JRPP No	2011SYW054
DA Number	DA/421/2011
Local Government Area	Hornsby Shire Council
Proposed Development	Affordable rental housing comprising twenty-four townhouses with associated basement carpark for thirty-eight cars and landscaping
Street Address	Pt Lot 1, Pt Lot 2, Pt Lo3 and Lot 4 DP 200513, Pt Lot 1 and Pt Lot 2 DP 214167 Nos.173-179A Pennant Hills Road Thornleigh
Applicant	Urbanlink Pty Ltd
Owner	Northside Truck Sales Pty Ltd P Y M Pty Ltd Parkhill Developments Pty Ltd
Number of Submissions	Twelve submissions
Recommendation	Refusal
Report by	Aditi Coomar Senior Town Planner
Instructing Officers	Rod Pickles – Manager Assessment Team 2 Scott Phillips - Executive Manager Planning

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

1. The application proposes affordable rental housing comprising twenty four two-storey townhouses with associated basement car parking and landscaping works.

2. The application falls under the provisions of State Environmental Housing Policy (Affordable Rental Housing) 2009. The proposal fails to comply with solar access and design requirements under the Policy.

3. Twelve submissions have been received in respect of the application.

4. It is recommended that the application be refused.

RECOMMENDATION

THAT Development Application No. DA/421/2011 for the construction of an affordable housing development comprising twenty-four townhouses and basement car parking at Pt Lot 1, Pt Lot 2, Pt Lo3 and Lot 4 DP 200513, Pt Lot 1 and Pt Lot 2 DP 214167 No.173-179A Pennant Hills Road Thornleigh be refused subject to the reasons for refusal detailed in Schedule 1 of this report.

HISTORY OF THE SITE

In 1950 Council approved the use of the site as a car sales and services premises. This use continued through to 1970s. Subsequently the use ceased to exist within the premises and the buildings were demolished around 1984 following legal actions taken by Council.

Council's records indicate that there were not any subsequent approvals being granted on the site for residential uses and the site remains vacant.

THE SITE

The site comprises six allotments located on the southern side of Pennant Hills Road at its intersection with Nelson Street (western side), known as Nos. 173 –179A Pennant Hills Road, Thornleigh. The site is L-shaped with a total area of 3647 sq metres. The northern boundary of the site runs parallel to Pennant Hills Road and is located 1 metre below the road level. A concrete retaining wall provides structural support to the northern boundary of the site. The site generally falls towards the rear with a 14% slope. The site is currently vacant and comprises a number of native trees.

The surrounding developments along the southern side of Pennant Hills Road include a mix of single and two storey dwelling houses with the streetscape being intercepted by high fences. A multi unit housing development is in existence in close proximity to the site. A car-wash/café is located on the eastern side of the intersection of Pennant Hills Road and Nelson Street and a petrol station is located at the corner of Stuart Street, further east. A commercial building is located adjoining the car wash and fronts Nelson Street. Brickpit Park is located opposite the site on the northern side of Pennant Hills Road. A vacant site (former veterinary hospital) and a petrol station are located adjacent to Brickpit Park.

The surrounding developments along both sides of the Nelson Street include single and two storey dwelling houses with large front setbacks. A group of townhouses are located at 16-18 Nelson Street.

THE PROPOSAL

The proposal involves the construction of an affordable housing development comprising the following:

- Construction of twenty-four townhouses.

- TH1 – TH 8 would comprise a row of north-facing attached townhouses fronting Pennant Hills Road. TH 7 and TH 8 would be two storeys in height whereas TH1 – TH6 would include a third storey within the roof (attic). The ground floor of the townhouses would be located 2.5 metres below the road level with the private open spaces fronting the street. Stairs would provide pedestrian access to each of the townhouses from Pennant Hills Road.

- TH 9 – TH 16 would comprise a row of south-facing townhouses, attached to the above townhouses. TH 9 and TH 10 would be two storeys in height whereas TH11 – TH16 would include a third storey within the roof (attic). Pedestrian access to these units would be via a pathway connecting Pennant Hills Road to the rear of the site.

Individual front landscaped areas would provide access to these units and would also act as private open space areas.

- TH17 – TH24 would comprise a row of east-west orientated two storey townhouses fronting Nelson Street and separated from the remaining townhouses by a landscaped area. Pedestrian access to the townhouses would be provided individually from Nelson Street through a front landscaped area. Terraces would also be located at the rear fronting the internal landscaped area and have access to Pennant Hills Road via a pedestrian pathway running through the site.

- Typically all townhouses except TH 17 and TH 24 include the primary living areas on the ground floor and the secondary living spaces on the upper floor including balconies.

- The details of the floor areas (GFA) are provided below:

Townhouse number	**Bedrooms**	**Gross Floor Area**
TH1	3	103.09 m^2
TH2	3	100.54 m^2
TH3	3	101.77 m^2
TH4	3	103.28 m^2
TH5	3	95 m^2
TH6	3	95 m^2
TH7	1	73.8 m^2
TH8	1	68.2 m^2
TH9	3	119.4 m^2
TH10	1	75.2 m^2
TH11	3	100.2 m^2
TH12	3	102.1 m^2
TH13	3	101.9 m^2
TH14	3	101.59 m^2
TH15	3	101.3 m^2
TH16	3	104.7 m^2
TH17	3	121.25 m^2
TH18	3	130.98 m^2
TH19	3	134.3 m^2
TH20	3	104.15 m^2
TH21	3	133.7 m^2
TH22	3	139.5 m^2
TH23	3	164.8 m^2
TH24	3	153.65 m^2
GFA		**2629.4 m^2**

- The proposal includes basement car parking comprising thirty-eight spaces accessed via a ramp off Nelson Street. Eight lock-up garages at the basement level would accommodate sixteen cars (some as tandem) and would have direct access to TH 17 – TH 24.

- Pedestrian access to the basement car parking would be via two sets of stairs from the landscaped areas within the site.

- Communal areas are proposed to be located at the northern and southern ends of the site.

ASSESSMENT

The development application has been assessed having regard to the *'Metropolitan Plan for Sydney 2036'*, the *'North Subregion (Draft) Subregional Strategy'* and the matters for consideration prescribed under Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act). Subsequently, the following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 NSW State Plan

Priority of E6 of the *NSW State Plan* is 'Housing Affordability'. A key lever of Priority E6 was the introduction of State Environmental Planning Policy (Affordable Rental Housing) 2009. Being a fairly recent planning initiative, Hornsby local government area has only started receiving development applications for this type of housing since 2010. Therefore, it is important to carefully consider development proposals in the context of this strategic planning objective as well as more established local planning control.

1.2 Metropolitan Plan for Sydney 2036 and (Draft) North Subregional Strategy

The *Metropolitan Plan for Sydney 2036* is a broad framework to secure Sydney's place in the global economy by promoting and managing growth. It outlines a vision for Sydney to 2036; the challenges faced, and the directions to follow to address these challenges and achieve the vision. The *Draft North Subregional Strategy* acts as a framework for Council in its preparation of the *Comprehensive LEP* by the end of 2011.

The *Draft North Subregional Strategy* sets the following targets for the Hornsby LGA by 2031:

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

The proposed development would be consistent with the draft Strategy by providing an additional twenty-four dwellings and would improve housing choice and contribute towards improved housing affordability in the locality.

2. STATUTORY CONTROLS

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

2.1 Hornsby Local Environmental Plan 1994

The subject land is zoned Residential A (Low Density) under Hornsby Local Environmental Plan 1994 (HSLEP). The objectives of the Residential A (Low Density) zone are:

(a) to provide for the housing needs of the population of the Hornsby area.

(b) to promote a variety of housing types and other land uses compatible with a low density residential environment.

(c) to provide for development that is within the environmental capacity of a low density residential environment.

The compliance of the development with the zone objectives must be read in the context of the aims of State Environmental Planning Policy (Affordable Rental Housing) 2009. An assessment of the application against the Policy is held at section 2.2 of this report.

The proposed development is defined as 'multi-unit housing' under the HSLEP and is permissible in the zone with Council's consent.

Clause 15 of the HSLEP prescribes that the maximum floor space ratio (FSR) of development within the Residential A zone is 0.4:1. The proposal exceeds this requirement and relies on the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 which permits a maximum floor space ratio of 0.75:1 and prevails over HSLEP in case of any inconsistency.

Clause 18 of the HSLEP sets out heritage conservation provisions within the Hornsby area.

The site is located in the near vicinity of two heritage listed properties; Brickpit Park at Nos.142-178 Pennant Hills Road and the remains of Maltworks at No. 1 Pioneer Avenue Thornleigh. Council's assessment of the proposal in this regard concludes that there are no historic or visual relationships between the sites due to separation by an arterial road and the Northern Railway line. Therefore, the proposal would have no impact on the heritage items and no further assessment is required.

2.2 State Environmental Planning Policy (Affordable Rental Housing) 2009

The application has been assessed against the requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009 (AHSEPP). This Policy provides State-wide planning controls for delivery of affordable rental housing through planning incentives to increase rental housing close to business centres and to expand the role of non-profit housing providers. A brief discussion of the compliance of the proposal against the various development controls and best practice standards within the AHSEPP is provided below.

2.2.1 Clause 54A Savings and transitional provisions—2011 amendment

The subject application was lodged on 29 April 2011 under the provisions of Division 1 (Part 2) of the AHSEPP. The AHSEPP was subsequently amended on 20 May 2011 repealing and amending a number of provisions within the above Division. The transitional provisions in Clause 54A of the amended AHSEPP allow the assessment of the application under the

repealed provisions of the Policy subject to the application being supported by a statement which demonstrates the compatibility of the proposed development with the local character of the area. The applicant has submitted a "Local Character Compatibility Statement" in accordance with the above requirement.

2.2.2 Clause 10 – Land to which this Division applies

The Policy applies to the majority of Council's residential land use zones, subject to sites being located within 800 metres walking distance of a railway station or 400 metres of a bus stop with an hourly bus service as detailed in the Policy. The proposed development is a permissible use on the land pursuant to Clause 10.

The subject site is located within 400 metres walking distance of a frequently serviced bus stop on the southern side of Pennant Hills Road. This bus service provides south-bound services. The subject site is also located within 400 metres of a frequently serviced north bound bus stop. However, given that Pennant Hills Road is a six lane divided road which forms part of the National Highway network, physical pedestrian access is not available to that bus stop within 400 metres walking distance. The distance from the closest point of the site to the bus stop is approximately 437 metres. Whilst this is less than ideal, it is considered that the departure from the development standard is not significant in the circumstances of the case.

2.2.3 Clause 11 – Building Height

Clause 11 restricts the maximum building height of buildings to 8.5 metres given the zone applying to the subject site. The proposed development complies with the 8.5 metres height restriction and satisfies Clause 11.

2.2.4 Clause 17 – Percentage of Dwellings for Affordable Rental Housing

Clause 17 provides that at least 50% of dwellings are to be used for affordable rental housing for a period of 10 years. The affordable rental housing accommodation is to be managed by a registered community housing provider.

The application does not include any documentation to demonstrate that the development would be managed by a registered community housing provider. Given the absence of any related documentation it is uncertain as to whether the development would be utilised for affordable housing purposes after the issue of the occupation certificate.

2.2.5 Clause 14 – Standards that cannot be used to refuse consent

The following table sets out the compliance of the proposal against the development standards within Clause 14 of the AHSEPP:

SEPP - Affordable Rental Housing			
Control	**Proposal**	**Requirement**	**Compliance**
Site Area	3647m^2	450m^2	Yes
Floor Space Ratio	0.71:1	0.75:1	Yes
Dwelling Size (3 bd)	> 95m^2	Min 95m^2	Yes
Dwelling Size (1 bd)	> 68m^2	Min 50m^2	Yes
Height	8.5m	8.5m	Yes
Car parking	38 spaces	12 spaces (0.5 per dwg)	Yes
Solar Access	62.5%*	70%	No
Deep Soil Zone	28%	15%	Yes
Minimum dimension of deep soil zone	3m	3m	Yes
Landscaped Area	39%	30%	Yes
Deep Soil	17.5%	15%	Yes
* As claimed by applicant.			

As stated above the proposal does not comply with the "Solar Access" provision within Clause 14 of the AHSEPP. The matter is discussed below:

2.2.5.1 Solar Access

Clause 14(e) of the AHSEPP requires living rooms and the private open space areas of at least 70% of the dwellings to receive three hours direct sunlight between 9 am and 3 pm in mid-winter.

Due to the topography of the site, the orientation of units and the design of the development, most units receive inferior solar access. Whilst the courtyards of TH1 – TH8 are on the northern side of the building, they would be located approximately 2.5 metres below the road level and screened by a solid fence to reduce road noise. Consequently, solar access would be significantly compromised and the courtyards would provide inferior amenity to these private open space areas.

TH9 – TH16 provide courtyard areas on the southern side of each unit and do not provide sufficient solar access to these private open space areas.

Due to absence of elevation shadow diagrams for TH17 – TH24, it is unclear whether the living area and the entire private open space area for these townhouses would receive three hours of direct sunlight during mid-winter.

As a consequence, it can not be determined whether any units receive sufficient solar access, although the applicant claims that 70% of units receive adequate solar access. However, relying solely on the shadow diagrams submitted by the applicant, it is assessed that only 62.5% of the townhouses would receive three hours direct sunlight between 9 am and 3 pm in mid-winter which does not satisfy the minimum solar access requirements under the Policy. It is considered that the design of the development does not have adequate regard for solar access and this outcome is fatal to the approval of the application.

2.2.6 Clause 15 – Design Requirements

The AHSEPP applies design criteria for low rise and high rise developments. For the subject site, the *Seniors Living Policy: Urban Design Guidelines for Infill Development* is to be taken into consideration. Below is a brief discussion on compliance with design principles and best practice standards within the *Urban Design Guidelines for Infill Development*.

2.2.6.1 Responding to Context

Nelson Street

The immediate locality along Nelson Street is characterised by single storey detached dwellings with open landscaped frontages along the street and varying housing styles. Front building setbacks are variable with an average of at least 6 metres. Dwellings contain a mix of building materials and finishes. A cluster housing development is located in close proximity to the subject site. However, the townhouses are not distinctly visible from the street due to extensive front setbacks and appropriate screening.

The proposal provides a denser form of development with a setback of only 3 metres from Nelson Street. As a result, the development would not maintain the existing building alignment along the western side of the street and would introduce a building style that would be out of context with the existing building patterns on the street. The proposal is not considered acceptable with regard to the context of Nelson Street and the immediate locality on this street. The development would most significantly impact upon No 4 Nelson Street, which would have a dramatic change to the context of that dwelling in the streetscape.

Pennant Hills Road

The southern side of Pennant Hills Road in the immediate locality accommodate single and two storey dwellings, the front boundaries being intercepted by solid fences. The proposed development would maintain a minimum setback of 8 metres from the Pennant Hills Road frontage and would be placed well below the road level with a solid low height fence defining the front boundary. It is considered that the development responds appropriately to the Pennant Hills Road context.

2.2.6.2 Site Planning and Design

The objectives of the best practice standards are to provide a high level of amenity to the new dwellings and minimise impact on the neighbourhood character. The site planning and design of the proposal are not considered to be satisfactory due to the following reasons:

- The proposed development would include eight attached townhouses with narrow openings being present only on the southern elevation. The shadow diagrams indicate that these townhouses would be overshadowed in mid-winter and the design would have unacceptable amenity impact on the future residents due to lack of openings on other elevations.

- Most townhouses are not designed to allow cross-flow ventilation and rely upon narrow openings to provide natural light.

- TH19 and TH18 would be located immediately adjoining the vehicular ramp and would include windows of living areas on the walls adjoining the ramp. This would cause unacceptable impact on the future residents due to constant vehicular movements and noise.

- TH17 and TH 21 would be irregular shaped resulting in unusable spaces in living areas and bedrooms.

- The private open spaces for TH 1- TH 8 would be located fronting Pennant Hills Road being screened by fences and planter boxes. However, given that this is an arterial road with a high volume of traffic, the location of the private open space areas are not considered to be suitable with regard to noise from the road, privacy, security and vehicle emission impacts.

- The site includes large landscaped areas designated as communal open spaces. Given that these areas are not clearly defined and not easily accessible to all residents, they would be underutilised in most cases and would not be suitable as communal open space. The units require reorientation to create a distinct communal open space area which could be utilised for recreational purposes in the future.

- The guidelines encourage provision of mid-block deep soil zones to provide adequate separation between the dwelling units, act as communal open space and provide solar access to the individual units. The site plan does not reflect this requirement.

- The proposal would result in an adverse impact on significant trees within the site. The matter is discussed in detail in section 3.1 of this report.

- The proposal does not adhere to the established streetscape pattern along Nelson Street.

- The proposal does not provide a logical and convenient opportunity for waste management on site.

2.2.6.3 Impacts on Streetscape

The Guidelines require the design of buildings to respond to Council's local planning controls that specify the character or desired character of the area and to maintain the established front setback. The proposed site layout includes individual pedestrian access to most of the townhouses from the street and the basement car parking. The location of the driveway and the pedestrian access to the site is considered satisfactory in this regard.

However, the proposed built form fronting Pennant Hills Road is monotonous and lacks articulation, with the roof being the dominating element of the streetscape. Further, TH1 - TH8 include private open space areas within the front setback which is inconsistent with the streetscape of Pennant Hills Road.

As discussed in section 2.2.6.1 of this report under the heading "Responding to Context", the proposal is inconsistent with the streetscape of Nelson Street with regard to setbacks and building style. The building would dominate the streetscape and significantly change the character of the streetscape.

Given the above, the proposal is assessed as being unsatisfactory with regard to its impact on the streetscape.

2.2.6.4 Impacts on Neighbours

The objectives of the Guidelines are to prevent impacts on the amenity and privacy of the neighbouring properties. The Guidelines include controls for the rear 25% of the site to be single storey in zones where residential flat buildings are not permitted. Given that the height requirement of 8.5 metres is stipulated in the AHSEPP, it would prevail over the best practise Guidelines. The proposal includes a 3 metre wide deep soil landscaping area along the rear in compliance with the Policy. However, the design of the development would have adverse impacts on the neighbouring properties in the following ways:

- The orientation of TH11 – TH16 and the upper level balconies would result in overlooking onto the private open space areas of the adjoining southern properties. Use of landscape screens or high fences as privacy devices along the ground level yards would not be suitable as they would further prevent sunlight penetration to these townhouses.

- The shadow diagrams indicate that the north-facing windows of the dwelling house located at No. 4 Nelson Street and part of the rear yard of No. 181 Pennant Hills Road would not receive three hours of direct sunlight during mid-winter.

- The length of the unrelieved walls along the side and rear setbacks exceed the required 8 metres length and result in increased overshadowing impact.

2.2.6.5 Internal Site Amenity

The internal site amenity has been addressed in section 2.2.6.2 under the heading "Site Planning and Design". Additionally the following design elements would have adverse impacts on the internal site amenity:

- 1.8 metre high privacy walls separating the terraces for TH 19 - TH24 would overshadow these areas due to the orientation.

- The site planning does not incorporate a direct and safe access to TH 9 – TH 16. The pedestrian pathways leading to these townhouses from Pennant Hills Road are convoluted. Such a design would have concealment opportunities, and is subject of crime risk especially on the southern boundary.

- The pathway along the western boundary would also not have opportunities for casual surveillance due to the orientation of the townhouses.

- 70% of the dwellings would not receive three hours of direct solar access in mid-winter.

2.2.7 Car Parking

The development proposes thirty-eight car spaces located at the basement level with access being provided off Nelson Street. As indicated in the table, the number of car spaces provided on site is well over the requirement of the AHSEPP and would not have a negative impact on the on-street parking facilities at Nelson Street. The isle widths, manoeuvring areas and ramp gradient are also considered satisfactory.

2.2.8 Compatibility with the Local Character of the Area

In accordance with the requirements of Clause 16A and Clause 54A of the amended AHSEPP, the applicant has submitted a Local Character Statement which is summarised as follows:

- *There is no consistency of subdivision patterns and built forms in the streetscape.*

- *Large scale multi unit housing developments are located in close proximity to the subject site.*

- *The proposed development was lodged under the provisions of the AHSEPP at a time when it permitted such developments to be located in any low density residential zones complying with Clause 10(2).*

- *The proposal satisfies the objectives of the Residential A (Low Density) zone of the HSLEP which encourages redevelopment of low to medium density building forms.*

- *The proposal would enhance residential amenity and provide housing choice.*

- *The Pennant Hills Road streetscape does not have any consistency regarding building forms and types. Therefore the development would suit the existing streetscape of Pennant Hills Road.*

- *The proposed new development would not impact on the existing built form of the locality as the adjoining developments would be similar in height and bulk.*

- *The development would provide a well articulated and interesting building form.*

- *The location of the private open spaces along the street front would have a positive impact on the streetscape.*

- *Medium and mature tree planting along the perimeter would enhance the streetscape.*

The matters identified in the Local Character Statement have been assessed in details and the following comments are provided:

- The proposal would have a detrimental impact on the streetscapes of Pennant Hills Road and Nelson Street due to reasons discussed in section 2.2.6 of this report. The location of the private open space areas and facade articulation are also not considered to be satisfactory.

- As identified by the applicant, two low density cluster housing developments are located in close proximity to the site at Nos. 16-18 Nelson Street Thornleigh and Nos. 2-4 Stuart Street Normanhurst. The development at Nos. 16-18 Nelson Street accommodates eighteen townhouses on a site with an area of 6000 sq metres whereas the site at Nos. 2-4 Stuart Avenue Normanhurst accommodates sixty four townhouses on a site with an area of approximately 20,000 sq metres. The subject application involves the construction of twenty-four townhouses on a site with an area of 3000 sq metres and is considered to be an overdevelopment compared to similar other developments in the locality.

- The character statement indicates that surrounding developments have similar floor space ratio and building heights. This is not correct especially in the context of Nelson Street which primarily accommodates low density developments.

- The proposal does not comply with the objectives of the Residential A zone in the HSLEP. The objectives of the zone require the provision of housing within the environmental capacity of the land and therefore stipulate a maximum floor space ratio of 0.4:1. The site planning and design of the proposal is not within the environmental capacity of the land due to the resultant overshadowing and overlooking issues and impacts on significant trees.

Given the above, the proposal is not considered to be compatible with the local character of the area and is not supported.

2.3 State Environmental Planning Policy Infrastructure 2007

The application has been assessed against the requirements of State Environmental Planning Policy (Infrastructure) 2007. This Policy contains State-wide planning controls for developments adjoining busy roads:

2.3.1 Clause 101 – Development with frontage to classified road

The proposal is assessed against the requirements of Clause 101 of the SEPP (Infrastructure) as it fronts Pennant Hills Road.

2.3.1.1 Access

In accordance with the requirements of the Policy, the development does not propose any vehicular access from Pennant Hills Road. The proposed access to the site is considered satisfactory subject to the construction of a pedestrian refuge island at the intersection of Nelson Street and Pennant Hills Road.

2.3.1.2 Noise

The application includes a Noise Assessment Report addressing the noise attenuation measures to mitigate the noise from traffic on this road. The matters in relation to impact of noise are discussed in section 2.3.2 of this report.

2.3.1.3 Air Quality

Clause 101(2)(c) requires applicants to consider the impacts of vehicle emissions on a sensitive land use and propose measures to ameliorate such impacts.

TH1 – TH8 and TH 17 would have direct frontage to Pennant Hills Road and being a sensitive land use, would be exposed to the vehicle emissions. The remaining townhouses would also be located in close proximity to the road and may be impacted upon by the vehicle emissions. In this regard Council requested the applicant to submit an Air Quality Management Report to address the requirements of the SEPP (Infrastructure). The information has not been provided.

No further assessment in this regard can be made due to lack of information and the proposal is assessed as unsatisfactory in this regard.

2.3.2 Clause 102 – Impact of road noise or vibration on non-road development

In accordance with the requirements of the SEPP, the application has been assessed against the noise related controls contained within the Department of Planning's publication *"Development near Rail Corridors and Busy Roads – Interim Guidelines"*.

The applicant has addressed this requirement by submitting a detailed Noise Assessment Report which provides construction techniques to attenuate road noise and vibration and concludes that the development would not exceed the specified noise criteria and L_{eq} levels within Clause 102 of the SEPP (Infrastructure) subject to adherence to the recommendations. The report has been assessed as satisfactory.

Notwithstanding the above, the private open space areas for TH 1- 8 and TH 17 would be located fronting Pennant Hills Road and would be directly exposed to the road noise. The report does not address the impact of noise on these areas, nor includes recommendations for any additional acoustic treatment required along the boundary to attenuate noise and vibration. The application is assessed as unsatisfactory in this regard.

2.3.3 Traffic Generating Development

The development is classified as a Traffic Generating Development in accordance with Clause 104 of the SEPP (Infrastructure) as it is located on a site that has direct vehicular or

pedestrian access to a road that connects to a classified road, where the access is located within 90m of the connection.

The development application includes a Traffic Assessment Report. The report calculates the trip generation for all components of the development in accordance with the Roads and Traffic Authority (RTA) guidelines and concludes that the development would result in a net increase of 10 trips per hour during the peak period which is considered negligible.

The application was referred to the RTA for concurrence whereby no objections were raised.

2.4 State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 (SEPP 55) requires that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated or requires remediation for the proposed use.

The proposal includes a Soil Assessment Report and results of qualitative identification of asbestos within the site. The report states that uncontrolled fill has been imported in the past to level the site. The historic activities and use of pesticides may have caused potential contamination of soil and asbestos fragments were detected across the central portion of the site. However the report concludes that the risks associated with soil contamination are low in the context of the proposed use of the site. The site would be suitable to redevelop subject to the following:

- A remedial management strategy be developed culminating in the preparation of a Remedial Action Plan.

- Any soil removal from the site, as part of the remedial process being classified in accordance with *"Waste Classification Guidelines"*.

Should the application be approved, this requirement can be recommended as a condition of development consent.

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

The application has been assessed with regard to State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP (BASIX)). The application includes a BASIX Certificate which incorrectly states that TH 15 and TH 22 include two bedrooms.

However, the BASIX Certificate complies with the minimum scores for thermal comfort and energy.

2.6 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The application has been assessed against the requirements of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. This Plan ensures that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected and maintained.

The proposal is consistent with the aims and objectives of the Plan as the proposal would not have a detrimental impact upon the catchment, foreshores waterways or islands of Sydney Harbour.

2.7 Waste Management and Minimisation Development Control Plan

The proposal includes a waste management plan with details of waste management during the construction phase of building works and is assessed as satisfactory.

With regard to the on-going waste management on the site, the applicant proposes that each townhouse would have its own set of three bins and residents would be responsible for placing their bins along the kerb side for collection by the waste collection vehicles. The occupiers of the south facing townhouses would need to cart the bins to Nelson Street or Pennant Hills Road via the pedestrian accessway with no steps on the bin carting route. Bin storage areas have been provided at the street level for the remaining townhouses fronting the roads are the locations are considered to be suitable.

There is sufficient space on both the road frontages to accommodate the bins.

2.8 Sustainable Water Development Control Plan

The proposal is required to comply with Council's Sustainable Water Development Control Plan. Subject to sediment and erosion control measures being implemented on site during construction, the proposal would comply with the requirements contained within the Plan.

2.9 Section 94 Contributions Plan

Council's Section 94 Plan applies to the development as it would result in the addition of twenty-four townhouses. Accordingly, the requirement for a monetary Section 94 contribution would be recommended as a condition of development consent, should the application be approved.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Ecological Impact

The site comprises a number of exotic and locally indigenous trees. Although the vegetation on the site has not been formerly mapped, it is likely that the original vegetation on the site would have been Blue Gum Shale Forest (BGSF) which is listed as Critically Endangered Ecological Species (CEEC) and that the locally native trees on the site are remnants of the original vegetation. This vegetation group would also provide a linking corridor for fauna to the adjacent mapped BGSF less than 50 metres from the site. The application does not include any information regarding the nature of vegetation on the site and the likely impact of the development on the local Gang-gang Cockatoo Endangered Population and BGSF.

No further assessment in this regard can be conducted due to lack of information.

3.1.2 Impact on trees

The proposed development would necessitate the removal of three trees from the site. Council's assessment of the proposal included a detailed examination of the existing trees on the site. Two of the trees proposed to be removed have been identified as significant remnant trees forming a part of a significant group of trees on the site (Tree nos. 18, 17, 12, 11, 10, 8, 7, 6, 4, 3, 2, 1 marked on the attached tree location plan). Therefore removal of these trees cannot be supported.

The proposed development would result in encroachments into the Tree Protection Zones (TPZ) of a Eucalyptus Pilularis (Tree 1 - Blackbutt) and a Eucalyptus Saligna (Tree 18 – Sydney Blue Gum). This encroachment would be in addition to the previous disruption to the TPZ due to offsite works and would impact on the health and well being of the trees. The proposed excavation required for the basement car parking would also have major encroachments within the TPZ of a Eucalyptus Pilularis (Tree 3 - Blackbutt) located within the site.

Given the above, the proposal is unacceptable with regard to its impact on the trees within the site.

3.1.3 Stormwater Management

The proposed development would drain stormwater to Council's drainage system at Nelson Street via an on-site detention system. The basement car parking area would include a pump out system for drainage. Designated roof areas would drain to below-ground rainwater tanks as per the BASIX commitments. The application includes a detailed Stormwater Management Plan and design of the on-site detention system. The proposed stormwater management solution is considered satisfactory and the development would not have any adverse impact on the existing street drainage system subject to implementation of recommended conditions.

3.2 Built Environment

The details of the impact of the proposed development on the built environment of the locality with regard to streetscape presentation, overall visual impact and traffic generation have been discussed in details in the previous sections of this report.

3.3 Social Impacts

The proposed development would result in a positive social impact in providing affordable rental accommodation particularly for large families, thus reducing social disadvantage and fostering inclusive and diverse communities in accordance with the NSW State Plan. Whilst this report recommends refusal of the application, the assessment recognises that affordable housing would be suitable for the site and subject to the applicant redesigning the development to address the deficiencies identified, the net benefit of the development should result in a favourable recommendation.

3.4 Economic Impacts

The proposal would have a minor positive impact on the local economy in conjunction with other residential development in the locality by generating an increase in demand for local services. Submissions raised concerns regarding the devaluation of properties due to this development. However, this is not a matter for consideration under the provisions of Section 79C of the Act. No evidence has been submitted that the any adverse impact on land values would occur.

4. SITE SUITABILITY

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

There is no known hazard associated with the site with respect to landslip, subsidence, bushfire or flooding that would preclude development on the site. The proposal complies with the draft North Subregional Strategy which aims at improving housing choice in the locality. However, the proposal in its current form would result in a detrimental impact on the natural and built environments of the locality and insufficient internal site amenity.

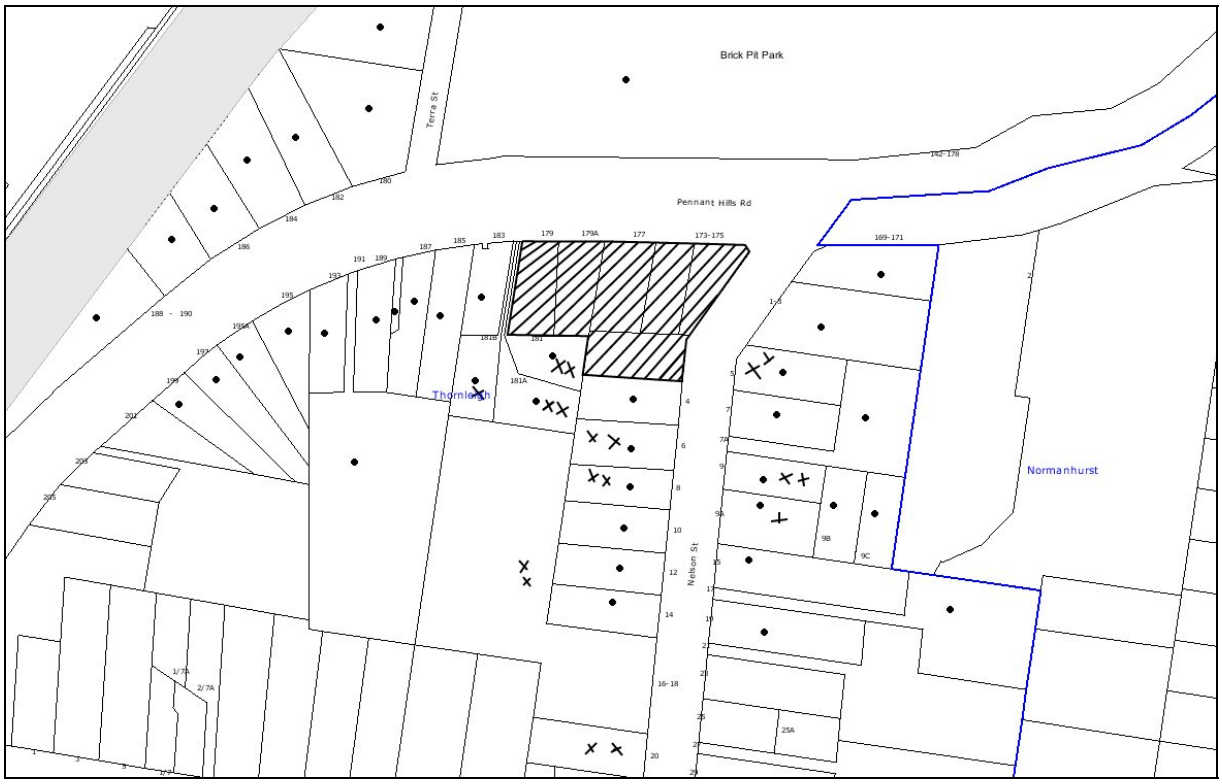
Given the above, the site is not considered to be suitable for the development as it is currently proposed.

5. PUBLIC PARTICIPATION

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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 19 May 2011 and 23 June 2011 in accordance with Council's Notification and Exhibition Development Control Plan. During this period, Council received twelve submissions from eighteen residents. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	PROPERTY SUBJECT OF DEVELOPMENT	N W E S

Twelve submissions objected to the development, generally on the grounds that the development would result in:

- An overdevelopment for the site due to construction of twenty-four townhouses.
- Being out of character with the area.
- Adverse privacy impacts on neighbouring properties.
- Adverse impact upon the solar panels installed on the roof of the adjoining southern property.
- Adverse overshadowing impacts on neighbouring properties.
- Reduced solar access to the proposed townhouses.
- Increased crime risk in the locality.
- Increased on-street parking problems due to insufficient parking on the site.

- Increased accidents in the area.
- Unacceptable location of vehicular access.
- Insufficient area on Pennant Hills Road to place bins.
- Adverse impact on the locality due to noise.
- Devaluation of adjoining properties in the neighbourhood.

In addition to the above the objections or made the following observations:

- The development is based on the number of affordable units rather than the percentage of floor space as mentioned in the amended AHSEPP.
- The locality does not have sufficient infrastructure such as child care centres or medical support to cater for such a development.
- There is no demarcated area for letter boxes.
- Most of the private open space areas for the proposed townhouses are not orientated towards the north.
- All garages are not accessible form the common driveway.
- The application does not include a photo montage.
- The soil on the site may be contaminated due to historic activities. Asbestos has been illegally dumped on the site.
- The site is affected by vehicle emission.
- The site description does not include No. 2 Nelson Street which forms a part of the property.
- The submitted noise report and noise levels are incorrect.

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

5.1.1 Property Description

Pt Lot 2, Pt Lo3 and Lot 4 DP 200513 comprise three parcels of land known as Nos. 173 – 175 Pennant Hills Road. Lot 4 DP 200513 is not described as No. 2 Nelson Street.

5.2 Public Agencies

5.2.1 Roads and Traffic Authority

The development application was referred to NSW Roads and Traffic Authority (RTA) for comments under the requirements of SEPP (Infrastructure).

The RTA raised no objection to the proposal and no specific conditions are recommended.

6. THE PUBLIC INTEREST

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

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

The application has not satisfactorily addressed Council's and NSW Government's criteria for affordable housing in a locality. It would provide a development outcome that, on balance, would result in a negative impact for the community due to the built form and the site planning. Accordingly, it is considered that approval of the proposed development would not be in the public interest.

CONCLUSION

The proposed development is for the erection of an affordable rental housing development comprising twenty four townhouses and basement car parking for thirty-eight cars at Nos. 173 - 179A Pennant Hills Road Thornleigh.

The application has been assessed having regard to the provisions of Section 79C of the *Environmental Planning and Assessment Act 1979* and the *State Environmental Planning Policy (Affordable Rental Housing) 2009.* The proposed affordable housing development is permissible on the site pursuant to the savings and transitional provision of the AHSEPP.

The development complies with the development standards prescribed under the AHSEPP in respect to floor space ratio, car parking, landscaping, deep soil zones and dwelling size. However, the development fails to provide appropriate solar access to 70% of the proposed townhouses, proposes inappropriate location of private open space areas and the site planning, internal amenity and impact on the locality do not comply with the best practice standards provided in the "Seniors Living: Urban Design Guidelines-Infill Developments".

The proposal is considered to be an overdevelopment for the site when assessed against the established local planning controls. It would result in unacceptable impact on significant trees on the site and would have detrimental impact on the surrounding properties due to overlooking and overshadowing. The Local Character Statement submitted with the application is assessed as unsatisfactory.

Refusal of the application is recommended.

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

Attachments:

1. Locality Plan
2. Survey Plan
3. Tree Location Plan and table – 3 pages
4. Typical Floor Plans including Site Plan– 3 pages
5. Basement Plan and Roof Plan – 2 pages
6. Elevations & Sections – 2 pages
7. Shadow Plans – 2 pages
8. Landscape Plan – 1 page
9. Perspective view from Pennant Hills Road – 1 page

SCHEDULE 1

1. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Clause 14(e) (Solar Access) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 as it is does not provide three hours direct sunlight to 70% of the dwellings between 9 am and 3 pm in mid-winter.

2. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Clause 15 (Design Requirements) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 as it is assessed as unsatisfactory against *"Seniors Living Policy: Urban Design Guidelines for Infill Development"*. The development would result in unacceptable internal amenity for the future occupiers of the townhouses, inappropriate location of private open space areas, unsatisfactory site planning and layout, detrimental impact on the streetscape due to reduced front setbacks and accentuated building bulk and adverse impact on the neighbouring properties due to overlooking and overshadowing.

3. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Clause 17(1)(a)(ii) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 as it does not include any evidence that all accommodation to be used for affordable housing will be managed by a registered community housing provider.

4. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Clause 16A of the amended State Environmental Planning Policy (Affordable Rental Housing) 2009 as the development is not in character with the locality and the submitted "Local Character Statement" is assessed as unsatisfactory.

5. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development would result in unacceptable impact on a significant group of trees located within the site, being remnant to the adjoining Blue Gum Shale Forest listed as Critically Endangered Ecological Species.

6. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the application does not demonstrate that would result in satisfactory:

    - Air Quality Management in accordance with the requirements of Clause 101(c) of the State Environmental Planning Policy (Infrastructure) 2007

    - Impacts on the local Gang-gang Cockatoo Endangered Population and the Blue Gum Shale Forest listed under the *Threatened Species Conservation Act 1995*.

7. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the submitted BASIX Certificate is incorrect with regard to details of a number of proposed townhouses.

8. Pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, it is considered that the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.