.

Comment:

It is not Council's policy to notify the residents of the property on which the application is lodged. The site has not been subdivided in any way, with the competed units owned by the applicant. Residents of the site have been able to view the plans on-line or at Council and a submission was received from one of the existing residents.

Hunter JRPP Chairman's Association with DA

Comment:

Concerns have been raised by objectors that the Hunter JRPP Chairman is associated with the applicant's planning consultants. The Chairman (Mr G Fielding) has declared an interest and has not attended the JRPP briefing and will not chair the meeting when the matter is considered.

Construction Matters, Existing State of Site, Existing Ground Levels and Site Stability

Comment:

The on-going issues for neighbouring residents, particularly in Market Street during the construction on site are well documented. Large piles of soil/excavated material and waste stored on the site have caused dust, vermin and soil/sediment runoff complaints. These concerns were raised with the Private Certifier during construction, with little assistance.

In any recommendation for approval, standard conditions regarding hours of work and noise levels would be recommended. Council's Erosion Control officer has made the following recommendation, which would be conditioned in any approval:

A Soil and Water Management Plan (SWMP) shall be submitted to Council as part of the Development Application. The SWMP shall comply with the provisions of DCP No. 1 Section 2.1.11 Erosion Prevention and Sediment Control.

The approved SWMP showing detailed runoff and erosion control measures (both temporary and permanent) shall be implemented on the subject site prior to the construction of the approved development. The SWMP shall be implemented to the satisfaction of Council or the Private Certifying Authority prior to the commencement of works, and during constructions.

The plan must incorporate (without being limited to):-

- *the provisions of DCP No. 1 Section 2.1.11 Erosion Prevention and Sediment Control;*

- *minimise disturbance of existing stabilised land or areas of vegetation outside of the limits of the development,*
- *upslope interception of uncontaminated stormwater run-off with diversion drains/bunds around disturbed areas;*
- *appropriate sediment interception measures (catch drains, contour banks, detention basins, settling ponds, straw bale or gabion barriers, sediment traps, sediment fences etc), sufficient to prevent sediments, contaminants, and other debris leaving the site or entering downstream drainage lines;*
- *procedures for the operation and maintenance of pollution control equipment/works must be noted;*
- *regular maintenance of erosion control works and sediment control measures;*
- *satisfactory disposal of intercepted sediments and other contaminants; and*
- *long-term stabilisation procedures, including proposed vehicle accessways/parking areas, which can be incorporated in a landscape rehabilitation plan if appropriate.*

The applicant shall also submit with the SWMP, a Statement of Compliance, stating that:

- ♦ *The Plan has been developed by an appropriately qualified professional in erosion and sediment control, or similar;*
- ♦ *The plan complies with the requirements of a SWMP as set out in LMCC's DCP No. 1;*
- ♦ *The plan and associated documents, calculations and drawings, have been prepared to a standard which, if properly implemented, will achieve the water release criteria of 50mg/L of Total Suspended Solids (TSS) as identified in LMCC DCP No.1 and The Blue Book (Managing Urban Stormwater – Soils and Construction. Landcom, 2004); and*
- ♦ *All erosion and sediment control measures are in accordance with the latest version of The Blue Book (Managing Urban Stormwater – Soils and Construction. Landcom, 2004).*

Colours of Roofs / Visible from Locality

Comment:

Many people have commented on the non-recessive colours of the completed buildings. The new buildings, if approved, would require a more recessive colour to reduce their visual impact on the locality and views from the Lake. A colour palate, showing grey and brown themes has been received and would be one of the approved documents in any approval.

Submissions from public authorities:

Apart from the Mine Subsidence Board and Hunter Water the proposal was also forwarded to Energy Australia and NSW Police for comment. No comments were received from the police.

Energy Australia were notified of the proposal and indicated in their response of 14 March 2011 that a substation may be likely to be required to be installed on-site to ensure electricity supply to the development. It is noted that a sub-station was installed in Market Street with the completed units. Given this knowledge, it is considered that as part of the deferral, the applicant engage with Energy Australia to confirm if a substation is required, so its location

can be confirmed to reduce any impacts on the streetscape, given they are generally located adjacent the boundary.

79C(1)(e) the public interest

There have been objections to the proposal from the community. These concerns have been raised and discussed above. It is considered that none of the concerns raised are insurmountable or likely to have an adverse impact on the local environment.

Conclusion:

Based on the above assessment it is concluded that the proposed Seniors Housing will not result in an adverse impact on the environment and therefore the development is acceptable, subject to some slight alterations and retention of an on-site tree.

Recommendation:

It is recommended::

(A) That DA/263/2011 be deferred for a period of up to twenty eight days to permit:

1. The lodgement of amended plans with the deletion of units 30, 37 and 8;
2. The lodgement of amended plans showing the retention of tree No 10, adjacent Building J;
3. The lodgement of plans showing the location of any required sub-station on the site; and
4. The lodgement of plans / information showing details of retaining walls and fencing.

(B) After consideration of the requested details, conditions of approval be drafted by LMCC for JRPP members consideration

(C) If the applicant fails to submit plans or the requested details are not supported, reasons for refusal be drafted by LMCC for JRPP members consideration.

Andrew Leese
Senior Development Planner
Lake Macquarie City Council

I have reviewed the above planning assessment report and concur with the recommendation.

John Andrews
Chief Development Planner
Lake Macquarie City Council

APPENDIX A – SEPP 71 Assessment

State Environmental Planning Policy 71 - Coastal Protection – DA/263/2011

Clause		Yes/No
Part 1 - Preliminary		
4(1)	Is the subject site within the coastal zone? <i>If yes, then this policy applies.</i>	Yes
Part 2 – Matters for Consideration		
8	(a) the aims of this Policy set out in clause 2; <i>This Policy aims:</i> <i>(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and</i> <i>(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and</i> <i>(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and</i>	

Clause		Yes/No
	<p>(d) <i>to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and</i></p> <p>(e) <i>to ensure that the visual amenity of the coast is protected, and</i></p> <p>(f) <i>to protect and preserve beach environments and beach amenity, and</i></p> <p>(g) <i>to protect and preserve native coastal vegetation, and</i></p> <p>(h) <i>to protect and preserve the marine environment of New South Wales, and</i></p> <p>(i) <i>to protect and preserve rock platforms, and</i></p> <p>(j) <i>to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and</i></p> <p>(k) <i>to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and</i></p> <p>(l) <i>to encourage a strategic approach to coastal management.</i></p> <p><u>Comments:</u></p> <p>In relation to item (k) the buildings heights will be visible from the foreshore of Lake Macquarie. The impact is not considered adverse given the existing development and as the project will not affect the view of the ridge line, which Council desires to protect.</p>	
	<p>(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved;</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> • N/A 	
	<p>(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability;</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> • N/A 	
	<p>(d) the suitability of development given its type, location and design and its relationship with the surrounding area;</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> • The proposal complies with the fundamentals set out in the SEPP and is considered suitable given the relationship with the surrounding area, subject to some minor alterations. 	
	<p>(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore;</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> • N/A 	

Clause		Yes/No
	<p>(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities;</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> The completed development is highly visible from various aspects of the Lake and foreshore. However, the proposal is not considered to have an adverse impact on the natural scenic quality of the surrounding area. 	
	<p>(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats;</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> While concerns have been raised in submissions, the site is not located within an ecological corridor and the site is subject to an approved development. Trees along Puna Avenue will be required to be retained. 	
	<p>(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats;</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> N/A 	
	<p>(i) existing wildlife corridors and the impact of development on these corridors;</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> The works are within a disturbed area. 	
	<p>(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards;</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> N/A 	
	<p>(k) measures to reduce the potential for conflict between land-based and water-based coastal activities;</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> N/A 	
	<p>(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals;</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> N/A 	
	<p>(m) likely impacts of development on the water quality of coastal waterbodies;</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> N/A 	
	<p>(n) the conservation and preservation of items of heritage, archaeological or historic significance,</p> <p><u>Comments:</u></p>	

Clause		Yes/No
	<ul style="list-style-type: none"> N/A 	
	<p>(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> N/A (no draft LEP applies to the land) 	
	<p>(p) only in cases in which a development application in relation to proposed development is determined:</p> <p>(i) the cumulative impacts of the proposed development on the environment, and</p> <p>(ii) measures to ensure that water and energy usage by the proposed development is efficient.</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> The cumulative impacts of the proposal could not be considered adverse in relation to their environmental impact. 	
Part 3 – Significant Coastal Development		
9	<p>Is the proposed development within 100m below mean high water mark of the sea, a bay or an estuary?</p> <p><i>If yes, then this part applies to the proposal unless:</i></p> <p><i>(2) This Part does not apply to:</i></p> <p><i>(a) development in relation to which, under another environmental planning instrument, development consent cannot be granted without the concurrence of the Minister or the Director-General, or</i></p> <p><i>(b) development in relation to which, under another environmental planning instrument, the Minister or the Director-General is the consent authority.</i></p> <p><i>(3) Despite subclause (2), this Part does apply to development in relation to which, under:</i></p> <p><i>(a) State Environmental Planning Policy No 1 Development Standards , or</i></p> <p><i>(b) State Environmental Planning Policy No 14 Coastal Wetlands , or</i></p> <p><i>(c) State Environmental Planning Policy No 26 Littoral Rainforests ,</i></p> <p><i>development consent cannot be granted without the concurrence of the Director-General, whether or not the concurrence may be lawfully assumed.</i></p>	No
11(2)	<p>If answered yes above and this part applies, has a copy of the development application been sent to the Director-General within 2 days of the application being received by Council?</p>	N/A
Part 4 – Development Control		
14	<p>A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> N/A 	

Clause		Yes/No
15	<p>The consent authority must not consent to a development application to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> N/A 	
16	<p>The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.</p> <p><u>Comments:</u></p> <ul style="list-style-type: none"> N/A 	

APPENDIX B - SEPP HSPD Assessment

State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 - DA/263/2011

Cl. 2 - Aims of Policy

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

Increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and

Make efficient use of existing infrastructure and services, and

Be of good design.

Does the proposal achieve the above aims?

It is considered that the proposal achieves these aims. The proposal increases the supply of residences and the internal amenity offered to the potential residents is considered high, with a quality design.

Clause		Yes/No
4	Is the subject site/s land:	
	that is zoned primarily for urban purposes or that adjoins land zoned primarily for urban purposes, and	Yes
	(a) on which development for the purpose of any of the following is permitted: <div style="margin-left: 40px;"> (i) dwelling-houses, (ii) residential flat buildings, (iii) hospitals, and (iv) development of a kind identified in respect of land zoned as special uses, including (but not limited to) churches, convents, educational establishments, schools and seminaries? </div>	Yes
	Is the subject site/s:	
	(a) land described in Schedule 1 (Environmentally sensitive land), or	No
10	Does the proposal fit the definition of seniors housing?	Yes
11	Does the proposal incorporate a residential care facilities?	No
12	Does the proposal incorporate a hostel?	No
13	Does the proposal incorporate self-contained dwellings?	Yes
17	Is the subject land adjoining land zoned primarily for urban purposes?	No
	If yes above, confirm the proposal is for serviced self-care housing, a hostel and/or a residential care facility.	N/A
19	Is the subject land zoned commercial?	No
	If yes above, confirm the ground floor fronting the street is not used for residential purposes or if it is, confirm another EPI permits use of all of the building for residential purposes.	N/A
21	Does the proposal involve subdivision?	No
26	Are facilities and services (cl. 26(1)) no more than 400m from the site and of an acceptable gradient (1:14; or 1:12 max 15m; or 1:10 max 5m; or 1:8 max 1.5m)?	A development is partially completed on the site. An Access Audit was submitted with the additional information requested and this was considered by Council's Disability/Access Officer. No objection was raised to the proposal relation to access. It is noted that the proposal would

Clause		Yes/No
	rectify issues with levels associated with the approved development.	
	Are transport services located within 400m of the site?	Yes
	Will the transport services drop residents within 400m of relevant facilities?	Yes
	Is the transport service available to and from the proposed development at least once in daylight hours?	Yes
27	Is the land identified as bushfire prone?	No
28	Is a reticulated water supply and adequate facilities for the removal/disposal of sewerage available for the development?	Yes
	Have the plans been stamped by HWC to verify above?	Plans with Hunter Water dated 3/2/11 have been sighted.
29	<p>Additional matters for consideration where clause 24 does not apply:</p> <p>(b) is of the opinion that the proposed development is compatible with the surrounding land uses having regard to (at least) the following criteria:</p> <p>(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,</p> <p>(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,</p> <p>(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,</p>	It is considered that the proposal will not have an adverse impact in terms of the bulk and built form, subject to the deletion of three units as detailed in the s.79C assessment report.

Part 3 – Design Requirements

Division 1

Clause		Yes/No
30	Has a site analysis been provided?	Yes
	Have the following been included about the site in the site analysis:	
	Site dimensions?	Yes

Clause		Yes/No
	Topography (spot levels, contours, north point, natural drainage, contaminated soils, filled areas)?	Yes
	Services (easements, connections for drainage & utility services)?	Yes
	Existing vegetation (location, height, spread, species)?	Yes
	Microclimates (orientation, prevailing winds)?	Yes
	Location of buildings, structures, heritage features, items of archaeology, fences, property boundaries, pedestrian and vehicle access)?	Yes
	Views to and from the site?	Yes
	Overshadowing by neighbouring structures?	Yes
	Have the following been identified in the site analysis about the surrounds of the site?	Yes
	Neighbouring buildings (location, use, balconies on adjacent properties, pedestrian and vehicle access to adjacent properties)?	Yes
	Privacy (adjoining private open spaces)?	Yes
	Walls built to the site's boundary (location, height, materials)?	Yes
	Difference in levels between the site and adjacent properties at their boundaries?	Yes
	Views and solar access enjoyed by neighbouring properties?	Yes
	Major trees on adjacent properties?	Yes
	Street frontage features (poles, trees, kerb crossovers, bus stops, other services)?	Yes
	The built form & character of adjacent development (including buildings opposite on both sides of the street(s) fronted (architectural character, front fencing, garden styles))?	Yes
	Heritage features of surrounding locality & landscape?	N/A
	Direction & distance to local facilities (local shops, schools, public transport, recreation & community facilities)?	Yes
	Public open space (location, use)?	Yes
	Adjoining bushland or environmentally sensitive land?	N/A
	Sources of nuisance (flight paths, noisy roads, significant noise sources, polluting operations)?	N/A
	Adjoining land use – such as agricultural activities	N/A

Cl. 31 – Design of In-Fill Self-Care Housing

Seniors Living Policy: Urban Design Guidelines for Infill Development – March 2004

1. Responding to Context

There is an existing development approved on this site. The application includes the provision of an additional fifteen units, most of which will be accommodated in second storey additions to buildings approved as single storey (eg Buildings C, J and K) with a corresponding increase in height.

After consideration, Council believes the additional heights and the non-compliance with the SEPP 8 metres height limit etc will be acceptable with privacy, building mass and view loss not being adverse, subject to deletion of units 8, 30 and 37 and retention of an additional tree.

2. Site Planning and Design

Does the proposal achieve the following objectives?

- Minimise the impact of new development on neighbourhood character.
- Retain existing natural features of the site that contribute to neighbourhood character.
- Provide high levels of amenity for new dwellings.
- Maximise deep soil and open space for mature tree planting, water percolation and residential amenity.
- Minimise the physical and visual dominance of car parking, garaging and vehicular circulation?
- Provide housing choice through a range of dwelling houses.

The site is located in an urban area with high lakeside amenity. This proposal alters the footprints of approved buildings on the site, with proposed setbacks on most boundaries positioned greater than that approved.

The proposal will not adversely impact on the internal amenity of the site with privacy loss and overshadowing limited.

Rules of Thumb		Y/N
The proportion of the site given to landscaped area and deep soil should be increased in less urban areas, on large lots, and in areas already characterised by a high proportion of open space and planting. Does the proposal achieve this?	In excess of 50% of the site is available for landscaping.	

3. Impacts on Streetscape

Does the proposal achieve the following objectives?

- Minimise impacts on the streetscape and enhance its desirable characteristics?
- Ensure that new development, including the built form, front and side setbacks, trees, planting and front fences, is designed and scaled appropriately in relation to the existing streetscape.
- Minimise dominance of driveways and car park entries in the streetscape.
- Provide a high level activation and passive surveillance to the street.

This proposal provides a greater setback from the Dobell Drive, but presents as two and three storey buildings, where only single level buildings are presently approved facing this elevation. The third storey element that most impact on neighbouring properties and the streetscape are recommended to be removed.

There is also an additional driveway entrance. Given the width of the site the second crossing is not opposed.

Rules of Thumb		Y/N
Does the proposal respond to council planning instruments that specify the character or desired character of the area?		N/A
Is the proposal consistent with the front building alignment and not encroach on this front setback?	No, does not match any front setback formula.	
Driveways or basement car park entries does not exceed 25% of the site frontage.		Yes
Garage doors set back a minimum of 1 metre behind the predominant building façade on both the front street frontage and common driveways.		Yes

4. Impacts on Neighbours

Does the proposal achieve the following objectives?

- Minimise impacts on the privacy and amenity of existing neighbouring dwellings.
- Minimise overshadowing of existing dwellings and private open space by new dwellings.
- Retain neighbours' views and outlook to existing mature planting and tree canopy.
- Reduce the apparent bulk of development and its impact on neighbouring properties.
- Provide adequate building separation.

The height of buildings J and K will add overshadowing, but only after noon so it can not be considered detrimental. Building B will have the most privacy impacts, with balconies overlooking rear yards of properties in Market Street. The most intrusive unit is recommended for deletion. View loss and apparent bulk/building mass have been discussed in detail in the s.79C assessment report.

Rules of Thumb		Y/N
Where side setbacks are less than 1.2 metres, a maximum of 50% of the development is built to this alignment.		N/A
The length of unrelieved walls along narrow side or rear setbacks does not exceed 8 metres.		N/A
Living rooms of neighbouring dwellings receive minimum 3 hours of direct sunlight between 9am-3pm in mid winter.		Yes
Solar access to the private open space of neighbouring dwellings is not unreasonably reduced.		Yes

5. Internal Site Amenity

Does the proposal achieve the following objectives?

- Provide quality useable private and communal open spaces for all residents.
- Provide dwellings that have distinct identity and safe entries.
- Provide safe and distinct pedestrian routes to all dwellings and communal facilities.
- Ensure adequate solar access to living areas and private open space.
- Reduce the dominance of parking, garaging and vehicular circulation space on the internal character of new development.

The proposal will have acceptable internal privacy and overshadowing, given the orientation of the site and location of the second levels.

Rules of Thumb	Y/N
Separation of 1.2m is provided between habitable rooms and driveway or car parks or other dwellings (this can be reduced if adequate screening is provided).	Yes

CI. 33 – Neighbourhood Amenity and Streetscape

This site is a stand alone site. It is not part of the standard suburban pattern given its past use as a caravan park. The past approval of a seniors living development on the site has established the setbacks, open space areas, tree retention and design characteristics.

The present proposal, which is primarily second level additions with altered footprints of the buildings yet to be constructed on the site, will have acceptable impacts in terms of building mass, given the distance to neighbouring residential properties and removal of units with the most impact.

CI. 34 – Visual and Acoustic Privacy

It is considered that the proposal will not have an adverse impact on visual and acoustic privacy, given the distances to neighbouring properties.

CI. 35 – Solar Access and Design for Climate

The additional levels will not overshadow neighbouring residential properties between 9.00am to 1.00pm on the winter solstice. A number of units in buildings J and K have their main living areas facing south east, which is not the best orientation. However, views to the Lake are available, rear rooms have a northern orientation and over 70% of units on the site receive adequate solar access, (as desired by the SEPP).

CI. 36 – Stormwater

Council's Development Engineers have requested additional plans given the new footprints and the necessity for stormwater re-use. The applicant has provided these and the Development Engineer has not raised objection.

CI. 37 – Crime Prevention

The proposal will not have an adverse impact in terms of crime prevention, given the proposed building design and site layout.

CI. 38 – Accessibility

An Access Audit was submitted with the modification. This report was considered and it was found that there is satisfactory links to local services and for access within the site.

CI. 39 – Waste Management

Part 4 – Development Standards to be Complied With

Division 1 – General

Clause	Minimum Sizes and Building Heights	Yes/No
40	The size of the site is at least 1000m ² .	Yes
	The frontage of the site is at least 20m wide measured at the building line.	Yes
	If residential flat buildings are not permitted in the zone then the proposal must comply with the following:	
	Height of the building does not exceed 8m; and	Exceeds 8m A SEPP 1 objection has been lodged.
	A building that is adjacent to the boundary of the site must not be more than 2 storeys in height; and	Basement level exceeds 1m above ground level. In some places actually creating a third level. A SEPP 1 objection has been lodged. This is considered in the assessment report.
	A building located in the rear 25% area of the site does not exceed 1 storey in height.	This is stand alone site and is not situated in a standard residential subdivision. The location of the of the rear 25% of the site is not clear, but a SEPP 1 objection has been lodged. This is considered in the assessment report.
	NOTE: This does not apply to development applications made by the Department of Housing or a local government or community housing provider.	N/A

Division 4 – Self-Contained Dwellings (as per items in Schedule 3)

Clause 41(1)	Standards Concerning Access and Usability	Y/N/TBC
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Clause 41(1)	Standards Concerning Access and Usability	Y/N/TBC
3-(2)	If the whole of the site has a gradient of less than 1:10:	No
	100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within meaning of AS 1428.1) to an adjoining public road	N/A
	If the whole of the site does not have a gradient of less than 1:10:	Yes
	A percentage (which is not less than the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater) of any dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428) to an adjoining public road or an internal road or a driveway that is accessible to all residents.	Yes
	Access must be provided so that a person using a wheelchair can see common areas and common facilities associated with the development.	Yes
3-(3)	Pathway lighting does not result in glare for pedestrians and adjacent dwellings.	TBC
	Pathway lighting is at least 20 lux at ground level.	TBC
3-(4)	Letterboxes:	TBC
	Must be lockable.	TBC
	Must be located together in a central location adjacent to the street entry for self-contained dwellings that do not have their own private street entry.	TBC
	Must be situated on a hard standing area and have wheelchair access by a continuous accessible path of travel (within the meaning AS 1428.1).	TBC
3-(5)	Where car parking (not being for employees) is provided, the following criteria must be complied with:	Yes
	Each car parking space must comply with AS 2890.	Yes
	5% of car spaces must be increased to 3.8m in width.	Yes
	Any garage must have a power-operated door to be installed at a later date.	TBC
3-(6)	Every entry to a dwelling (not being entry for employees) must comply with the following:	TBC
	Must comply with clauses 4.3.1 and 4.3.2 of AS 4299.	TBC
3-(7)	Internal doors must have a clearance complying with AS 1428.1.	TBC
	Internal corridors must have a width of at least 1000mm.	TBC
	The width at internal door approaches must comply with AS 1428.1.	TBC
3-(8)	At least one bedroom within each dwelling must have the following:	TBC
	An area sufficient to accommodate a wardrobe and a single-size bed with a clear area at least 1200mm wide at the foot of the bed.	Yes

Clause 41(1)	Standards Concerning Access and Usability	Y/N/TBC
	2 double general power outlets on the wall where the head of the bed is likely to be.	TBC
	At least 1 general power outlet on the wall opposite the wall where the head of the bed is likely to be.	TBC
	A telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet.	TBC
	Wiring to allow potential illumination level of at least 300 lux.	TBC
3-(9)	A bathroom within a dwelling must comply with the following:	TBC
	An area that complies with AS 1428.	TBC
	Slip resistant floor surface.	TBC
	Shower that complies with AS 1428.	TBC
	Shower area to either immediately or in the future install: (i) a grab rail, (ii) portable shower head, (iii) folding seat,	TBC
	A wall cabinet that is sufficiently illuminated to be able to read the labels of items stored in it.	TBC
	A mirror.	TBC
	A double general power outlet beside the mirror.	TBC
3-(10)	A dwelling must have a toilet that complies with AS 4299.	TBC
3-(11)	Balconies and external paved areas must have slip-resistant surfaces.	TBC
3-(12)	Door hardware complies with AS 4299.	TBC
3-(13)	Switches that comply with AS 4299.	TBC
	For self contained dwellings the following:	
3(15)	Living room must comply with the following:	TBC
	Circulation space complies with cl. 4.7.1 of AS 4299.	TBC
	A telephone adjacent to a general power outlet.	TBC
	Living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.	TBC
3-(16)	A kitchen in a self-contained dwelling must have the following:	TBC
	Circulation space in accordance with clause 4.5.2 of AS 4299, and a circulation space at door approaches that complies with AS 1428.1	TBC
	Benches that comply with 16(c)i .	TBC
	Tap set that complies with 16(c)ii.	TBC
	Cook top that complies with 16(c)iii.	TBC
	Oven that complies with 16(c)iv.	TBC

Clause 41(1)	Standards Concerning Access and Usability	Y/N/TBC
	"D" pull cupboard handles in accordance with 16(d).	TBC
	General power outlets comply with 16(e).	TBC
3-(17)	In a multi-storey self-contained dwelling, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.	N/A
3-(18)	In a multi-storey building containing separate self-contained dwellings on different storeys, lift access must be provided to dwellings above the ground level of the building complying with clause E3.6 of the <i>Building Code of Australia</i> .	Yes
3-(19)	A self-contained dwelling must have the following:	TBC
	Provision for the installation of an automatic washing machine and clothes dryer.	TBC
	Circulation space that complies with AS1428.1 at the door..	TBC
	Clear space in front of appliances of at least 1300mm.	TBC
	Slip-resistant floor surface.	TBC
	An accessible path of travel to any clothes line provided in relation to the dwelling.	TBC
3-(20)	A self contained dwelling must have a linen cupboard that complies with clause 4.11.5 of AS 4299.	TBC
3-(21)	A garbage storage area must be provided in an accessible location.	Yes

Part 7 - Development Standards that Cannot be Used as Grounds to Refuse Consent

Clause	The following grounds cannot be used as reasons for refusal if the following criteria are met.	Y/N/TBC
50	Self-Contained Dwellings	
	Building Height – All buildings are 8m or less in height.	No
	Density and Scale – FSR is 0.5:1 or less.	No - 0.64:1 proposed (0.62:1 with recommended amendments)
	Landscaped Area – If the applicant is the Department of Housing or a local government or community housing provider and a minimum 35m ² of landscaped area per dwelling is provided. A minimum of 30% of the area of the site is to be landscaped.	Yes
	Deep Soil Zones – Deep soil zone is at least 15% of the site. Two thirds of the deep soil zone should preferably be located at the rear of the site and each area forming	Yes

Clause	The following grounds cannot be used as reasons for refusal if the following criteria are met.	Y/N/TBC
	part of the zone should have a minimum dimension of 3 metres.	
	Solar Access –Living rooms and private open spaces for a minimum of 70% of the dwellings receive a minimum 3 hrs direct sunlight between 9am-3pm mid winter.	Yes
	<p>Private Open Space (for in-fill self-care housing) –</p> <p>In the case of a single dwelling or a dwelling that is located , wholly or in part, on the ground floor of a multi-storey building, not less than 15m² of POS per dwelling is provided and, of this open space, one area is not less than 3m wide & 3m long and is accessible from a living area located on the ground floor; and</p> <p>In the case of any other dwelling, there is a balcony with an area of not less than 10m² (or 6m² for a 1 bedroom dwelling), that is not less than 2m in either length or depth and that is accessible from a living area.</p>	All proposed units have a 10sqm balcony.
	Visitor Parking – repealed	Not required
	<p>Parking –</p> <p>0.5 car spaces per each bedroom where the development application is made by a person other than the Department of housing or a local government or community housing provider.</p> <p>1 car space for each 5 dwellings where the development application is made by, or is made by a person jointly with, the Department of Housing or a local government or community housing provider.</p>	Sufficient new car parking spaces have been added to the development to cater for the new units as per the SEPP.