

MEMO



TO: Hunter & Central Coast Joint Regional Planning Panel
FROM: Brian Gibson - Senior Development Planner & Sue Page – Development Planner
APPLICATION NUMBER: DA/1058/2012 **DATE:** 20 December 2012
LOCATION: 152 BRIGHTON AVENUE, TORONTO NSW 2283

I refer to the subject application and advise the following:

Background

The above development application was lodged pursuant to State Environmental Planning Policy (Housing For Seniors or People with a Disability) 2004. The Hunter & Central Coast Joint Regional Planning Panel (JRPP) being the consent authority, considered a report on the application at its meeting of 15 November 2012.

At the meeting the Panel stated it favoured granting consent to the development application, subject to consideration of a further report from Council staff, addressing:

1. A SEPP 1 objection regarding the height non-compliance (Clause 40(4)(a) of SEPP Seniors Housing 2004)
2. Written evidence regarding accessibility and access to services (Clause 26 SEPP Seniors Housing 2004)
3. FSR calculations, including existing and proposed floor space and site area (Clause 48 and 50 of SEPP Seniors Housing 2004)
4. Draft Conditions of consent appropriately addressing and managing impacts (although noting the panel does not share the concerns of the SEPP 65 Design Review Panel)

The matters raised by the JRPP are addressed as follows:

1. SEPP 1 Objection to Clause 40(4)(a) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The proposal is for a Seniors development consisting of Independent Living Units and a Residential Care Facility. The application is pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Pursuant to Clause 40 of the SEPP, a consent authority must not consent to a development application unless it complies with the proposed development standards specified in the Clause. In this regard, the assessment as previously attested to in the report to the JRPP meeting of 15 November 2012 complies with the development standards specified within the Clause with the exception of 40(4)(a) which reads as follows:

40 Development standards—minimum sizes and building height

(1) General

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

(2) Site size

....

(3) Site frontage

....

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

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

- (a) the height of all buildings in the proposed development must be 8 metres or less, and

....

Due to the non compliant building height within that part of the development site which does not permit Residential Flat Buildings the applicant lodged an Objection to the Development Standard pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP1).

In considering a SEPP1 application Clause 21 of the Lake Macquarie Local Environmental Plan 2004 states:

21 Development the subject of SEPP 1 application

The consent authority, in determining a written objection made pursuant to State Environmental Planning Policy No 1—Development Standards, is to consider the underlying objectives of the development standard or other requirement concerned and the following, to the extent that they are relevant to the proposed development:

- (a) neighbourhood and local context,
- (b) topography,
- (c) solar orientation,
- (d) neighbourhood amenity and character,
- (e) privacy,
- (f) overshadowing,
- (g) security, safety and access,
- (h) local infrastructure,
- (i) landscape design,
- (j) waste disposal,

in addition to the matters referred to in that policy.

Further, Clause 16 of the LEP identifies matters for consideration:

16 Development consent—matters for consideration

Consent must not be granted for development unless the consent authority:

- (a) has had regard to the vision, values and aims of the Lifestyle 2020 Strategy expressed in Part 2, and
- (b) is satisfied that such of the development as is proposed to be carried out within a zone is consistent with the relevant objectives for the zone, as set out in the Table to clause 15.

State Environmental Planning Policy No. 1 – Development Standards

The SEPP1 Objection seeks to vary the Development Standard under Clause 40(4)(a) of SEPP Seniors Housing 2004. The applicant's predominant arguments against strict compliance with the development standard and reasons for supporting the SEPP1 objection are:

- The development in its current form is a balanced solution to the site, facilitating the proper conservation and management of natural resources whilst promoting the social and economic welfare of the community
- The development in its current form promotes the co-ordinated and orderly economic use and development of land zoned for urban purposes close to existing services and facilities;
- The proposal is infill development with access to existing infrastructure and services that represents orderly and economic development of the land.

Development Standard

The underlying basis or purpose of the development standard is not stated in the SEPP Seniors Housing 2004 however it is concluded that it is to ensure Seniors Housing development within residential zones where Residential Flat Buildings (RFB) are not permitted does not impact/or impose itself on low density scale development that is adjoining. Effectively, the 8 metre height limit seeks to ensure the scale of the development is compatible with the locality.

In terms of considering the variation to the development standard the proposed development is 12 metres or 3 storeys high above the area of the site zoned 2(1) Residential (in which an RFB is not permitted). Therefore it exceeds the development standard by 4 metres or 1 storey.

The variation to the development standard involves a small section of the development which is bounded to the north, east and west by the 2(2) zone (within which RFBs are permitted). To the south is an existing Seniors housing development which is two storeys, and is elevated above the proposed development. Further, the section of building involving the variation is removed from any adjoining separately owned lots.

If the development is approved as intended by the JRPP, it is not considered the variation to the development standard will have an impact on adjoining development considering its context within the broader development, the zoning of the locality and the existing and future built character.

Adequacy of SEPP1 Objection

Analysis of the SEPP1 objection in accordance with Council's 'A guide to State Environmental Planning Policy No. 1' has determined:

- Zone 2(1) Residential Objectives – The applicant’s SEPP1 refers back to the Statement of Environmental Effects in which it argued the proposed development in its current form is generally consistent with the objectives of the 2(1) zone.
- Vision, Values and Aims of the Lifestyle 2020 Strategy – The applicant’s SoEE made reference to the Vision, Values and Aims of the Lifestyle 2020 Strategy.
- Clause 21 of the LEP – The applicant’s SEPP1 objection provided analysis of the requirements of Clause 21 of the LEP as follows:
 - (a) Neighbourhood and local context,

Comment: The variation to the development standard will have no impact with regard to the neighbourhood and local context, as considered by the JRPP at its meeting of 15 November 2012.
 - (b) Topography,

Comment: The variation to the development standard will have no impact with regard to the topography of the site, as was considered more broadly in the development assessment.
 - (c) Solar Orientation,

Comment: The variation to the development standard will have negligible impact to solar access both internally and externally of the development.
 - (d) Neighbourhood amenity and character,

Comment: The variation to the development standard will have no impact with regard to the neighbourhood and local context, as considered by the JRPP at its meeting of 15 November 2012.
 - (e) Privacy,

Comment: The variation to the development standard will have negligible impact with regard to privacy both internally and externally of the development.
 - (f) Overshadowing,

Comment: The variation to the development standard will have negligible impact to solar access both internally and externally of the development.
 - (g) Security, safety and access,

Comment: No issues are identified in terms of security and safety.
 - (h) Local infrastructure,

Comment: The proposed variation will have no impact in terms of local infrastructure.
 - (i) Landscape design,

Comment: The variation to the development standard will have no bearing on the landscaping of the development.
 - (j) Waste disposal,

Comment: The proposed variation will have no impact in terms of waste disposal.

5 Part Test

In considering the SEPP1 objection, the 5 Part Test by Chief Justice Preston of the Land & Environment Court has been applied.

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Comment: The objective of the standard, if considered in the context of minimising impacts on adjoining development and the local context, is achieved.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Comment: The underlying objective and purpose of the standard is relevant to the development, and considering the view of the JRPP at its meeting of 15 November 2012 the development is satisfactory when considered in a broader context.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Comment: If strict compliance was enforced then the underlying objective and purpose would be defeated or thwarted whereby the outcome would be at odds with the future desired character noting the existing zone boundary alignment is an anomaly.

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;

Comment: The development standard under SEPP Seniors Housing 2004 has not been abandoned or destroyed by Council's own actions in granting consents as evident with recent determination in the local government area. Further, as the instrument under which the development standard sits is a State Environmental Planning Policy it is not possible to determine the level of adherence on a broader state wide level.

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.

Comment: The 2(1) Residential zoning of the land is not suitable when considering the alignment of the zone boundary. The majority of the development (habitable building works) is located within 2(2) Residential (Urban Living) zone, and, with the exception of the 2(1) encroachment, is compliant with the development standards having regard to Residential Flat Buildings.

Therefore, compliance with the development standard is deemed unreasonable and unnecessary in this circumstance.

Conclusion

The applicant's SEPP1 Objection to the Development Standard listed under Clause 40(4)(a) of the SEPP Seniors Housing 2004 is deemed to be well founded based on the following:

1. The objection is well founded as the arguments that compliance with the development standard being unreasonable or unnecessary in the circumstances are based on the interface with adjoining development and the anomaly evident in the zone boundaries.
2. The proposal is an appropriate form of development which is consistent with the desired future character of the area.
3. Compliance with the identified standard is considered to be unreasonable and unnecessary in the circumstances of the case and it is considered not to be in the public interest to require compliance.

Accordingly the SEPP1 Objection lodged in support of the development application is supported and therefore find no objection to the granting of consent.

2. Written evidence regarding accessibility and access to services (Clause 26 SEPP Seniors Housing 2004)

The applicant submitted a 'Response to JRPP' in terms of written evidence regarding accessibility and access under Clause 26 of SEPP Seniors Housing 2004 (a copy of the submission has been provided to the JRPP).

Council's Community Planner (Ageing & Disabilities Services) advised in a memo dated 6 December 2012:

I refer to the subject application and advise that I have reviewed the response from the applicant on accessibility.

The response outlines the use and frequency of a bus for outings for residential aged care residents and a shuttle service for independent living residents to access Toronto, and Fassifern Station. The service frequency outlined is satisfactory but this information needs to be included in the management plan that was previously submitted to Council.

3. FSR calculations, including existing and proposed floor space and site area (Clause 48 and 50 of SEPP Seniors Housing 2004)

Residential Care Facility - Clause 48(b) of the SEPP Seniors Housing 2004 provides that a consent authority must not refuse consent to a development application for the purpose of a Residential Care Facility on the grounds:

if the density and scale of the building when expressed as a floor space ratio is 1:1 or less

Self-Contained Dwellings - Clause 50(b) of the SEPP Seniors Housing 2004 provides that a consent authority must not refuse consent to a development application for the purpose of a self-contained dwelling on the grounds:

if the density and scale of the building when expressed as a floor space ratio is 0.5:1 or less

The applicant provided calculations of the Floor Space Ratio determined for the development/site to address Clauses 48 and 50 of the SEPP Seniors Housing 2004 as follows:

Overall Site:

21,830m²

Residential Care Facilities:

Nursing home (existing): 1,900m² GFA

RACF (proposed): 9,134m² GFA

Self-care apartments:

Valley View apartments (existing): 1,460m² GFA

Self-care apartments + community facility (proposed): 4,985m² GFA

Total GFA: 17,479m²

Total FSR: 0.8:1

4. Draft Conditions of consent appropriately addressing and managing impacts (although noting the panel does not share the concerns of the SEPP 65 Design Review Panel)

Draft Conditions of consent are attached as Appendix 1 to this Memo.

Should you require any information please contact me on 49 21 0388.

Brian Gibson

Development Assessment & Compliance