

JOINT REGIONAL PLANNING PANEL
(Sydney Region East)

JRPP No	2013SYE044
DA Number	197/13
Local Government Area	Canada Bay Council
Proposed Development	Demolition of existing structures on site and construction of a new Residential Aged Care Facility which will provide 86 beds
Street Address	65 - 71 St Albans Street, Abbotsford (Lots 34, 35, 36 and 37 of DP 5186)
Applicant	Cranbrook Care RACF Pty Ltd
Owner	<ul style="list-style-type: none"> - 65 St Albans Street (Lot 34 of DP 5186) Mr J Goris & Ms K Clarke - 67 St Albans Street (Lot 35 of DP 5186) Cranbrook Care RACF - 69 St Albans Street (Lot 36 of DP 5186) Mr R and Mrs A Barbariol - 71 St Albans Street (Lot 37 of DP 5186) Mr A and Mrs G Tesoriero
Number of Submissions	147 x Submission raising objection 1 x Petition (containing 198 signatures representing 138 households) 5 x Submissions of support
Recommendation	Refusal
Report by	Mr Samuel Lettice - Canada Bay Council

1. BACKGROUND

A background in respect to the application and critical dates is provided below:

03/06/13	Application lodged
11/06/13	Application notified (30 days), finishing on the 12 July 2013
22/06/13	Community information session held at the Five Dock Library
01/07/13	Correspondence sent to the applicant raising the issue of non compliance with Clause 26 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and that Council considered this to result in a prohibition.
15/07/13	Correspondence received from a representative of applicant in response to the above stating that the provisions of Clause 26 were considered a development standard with a SEPP 1 objection provided. Alternative routes to public transport services and survey data prepared by a registered surveyor was also submitted.
24/07/13	JRPP briefing panel meeting
15/08/13	Correspondence sent to a representative of the applicant providing comments received from Council's Environmental Health and Stormwater Divisions.
21/08/13	Meeting held at Council Chambers between Council officers and representatives of the applicant to discuss the application. At this meeting the applicant was provided with a copy of the independent peer review commissioned by Council in respect to the submitted Traffic and Parking Assessment.
22/08/13	Correspondence sent to the applicant confirming Council's position on the application, highlighting the previous primary concern held as well as other compliance issues and advice that had been received from Council's Tree Services division.

2. SITE AND CONTEXT

The 'subject site' is located within zone R2 'Low Density Residential' pursuant to the Canada Bay Local Environmental Plan 2008 and consists of four (4) existing individual sites as follows:

65 St Albans Street (Lot 34 of DP 5186)

This site contains an existing two storey rendered brick dwelling with hard paved areas to the rear. Charlton Street does form a secondary frontage and provides vehicular access. Scattered vegetation some of which comprises significant species is located adjacent to the southern side boundary and within the rear yard (two street trees forward of the site are also noted).

67 St Albans Street (Lot 35 of DP 5186)

This site contains a single storey face brick dwelling with vehicular access and garage adjacent to the northern boundary. Extensive paving is located to the rear as well as a swimming pool, boat shed and slipway. Low lying vegetation is also apparent with a street tree forward of the site.

69 St Albans Street (Lot 36 of DP 5186)

This site contains a two storey face brick dwelling with vehicular access and garage adjacent to the northern boundary. Areas of hard paving are apparent to the rear as well as a slipway. Limited vegetation is apparent though a mature tree in the rear yard adjacent to the north boundary is noted.

71 St Albans Street (Lot 37 of DP 5186)

This site contains a part two part three storey face brick dwelling with vehicular access provided adjacent to the southern boundary. A large hard paved area is located behind the dwelling with a detached carport and slipway located within the rear yard. Scattered vegetation is apparent with two trees located forward of the site within the Council verge.

The subject site is located on the south west side of St Albans Street between the intersections of Gow Street and Charlton Street. The site is irregular in shape and provides a frontage to St Albans Street of 64.375m, depth to the north of 74.7m and south (adjacent to Charlton Street) of 70.705m, with a rear exposure towards Hen and Chicken Bay of 56.76m, yielding a total site area by title of 4251.4m². The site has a fall of approximately 5m towards Hen and Chicken Bay to the rear.

To the north of the site is a Sydney Water Sewage Pumping Station listed as a heritage item pursuant to Schedule 5 of the Canada Bay LEP. The pumping station building falls within an allotment adjacent to the street frontage with an allotment surrounding the building unfenced and appearing as a component of Henry Lawson Park though also falling under the ownership of Sydney Water.

To the east of the site is an older three storey residential flat building above basement parking that is located within zone R3 'Medium Density Residential' with a wide exposure to the subject site. A single storey dwelling is located at 68 St Albans Street adjacent to Gow Street and has development approval for three two storey townhouses above partially elevated basement parking. Residential dwellings and townhouse development are apparent beyond on the eastern side of St Albans Street.

The R2 'low density residential' zone continues south of the site (on the western side of St Albans Street) and in this regard two detached residential dwellings are located on the opposing side of Charlton Street. Upon 63 St Albans Street is part two / part three storeys with 1 Charlton Street of single storey construction. Original single storey dwellings are located beyond, though more modern two / three storey examples are also apparent, noting that in the vicinity of Mayne Lane.

Hen and Chicken Bay bounds the site to the rear (west) with the Cabarita foreshore opposing.

3. PROPOSED DEVELOPMENT

3.1 Project Description in Detail

The proposal seeks consent for the following works:

- Demolition of all existing structures on site and removal of slipways with the exception of that located on 71 St Albans Street and removal of select vegetation.
- Construction of a new residential aged care facility over four levels as follows:
 - Basement floor comprising plant room, staff amenities, kitchen, linen service, plant and storage areas. This level also provides parking for twenty three (23) vehicles and a separate space identified as 'van parking';
 - Lower ground floor comprising twenty three (23) rooms and resident facilities in the form of a hydrotherapy pool, wellness centre, hairdressing salon, two dining rooms, nurse stations and utility storage spaces. Thirteen (13) rooms upon this level to the southern component are provided within a secure area and intended for use by dementia patients;
 - Upper ground floor comprising thirty two (32) rooms with resident facilities in the form of a dining area and two lounge areas as well a nurse station and utility storage areas. An administration office and reception are located upon this level adjacent to the main pedestrian entry provided adjacent to St Albans Street frontage;
 - Level 1 comprising twenty six (26) rooms with resident facilities such as a central dining area and lounge oriented towards the waterway to the rear. A nurse station and utility storage areas are also provided to this level

All levels are serviced by internal stairs with two lift cores also provided.

In total the facility provides a capacity of 86 beds within 81 separate rooms which will provide care for low, high and dementia care patients.

Pedestrian access to the development is via an entrance at the St Albans Street and Charlton Street intersection which accesses a pathway that leads to the main pedestrian entrance and administration located on the upper ground floor level of the building. Secondary access is provided via Charlton Street with a link also proposed to the rear adjacent to the foreshore. All access points including that for vehicular traffic will be restricted.

By nature the facility will provide 24 hour operation.

- Vehicular access to the site is proposed via Charlton Street and given the orientation of the access ramp to the basement which runs parallel to the street a turntable has been introduced. This device is located adjacent to the goods / loading room of the building and is to be utilised for loading purposes as well as an ambulance bay as required.
- In respect to landscaping an outdoor seating and lawn area forms a centralised communal component enclosed by the two wings of the facility. A small separate courtyard is also provided adjacent to the dementia care component of the building to the southern boundary. A large consolidated area of landscaping is provided to the rear of the development within the foreshore building line. Extensive planting is proposed to this area as well as a sheltered seating area.
- Foreshore access is facilitated with a public path depicted on plans in accordance with the Canada Bay LEP 2008. An undertaking to establish an easement consistent with that required by the LEP and a 3m dimension as required by the Canada Bay DCP is also proposed.

4. STATUTORY CONTEXT

4.1 Delegation

Under Section 23G of the *Environmental Planning and Assessment Act 1979 (the Act)*, a regional panel is taken to be the Council whose functions are conferred on a regional panel.

Pursuant to Schedule 4A of the Act as the development has a Capital Investment Value (CIV) greater than \$20 million (\$22,722,200 declared) the consent authority is the Sydney East Joint Regional Planning Panel (JRPP).

Canada Bay Council officers met with the JRPP on 24 July 2013. The purpose of the meeting was to present and brief the panel members on the Development Application ahead of the panel's determination of the application at a future panel meeting.

4.2 Permissibility

The site is zoned R2 'Low Density Residential' under the Canada Bay Local Environmental Plan 2008 (CBLEP). Under the CBLEP the proposed development defined as 'Seniors Housing' is prohibited. However State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 defines the use as a 'residential care facility' and pursuant to clause 4(1) it is permissible as the subject R2 'Low Density Residential' zone does permit 'dwelling-houses'.

4.3 Environmental Planning Instruments

To satisfy the requirements of Section 79C(1)(a) of the Act, this report includes references to provisions of the Environmental Planning Instruments that substantially govern the carrying out of the project and have been taken into consideration in the assessment of the Development Application.

Environmental Planning Instruments

- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy No. 55 - Remediation of Land

- Sydney Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005
- Canada Bay Local Environmental Plan 2008
- Draft Canada Bay Local Environmental Plan 2013

Non Statutory Planning Policies

- Sydney Harbour Foreshores Area Development Control Plan
- City of Canada Bay Development Control Plan 2008

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

Clause 4 stipulates the types of land on which housing developments for seniors or people with a disability may be erected and states:

This Policy applies to land within New South Wales that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if:

- (a) *development for the purpose of any of the following is permitted on the land:*
 - (i) *dwelling-houses,*
 - (ii) *residential flat buildings,*
 - (iii) *hospitals,*
 - (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, or*
- (b) *the land is being used for the purposes of an existing registered club.*

The proposed development is located on land zoned R2 'Low Density Residential' under the CBLEP which permits dwelling houses, therefore the proposed development is permissible.

Clause 5 states that where this Policy is inconsistent with any other environmental planning instrument, this Policy prevails 'to the extent of the inconsistency'.

Clause 10 identifies the proposed development as a residential care facility, which is a form of *seniors housing* to which the SEPP applies.

Clause 11 defines a *residential care facility* as:

Residential accommodation for seniors or people with a disability that includes:

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

The proposed residential care facility provides a dedicated kitchen, dining and laundry facilities. A hydrotherapy pool, wellness centre, hairdressing salon and nursing stations are also apparent and demonstrate that the facility is consistent with the abovementioned definition.

Clause 18 Restrictions on occupation

This clause restricts the occupation of the development to the following;

- (a) *seniors or people who have a disability,*
- (b) *people who live within the same household with seniors or people who have a disability,*
- (c) *staff employed to assist in the administration of and provision of services to housing provided under this Policy.*

Pursuant to sub clause 2 Council is required to impose a condition on any consent limiting the kinds of people who may occupy the development to the above with a restriction on title to also be registered.

Clause 22 Fire sprinkler systems in residential care facilities for seniors

Development for the purpose of the installation of a fire sprinkler system in a residential care facility for seniors may be carried out with development consent.

A Preliminary BCA Report was submitted with the application and states that the building will require a sprinkler system in accordance with AS218.1 and 4 throughout.

Clause 26 Location and access to facilities

This clause requires written evidence that the development will provide residents with adequate wheelchair access or adequate public transport access to a range of shops, services and facilities within the local area. The clause states the following:

- (1) *A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:*
 - (a) *Shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
 - (b) *Community services and recreation facilities, and*
 - (c) *The practice of a general medical practitioner.*
- (2) *Access complies with this clause if:*
 - (a) *The facilities and services are located not more than 400 m from the site accessible by means of a suitable access pathway and the overall average gradient for the pathway is no more than 1:14, although the following gradients along the pathway are also acceptable:*
 - (i) *A gradient of no more than 1:12 for slopes for a maximum of 15 m at a time,*
 - (ii) *A gradient of no more than 1:10 for a maximum length of 5 m at a time,*
 - (iii) *A gradient of no more than 1:8 for distances of no more than 1.5 m at a time, or*
 - (b) *in the case of a proposed development on land in a local government area within the Sydney Statistical Division - there is a public transport service available to the residents who will occupy the proposed development:*
 - (i) *That is located at a distance of not more than 400 m from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and*
 - (ii) *That will take those residents to a place that is located at a distance of not more than 400 m from the required facilities and services, and*
 - (iii) *That is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm Monday to Friday.*

and the gradient along the pathway from the site to the public transport services and from the public transport services to the facilities and services must comply with the same gradients referred to above. The access pathway is suitable if it is a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like

Subclause 2(c) which is not outlined makes reference to transport services being available to residents who will occupy the proposed development. This clause is not available to the application at hand as it only applies to land in a local government area that is not within the Sydney statistical division.

As initially submitted the nominated path of travel linking the site with public transport services (being a bus stop on Great North Road adjacent to Blackwall Point Road) was via Gow Street. This route as stated measured 270m and it was acknowledged that gradients did not comply with clause 2(a) above. In addressing this issue the submitted statement of environmental effects cited the average age of residents (being between 83 and 85 years of age) and fact that most would not have the capacity to

leave the site to access services and facilities outlined. The services provided on site by the subject facility and provision of a mini-van service for residents was also outlined.

Council sent correspondence to the applicant on the 1 July 2013 stating that in its opinion non compliance with the provisions of Clause 26 represented a prohibition to the proposed development.

In response additional information was provided stating that provisions of Clause 26 represented a development standard and accordingly an objection to the clause was submitted under SEPP 1 with revised paths of travel and survey data also provided. The submitted scheme confirmed that the distance via Gow Street was in fact 339.1m and outlined an alternate route via Mayne Lane that measured 458m. Mayne Lane is a narrow service lane and has no existing pedestrian footpath, hence it does not satisfy provision 2(a) which requires a *suitable access pathway*.

Two other options were cited via Abbotsford Parade (464.2m) and Altona Street (507.7m) to a bus stop on the western side of Great North Road adjacent to Altona Street. In respect to the distance calculation clause 2(b)(ii) of the SEPP requires that there is public transport service available to the residents who will occupy the proposed development that will take those residents to a place that is located at a distance of not more than 400m from the stated facilities and services. The bus routes available being the L38 and 438 when travelling north bound terminate approximately 370m from the nominated bus stop at the terrace with a new city bound service commencing at this point which may require occupants to disembark the bus, wait and board the new service. This means of access is considered both inadequate and inequitable and as such the bus stop that needs to be accessed from the subject site is that on the eastern side of Great North Road slightly north of the Walton Crescent intersection which travels south bound and provides access directly to required services. In this regard it is noted that access to this bus stop adds approximately 60m to each of the above-mentioned distances, such that the Abbotsford Parade route measures (524.2m) and Altona Street (567.7m).

Detailed gradients were provided for the Abbotsford Parade access and would appear to indicate compliance with the gradient standards though separate survey data prepared by a registered surveyor on behalf of residents objecting to the application indicates non compliance. Based upon information before Council this issue remains unresolved.

As demonstrated above the development does not comply with the distance provision with the issue of gradients unclear. Nevertheless as the development does not comply the position Council previously presented to the applicant is maintained and non compliance with clause 26 is considered to represent a prohibition and accordingly it is recommended that the application be refused on these grounds.

Clause 28 Water and Sewer

This clause requires Council to be satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.

An infrastructure report was submitted and identified that there is available and satisfactory connection to a reticulated water system and adequate facilities for the removal and disposal of sewerage.

Sydney Water was notified of the development application being an adjoining landholder and provided correspondence confirming the availability of water and waste water infrastructure.

Clause 30 Site Analysis

The documentation submitted with the application provides an adequate site analysis. It is also noted that an Urban Design Report was prepared and analysed the existing environment and somewhat guided built form based upon design principles that were established for the site.

Clause 32 Design of residential development

Consent must not be granted unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out under Clauses 33-39 of the SEPP. The assessment of the proposal against the provisions of these clauses is set out below.

Clause 33 Neighbourhood amenity and streetscape

This clause states that the proposed development should:

- (a) *Recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area.*
- (b) *retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and*
- (c) *Maintain reasonable neighbourhood amenity and appropriate residential character by:*
 - (i) *providing building setbacks to reduce bulk and overshadowing.*
 - (ii) *using building form and siting that relates to the site's land form.*
 - (iii) *adopting building heights at the street frontage that are compatible in scale with adjacent development.*
 - (iv) *considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.*
- (d) *Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line.*
- (e) *embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and*
- (f) *retain, wherever reasonable, major existing trees, and*
- (g) *be designed so that no building is constructed in a riparian zone.*

Development surrounding the subject site it is mixed and much of this is considered to stem from the R2 and R3 residential zone boundary interface which St Albans Street forms. An older three storey residential flat building opposes the site to the east with a number of two / three storey townhouse developments to the south east provided with narrow frontages and orientated more so internally. Detached residential dwellings are apparent south of the site on the western side of St Albans Street and are varied in respect to age and style and provide single, two and up to three storey construction given the topography of sites which fall towards the foreshore.

In response to sub clause (b) the site is adjacent to a heritage item at 73 St Albans Street being a 'Pumping Station' with Council's Heritage Advisor viewing the proposal as '*generally sympathetic to and relatively neutral in the context of the adjacent heritage item and acceptable in heritage terms*'.

In consideration of residential character stated in subclause (c) the four (4) planning principles in respect to seniors living developments in low density zones established in GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council [2003] NSWLEC 268 are also utilised in assessment. It is noted that the principles were established under SEPP 5 though still remain valid to the application at hand:

The first principle is that buildings in a SEPP 5 development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single-storey. The principle does not apply to conservation areas where single-storey dwellings are likely to be the major reason for conservation.

The second principle is that where the size of a SEPP 5 development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.

The height of the development to St Albans Street is generally considered acceptable with a two storey facade presented. It is noted that the lower level has a floor level of RL 4.9 approximately 2m below the St Albans Street gutter to the south (RL 6.93) and 3m to the north (RL 7.91). The overall height of the facade as measured to the parapet surround measures RL 11.9 which in comparison to existing built form on site is above the ridges of 65, 67 and 69 St Albans Street being RL 10.67, 10.73 and 11 respectively and below 71 St Albans Street which is RL 14.65. Furthermore the development is well within the 8m height provision of the SEPP at this point (measuring 5m) with an overall height of 6.4m as measured from natural ground to the upper level parapet surround.

As viewed from Charlton Street the bulk of the development is greater due to the slope of the site to the rear. Whilst it is considered that a three storey component can be reasonably entertained the extent of that proposed is considered excessive especially noting that the rear upper level being the highest component of the building is setback only 3m from Charlton Street. Reducing the footprint of the upper level to the rear would reduce bulk, provide greater articulation of the development and would provide a better transition with residential development within the low density residential zone to the south. As discussed elsewhere in this report in respect to separate issues increasing the southern setback of the development would also be beneficial in respect to the streetscape resolution of the development from Charlton Street.

A primary setback of 4.5m is provided to St Albans Street which noting the isolated nature of the site and varied established setbacks in the vicinity is considered acceptable. It is also noted that 4.5m is the minimum required by the Canada Bay DCP in respect to residential development otherwise permitted in the zone. Concern is held however in respect to the length of the facade which measures approximately 59.65m due to minimal side setbacks that are provided. An absence of any generous breaks within the built form are also noted which given the context of the site is considered inappropriate and directly in contrast to that promoted by the second of the planning principles.

In response to the length of the building the submitted Urban Design Report identifies that inset points have been provided for the three entries. *...expressed through the height of the building and reinforced with materials and colours. The inset will create areas of depth and shadow that will assist in creating reasonable response to the 'grain' of the street. It will also assist in reducing the apparent length of the building for pedestrians walking past the development and is far less intrusive than many of the town house developments in their overall length and form'.*

It is considered that the length of the building needs to be reduced and more generous breaks in the facade would be desirable as the main central recess only measures 2.1 x 3.6m and two secondary recesses 1.6 x 2.2m which it is considered will result in the building appearing largely as a singular form and possessing a bulk significantly greater than surrounding development. The level of the site forward of the building line below that of the adjacent verge and excavation of the lower level and basement to within 2.5m of the street boundary are also noted and limit opportunity for significant planting which in turn emphasises the importance of the facade design.

Furthermore as discussed elsewhere in this report in the need to increase side boundary setbacks in response to issues of amenity, vehicular access and tree preservation have also been identified.

The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.

As previously stated whilst the height of the development proposed to the street frontage is generally considered acceptable that proposed to the rear could be reduced to be better respond to the fall of the site. This principle does also bare resemblance to provisions of subclause 33(f) and in this regard an Arborist Report accompanied the application. The following extracts in respect to significant trees (identified as 43, 44 and 48) located adjacent to Charlton Street to be retained are noted:

Tree #43 and Tree #44 are E. scoparia (Willow Gum) and are large, healthy specimens which are of good form. Tree #43 has a small Bracket fungus wound which is able to be treated. Both specimens are suitable for and planned for retention.

Suitable setbacks from the trunks of these trees according to AS4970 are calculated at 12 x dbh which in this case would be 450 mm x 12 equals 5.4 metres and 600 mm x 12 equals 7.2 metres.

The set backs to retain both trees would not be cumulative. A setback of at least 10 metres from the front corner down the Charlton St frontage and a setback of at least 5 metres from the Charlton St frontage northwards would be required if the trees were reasonably able to be retained. The 5 metre set back from the Charlton St frontage northwards is just over 3 metres from the trunk of Tree #44. This means that the south east corner of the proposed building, including the basement excavation, would need to be setback this distance if Tree #44 is reasonably able to be retained. It should be noted that this distance would be an absolute minimum as excavation at the 5 metre distance from the boundary is only just outside the structural root zone of Tree #44. Excavation

closer than this may risk instability of the whole tree, notwithstanding the probable decline of the tree due to the removal of significant root feeding area.

Submitted plans indicate that basement excavation is within 1m of the trunks of both Tree 43 and 44.

Tree #48 is E. microcorys (Tallowwood) is a medium sized example of this species. Cranbrook Care seeks to retain this specimen however due to design constraints excavation closer than would otherwise normally be advised is planned to proceed. The ramp for the basement car park is proposed to be routed past the northern side of this tree. The root zone of the tree has been restricted somewhat on this side by the existing house and basement garage however the access ramp and basement car park would cut across the northern side of the tree close to the structural root zone (1.8 metres). The remainder of the root area of the tree on the Charlton St frontage would remain undisturbed.

It should be noted that the normal TPZ for this tree would be 7.2 metres from the trunk of this tree and so intensive measures to improve the remaining root area will be necessary if the tree is able to stand a reasonable chance of surviving in an acceptable state of health well into the future.

In order to give the tree the best chance of being able to survive construction of the development in or near its current state of health it was recommended that no excavation closer than 2m from the trunk of the tree be undertaken as this will significantly reduce available root area and significantly increase the risk of whole tree failure.

Council's Tree Services Division reviewed the application and raised objection to the proposed TPZ stated in respect to trees 43, 44 and 48 and extent of excavation in this area. Furthermore the removal of trees identified as 50, 52, 55 and 56, the latter 2 of which the Arborist Report states as being 'worthy of retention', is opposed. This vegetation is considered significant and is important from a streetscape perspective. It is located at the site edge and as such preservation is not considered unreasonable or overly restrictive. Secondly, in conjunction with issues outlined in respect to building bulk as well as vehicular access elsewhere in this report these trees should be retained.

Accordingly the development is considered inconsistent with subclause (f) which seeks to retain, wherever reasonable, major existing trees.

The fourth principle is that a SEPP 5 development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced, only that their introduction should be done with care and sensitivity.

A variety of materials and finishes have been utilised to the building and whilst not exactly replicating that of existing built form are considered to be of high quality and complement the context of the site.

Clause 34 Visual and acoustic privacy

The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:

- (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping.*
- (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.*

Note. The Australian and New Zealand Standard entitled AS/NZS 2107-2000, Acoustics - Recommended design sound levels and reverberation times for building interiors and the Australian Standard entitled AS 3671-1989, Acoustics - Road traffic noise intrusion - Building siting and construction, published by Standards Australia, should be referred to in establishing acceptable noise levels.

In respect to visual privacy the site is somewhat isolated, bound by the Sydney Water site to the north, St Albans Street to the east, Charlton Street to the south with Hen and Chicken Bay to the west. In respect to residential dwellings on the opposing side of St Albans Street as the upper floor level is on average only 1m higher than the St Albans Street verge no adverse overlooking is foreseen and view lines would be similar to that currently attained from the public domain.

Beds of the residential care facility with associated balconies are also oriented to the south elevation and subsequently provided with an outlook over Charlton Street and private open space of 63 St Albans Street. The property contains an elevated terrace to the rear which is visible from the public domain with the separation provided by the setback of the building and Charlton Street also noted and potentially mitigating impacts to a certain degree. Design amendments recommended in respect to the upper level footprint and side boundary setbacks would also be beneficial from a privacy perspective.

In respect to acoustic privacy a noise emissions report was prepared for the application. This report assessed plant noise in against the Canada Bay DCP and NSW EPA Industrial Noise Policy.

The report concluded that analysis carried out indicates that it is feasible to install the assumed plant and comply with noise criteria. Recommendations for the provision of acoustic treatment in principle have been given and will require detailed design when the equipment selections are finalised.

Accordingly we consider that the project is capable of complying with the Project Specific Noise Criterion in this report and therefore City of Canada Bay DCP requirements regarding noise control.

Based on the above no objection is raised from an acoustic perspective.

It is noted that a noise receiver was set up outside of 1 Charlton Street which assessed noise generated from the proposed turntable, the report however refers to the site as 86 Wymston Parade.

Clause 35 Solar access and design for climate

The proposed development should:

- (a) Ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space.*
- (b) Involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.*

Note. AMCORD: A National Resource Document for Residential Development, 1995, may be referred to in establishing adequate solar access and dwelling orientation appropriate to the climatic conditions.

The applicant provided shadow diagrams in plan and elevation depicting the impact of the proposed built form towards adjoining properties at 9am, 12noon and 3pm during midwinter (June 21).

Based on the above plans it is apparent that shadows will be cast towards the adjoining property (1 Charlton Street) at 9am reaching only the facade of the garage and veranda fronting the street and not impacting upon any main living areas or private open space. After this time shadows swing and primarily due to the separation do not adversely impact upon any adjoining properties, falling primarily over the subject site and Charlton Street.

With regard to solar access within the confines of the site as extensive excavation is undertaken the lower ground floor is predominantly contained below natural ground level. In this regard solar access to residential care facility bedrooms along the northern elevation which provide private open space in the form of balconies is considered extremely poor as this level is provided with setbacks as little as 1.5m from the boundary with floor levels significantly below the ground level of the adjacent Sydney Water site (approximately 4.71m below the top of the adjacent retaining wall).

A similar situation is identified to the southern component of the building to this lower ground floor level which will cater for dementia patients and is subsequently separated to a certain degree from other components of the facility. Whilst single aspect bedrooms are limited this orientation again those apparent provide a poor level of amenity for residents. The primary private open space area for the dementia unit, being the courtyard is located adjacent to the southern elevation of the building and approximately 3m below the Charlton Street verge (not including boundary fencing). To address this issue and to improve amenity for residents it is considered that at a minimum setbacks be increased.

Clause 36 Stormwater

The proposed development should:

- (a) Control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semipervious material, minimising the width of paths and minimising paved areas*
- (b) Include, where practical, on-site stormwater detention or re-use for second quality water uses.*

Council's Development Engineer reviewed submitted stormwater management detail and requested additional information. Comments were forwarded to the applicant and no response has been received

Clause 37 Crime prevention

The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:

- (a) Site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street.*
- (b) Where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked.*
- (c) Providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.*

Crime Prevention through Environmental Design (CPTED) is a crime prevention strategy. In this regard the submitted statement of environmental effects provided an assessment of the proposal against the four key strategies outlined by CPTED which are territorial enforcement, surveillance, access control and space / activity management. The findings of the statement are agreed and in this regard the proposed development is considered acceptable in terms of crime prevention.

Clause 38 Accessibility

The proposed development should:

- (a) Have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities.*
- (b) Provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.*

As discussed previously under the Clause 26 'Location and access to facilities', accessibility of the site to public transport services and local facilities is not considered appropriate.

In respect to circulation within the site a statement of compliance in relation to access for people with a disability accompanied the application and concluded that the '*proposal can achieve compliance with the access provisions of the BCA*'. In respect to parking it is understood that off street provision will only be utilised by staff.

Clause 39 Waste management

The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.

Council's Waste Management Officer reviewed the submitted waste management report and raised no objections. It is noted that adequate waste storage areas are provided within the basement which facilitate recycling with the operational strategy proposed also encouraging this practise.

Clause 40 Development standards

(1) 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: The size of the site must be at least 1,000 m².

(3) Site frontage: The site frontage must be at least 20 m wide measured at the building line.

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

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

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

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

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

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

Site area

The site has an area of 4251.4m² which complies with the minimum 1000m².

Site frontage

The site has a frontage to St Albans Street of 64.375m which complies with the 20m standard.

Height

In respect to height the definition is contained within section 3 of the SEPP and reads as follows:

height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

The proposal as submitted technically complies with the height standard though in this respect it appears that a component of the upper level ceiling cavity is manipulated / increased as depicted on architectural section detail to achieve compliance (DA - A2001 Sections A & C).

The proposed building contains a three (3) storey component and as such does not comply with clause (4)(b) which restricts development to two storeys. In response to the non compliance an objection pursuant to SEPP 1 objection was submitted.

Pursuant to Clause 1.9 of the Canada Bay LEP following gazettal of the standard instrument the provisions of SEPP 1 were repealed. In this regard if departure from the subject standard is sought application is to be made under clause 4.6 'Exceptions to Development Standards' of the CLEP. Correspondence was sent to the applicant outlining this though no response has been received.

In respect to height, noting surrounding development and the extent to which the subject building is excavated within the site a three storey component can be reasonably entertained. However the extent of the upper level footprint proposed is considered excessive and results in a bulk and scale that adversely impacts upon the streetscape resolution of the development and issues of view loss.

Nevertheless in the absence of valid application being received in respect to the proposed height variance, the proposal cannot be supported.

The proposal provides compliance with the foreshore building line and as such no component of the building is located within the rear 25% of the site, such complying with subclause 4(c).

Clause 48 Standards that cannot be used to refuse development consent for residential care facilities

A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds:

- (a) **building height:** if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys), or
- (b) **density and scale:** if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,
- (c) **landscaped area:** if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,
- (d) **parking for residents and visitors:** if at least the following is provided:
 - (i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and
 - (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and
 - (iii) 1 parking space suitable for an ambulance.

Building Height

In respect to height as previously outlined the proposal technically complies though in this respect it appears that the ceiling cavity has been manipulated to facilitate this.

Density and Scale

The proposal provides a gross floor area of 4226 which equates to an FSR of 0.994:1.

Landscaped Area

The submitted statement of environmental effects outlines that a landscaped area of 2137.79m² is provided equating to 24.85m² per bed. Whilst this could be viewed as a minor non compliance, it is considered that there is no impediment, given the context and size of the site, to achieving compliance, noting particularly other aspects of this report that necessitate an increase in setbacks.

The development provides a number of communal areas in the form of indoor lounge areas, a large outdoor seating and lawn area as well as landscaped area within the foreshore building line. Provision of these areas is beneficial though not considered to offset the landscaped area deficiency.

Parking for Residents and Visitors

Based on the outlined criteria the proposal requires 21.6 spaces based on 86 beds and 26 staff. Twenty three (23) spaces are provided within the basement with ambulance bay at grade on turntable.

Clause 55 Residential care facilities for seniors required to have fire sprinkler systems

A consent authority must not grant consent to carry out development for the purpose of a residential care facility for seniors unless the proposed development includes a fire sprinkler system.

As previously outlined a Preliminary BCA Report was submitted with the application and states that the building will require a sprinkler system in accordance with AS2118.1 and 4 throughout.

4.3.2 State Environmental Planning Policy No. 55 – Remediation of Land;

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

The proposed development involves the construction of a residential aged care facility. Council records do not indicate that any of the sites that make up the subject site have been utilised for any contaminating activity. Each site does have an extended history of residential use and as such it can be reasonably concluded that the subject site is not contaminated and is suitable for the use proposed.

4.3.3 Sydney Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005; deemed SEPP

The site falls within the map area shown edged heavy black on the Sydney Harbour Catchment Map and hence is affected by the provisions of SREP (Sydney Harbour Catchment) 2005. The SREP aims

to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained. The SREP also provides a set of guiding principles to be taken into consideration in the preparation of environmental planning instruments and / or master plans.

Clause 20(a) states that consent authorities must take into consideration the matters in Division 2 prior to the granting of consent. Assessment in response to considerations is provided below:

Clause 21 Biodiversity, ecology and environment protection

The proposed development is not likely to have any impact on the quality of water entering the waterway or upon terrestrial and aquatic species, populations and ecological communities.

General Terms of Approval were issued by the NSW Office of Water on the 9 July 2013. Following on from this a Controlled Activity Approval needs to be obtained and in this regard such documentation as a vegetation management plan, erosion and sediment control plan, soil and water management plan are required with the intent of mitigating any impact towards the foreshore during construction works.

Clause 22 Public access to, and use of, foreshores and waterways

The proposed development improves public access to and along the foreshore with access provided in accordance with the Canada Bay LEP. This is not foreseen to have any adverse impact on watercourses, wetlands, riparian lands or remnant vegetation.

Clause 23 Maintenance of a working harbour

The proposed development will not impact upon the character and functions of a working harbour.

Clause 24 Interrelationship of waterway and foreshore uses

The proposed development will not affect the interrelationship of the waterway and foreshore uses.

Clause 25 Foreshore and waterways scenic quality

The scale, form, design and siting of the building as viewed from the waterway is generally considered acceptable. In this regard development within Abbotsford Parade and St Albans Street is noted, much of which presents as three storeys elevated above and close to the waterway. The width of the subject development exceeds that of surrounding dwelling houses though it is noted that the building is excavated within the site, effectively articulated when viewed from the waterway (noting the internal lawn) and appropriately setback from waterway in accordance with the foreshore building line which in turn allow planting to be incorporated adjacent to the foreshore. Furthermore visual bulk is isolated to a certain degree by open space and planting to the north and Charlton Street to the south.

Clause 26 Maintenance, protection and enhancement of views

The proposed development will maintain, protect and enhance views (including night views) to and from Sydney Harbour. Views to and from public places and heritage items will not be compromised.

Clause 27 Boat storage facilities

No boat storage facilities are proposed. It is noted that two existing slipways are to be removed.

Clause 29 Consultation required for certain development applications

The consent authority must not grant development consent to the carrying out in the Foreshores and Waterways Area of development listed in Schedule 2, unless:

- (a) it has referred the development application to the Advisory Committee, and*
- (b) it has taken into consideration any submission received from the Advisory Committee within 30 days after the date on which the application was forwarded to the Committee.*

As the development involved the use of land below the mean high water mark as defined within Schedule 2 the application was referred to the Advisory Committee for consideration.

A water based site inspection was undertaken on the 16 August 2013 with the following offered:

The Sydney Harbour Foreshores & Waterways Area DCP for SREP (Sydney Harbour Catchment) 2005 (Deemed 2005) identifies the site as being within Landscape Character Type 12. This is characterised by open spaces and some residential areas along the foreshore, with open space being predominantly grassed, with few trees. The shoreline is mainly built up but pockets of natural shoreline do occur. Residential development forms the backdrop to these areas.

The Committee suggests that the consent authority takes into consideration:

- i) the impacts of the proposed development on public access to, and use of, foreshores and waterways, and on scenic quality and the protection of views, consistent with clause 22(a), (c), (d) and (e) and clauses 25 and 26 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed 2005);*
- ii) the overall bulk and scale of the proposed development in relation to its context within the Landscape Character type referred to above; and*
- iii) the importance of existing trees and vegetation and the proposed landscaping of the site.*

The above suggestions have been considered within this report.

4.3.4 City of Canada Bay Local Environmental Plan 2008

The site is zoned R2 - Low Density Residential under the Canada Bay Local Environmental Plan 2008 (CBLEP). Under the CBLEP the proposed development defined as 'Seniors Housing' is prohibited. As previously stated permissibility is established under the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

Clause 1.9 Application of SEPPs

- (2) *The following State environmental planning policies (or provisions) do not apply to the land to which this Plan applies:*

State Environmental Planning Policy No 1 - Development Standards

SEPP 1 objections were submitted in respect to the access and height provisions contained within clauses 26 and 40 of SEPP (Housing for Seniors or People with a Disability) 2004.

As previously stated following gazettal of the CBLEP which adopted the standard instrument template the provisions of SEPP 1 were repealed. Correspondence was sent to the applicant stating that if a departure from the standard was sought application would have to be made pursuant to clause 4.6 'Exceptions to Development Standards' of the CBLEP. To date no submission has been received.

Clause 4.3 Height of Buildings

Pursuant to sub clause (2) the maximum height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map which is 8.5m

The building does not comply with the height standard of the CBLEP, measuring 9.4m though as the proposal involves a residential aged care facility under provisions of the Seniors Housing SEPP which also includes design controls in respect to height, these provisions prevail over that of the CBLEP.

Clause 4.4 Floor Space Ratio

Pursuant to sub clause (2) the maximum floor space ratio of a building on any land is not to exceed the maximum floor space ratio shown for the land on the Floor Space Ratio Map which is 0.5:1.

The building does not comply with the FSR standard of the CBLEP though as the proposal involves a residential aged care facility under the provisions of the Seniors Housing SEPP which also includes a design control in respect to FSR, these provisions prevail over that of the CBLEP.

Clause 5.10 Heritage Conservation

The subject site is located adjacent to a Heritage Item under Schedule 5 of the Canada Bay LEP 'MWS and DB Pumping Station' at 73 St Albans Street, Abbotsford. The Heritage inventory for the item (414) provides the following Statement of Significance for the site:

SP0062 Abbotsford is of historic, aesthetic and technical/research significance. Historically, it is a representative example of an Inter-War period low level sewage pumping station, in addition to being associated with the SWSOOS No 1 sewage system, which was a major engineering project that superseded the Botany-Rockdale Sewage Farm in 1919. Aesthetically, it is a good example of small scale utility building displaying Inter-War Georgian Revival detailing. It is visually prominent in St Alban Street and makes a valuable contribution to the townscape and cultural landscape. Technically, it has the ability to reveal information about traditional construction techniques and sewage pumping mechanical design of the period. It is also technically significant for its continual operation as a low level sewage pumping station for over 70 years as originally designed and constructed, apart from mechanical and electrical upgrading.

Clause 5.10(4) of the LEP states that council must not grant consent to a development application in respect of a heritage item unless it has made an assessment of the impact that the development will have on the Item.

The subject application was accompanied by the following reports:

- Statement of Heritage Impact prepared by NBRIS + Partners dated May 2013

Council's Heritage Advisor reviewed the application in respect to criteria provided by both the Canada Bay LEP and Canada Bay DCP Part 4 - Heritage. It was subsequently advised that the 'proposed 4 storey residential aged care facility is generally sympathetic to and relatively neutral in the context of the adjacent heritage item and is acceptable in heritage terms'.

Clause 6.1 Acid Sulfate Soils

Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works, except as provided by this clause. The site is identified as Class 5 as follows:

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

Subclause (3)(a) states that development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the *Acid Sulfate Soils Manual*

A Geotechnical Investigation which included an Acid Sulfate Soil Assessment prepared by Douglas Partners dated May 2013 recorded acid sulfate levels from borehole samples. It is also noted that further investigation in respect to ground water and tidal influence was recommended.

Clause 6.4 Development on the foreshore must ensure access

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- (a) continuous public access to and along the foreshore through or adjacent to the proposed development,
- (b) public access to link with existing or proposed open space,
- (c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,

- (d) *public access to be located above mean high water mark,*
- (e) *the reinforcing of the foreshore character and respect for existing environmental conditions.*

The subject site is located on the foreshore and does not currently provide access. The applicant has recognised this and depicted a path on submitted documentation consistent with the abovementioned points and facilitating the desired public foreshore access.

Whilst not directly applicable due to the nature of the development proposed the applicant has suggested that access be provided in accordance with the foreshore access provisions of Parts 5 and 6 of the Canada Bay DCP as follows:

Public access along the foreshore should be provided by means of (as a minimum) a 3 metre strip of land between mean high water mark and the development. The access may be secured by means of a registered covenant, agreement or instrument in favour of the Council (as provided for in the Conveyancing Act 1919) that burdens the relevant land, or by means of an obligation contained in a planning agreement that is entered into between the relevant landowner, the Council, or both.

Public access to the foreshore is not to be obstructed by the location of foreshore structures.

The proposed pathway would provide a significant public benefit in facilitating future pedestrian access to Henry Lawson Park. It is however noted that Sydney Water does still own the parcel of land that separates the subject site from the park with an overland pipe apparent, hence provision of a fulfilled formal access would be subject to further consultation with relevant parties.

Clause 6.5 Foreshore Building Line

The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.

The aboveground component of the development does not extend into the foreshore building line though as acknowledged within the submitted statement a component of the proposed basement which is contained wholly below ground which is considered acceptable. The proposed turntable, sheltered family seating area and fencing are also located in this area and remain consistent with subclause 3(b) and (c) which permit:

- (b) *the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so'.*
- (c) *development for the purposes of boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other outdoor recreation facilities'.*

An electrical substation is also located within the foreshore building line adjacent to the turntable. It would be preferable that this infrastructure be within or directly adjacent to built form though given the context of the site, limited bulk and fact that the structure will be surrounded by vegetation, effectively screening it from the public domain it is considered acceptable.

A sheltered family seating area and fencing are depicted on the submitted landscape plan though no specific detail in respect to elevations outlining the bulk of the structures is provided. If such structures were to be endorsed additional information depicting their form would be required.

4.3.5 Draft City of Canada Bay Local Environmental Plan 2013

Council previously prepared a draft LEP which was gazetted on the 19 July and subsequently into force on the 2 August 2013. Given the lodgement date of the subject application before such time as the LEP came into force the instrument has been considered as a draft for purposes of assessment.

The site retains an R2 – Low Density Residential zone under the draft LEP and once again in respect to permissibility the proposal relies upon the provisions of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

The draft LEP does retain the same standards of the CBLEP 2008 previously discussed.

4.4 Non-Statutory Planning Policies

4.4.1 Sydney Harbour Foreshores Area Development Control Plan

The DCP identifies the site as being Landscape Character Type 12.

The Statement of Character and Intent is as follows:

The character of these areas ranges from a flat to a sloping terrain. There are open spaces and some residential areas along the foreshore. The open space is predominantly grassed with few trees. The shoreline is mainly built up, often with a seawall, but pockets of natural shoreline do occur. Residential development forms the backdrop to these areas'.

The intent for development within this area is to provide for appropriate recreational and similar uses of the foreshore, to rehabilitate or improve degraded foreshores and to protect valuable natural shorelines.

Performance Criteria of any development within this landscape is to satisfy the following:

- *it enhances the recreational focus of the foreshore;*
- *it is sited so that natural features are protected and views of these features maintained;*
- *pockets of natural shoreline are retained; and*
- *landscaping is incorporated into the proposal.*

The above performance criteria are covered and addressed below within in response to Section 5 of the DCP that provides Design Guidelines for land based development:

Section 5.2 - Foreshore Access

Most desirable are foreshore links joining public open spaces or access points. They can be obtained by right of way or dedicated or acquired strips of land and may link with tracks across beaches and rock platforms. Where foreshore access cannot be achieved, a linkage through adjacent streets is usually possible.

The proposed development includes public foreshore access that works towards filling a missing link between an existing pathway and Henry Lawson Park envisaged by this clause.

Section 5.3 - Siting of Buildings and Structures

Most Councils around the foreshores have set foreshore building lines governing the setback of structures from the waterway. In addition to these foreshore building lines, the following criteria should be observed when siting buildings and structures:

- *where there is existing native vegetation, buildings should be set back from this vegetation to avoid disturbing it;*
- *buildings should address the waterway;*
- *buildings should not obstruct views and vistas from public places to the waterway;*
- *buildings should not obstruct views of landmarks and features identified on the maps accompanying this DCP; and*

The proposed development is not considered to be setback sufficiently from existing vegetation concentrated to the southern boundary adjacent to Charlton Street to effectively enable retention.

The proposed development complies with the foreshore building line stipulated in the Canada Bay LEP 2008 and the building is considered to provide satisfactory address to the waterway.

View of landmarks and features identified on maps are not compromised.

Section 5.4 - Built Form

Buildings and other structures should generally be of a sympathetic design to their surroundings; well designed contrasts will be considered where they enhance the scene. Many councils have development controls governing built form and the heights of buildings. The following guidelines are designed to reinforce the local requirements:

- *where buildings would be of a contrasting scale or design to existing buildings, care will be needed to ensure that this contrast would enhance the setting;*
- *where undeveloped ridgelines occur, buildings should not break these unless they have a backdrop of trees;*
- *while no shapes are intrinsically unacceptable, rectangular boxy shapes with flat or skillion roofs usually do not harmonise with their surroundings. It is preferable to break up facades and roof lines into smaller elements and to use pitched roofs;*
- *walls and fences should be kept low enough to allow views of private gardens from the waterway;*
- *bright lighting and especially floodlighting which reflects on the water, can cause problems with night navigation and should be avoided. External lights should be directed downward, away from the water. Australian Standards AS/NZ1158.3: 1999 Pedestrian Area (Category P) Lighting and AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting should be observed;*
- *use of reflective materials is minimised and the relevant provisions of the Building Code of Australia are satisfied;*
- *colours should be sympathetic with their surrounds and consistent with the colour criteria, where specified, for particular landscape character types in Part 3 of this DCP;*
- *the cumulative visual impact of a number of built elements on a single lot should be mitigated through bands of vegetation and by articulating walls and using smaller elements; and*
- *the cumulative impact of development along the foreshore is considered having regard to preserving views of special natural features,*

As previously outlined the scale, form, design and siting of the building as viewed from the waterway is generally considered acceptable. The internal lawn and subsequent recess provides effective articulation with materials and finishes also considered sympathetic to surrounds.

A glass fence between the proposed pathway and lawn area of the development is incorporated and will allow unobstructed views of the communal open space of the development from the waterway.

Section 5.6 - Planting

Vegetation in the form of bushland, remnant native species and cultural planting has important ecological and landscape values that require protection and enhancement. The following criteria should be addressed when providing landscaping for developments:

- *appropriate species from those found in the surrounding landscape should be incorporated;*
- *endemic native species should be used in areas where native vegetation is present or has the potential to be regenerated;*
- *exotic species that have the potential to spread into surrounding bushland should be avoided;*
- *existing mature trees should be retained where possible and incorporated into the design of new developments;*
- *vegetation along ridgelines and on hillsides should be retained and supplemented with additional planting to provide a backdrop to the waterway; and*
- *a landscape plan is to be submitted with any land-based development proposal showing existing and proposed changes in contours, surface and sub-surface drainage, existing trees to be retained and removed, measures to protect vegetation during construction, and proposed planting including species and common names.*

As previously outlined existing vegetation concentrated to the southern boundary adjacent to Charlton Street is likely to be compromised by the proposed development.

In respect to proposed planting a number of native species are proposed adjacent to the foreshore.

4.3.2 City of Canada Bay Development Control Plan 2008

Given the nature of the proposal which relates to construction of a Seniors Living development within zone R2 'Low Density Residential', the Canada Bay DCP contains no specific numerical provisions.

In accordance with Part 2 (Notification and Advertising) of the DCP the proposal was notified to adjoining and nearby residents as discussed within section 4 of this report.

Part 3 of the DCP relates to issues of sustainable development, equity of access, stormwater, contamination, acid sulphate soils and preservation of trees and vegetation (addressed in this report).

The site is located adjacent to a heritage item under Schedule 5 of the Canada Bay Local Environmental Plan 2008 and subsequently the provisions of the Canada Bay DCP, specifically Part 4 (Heritage) are applicable in this instance. The application was reviewed by Council heritage advisor in this regard with comments provided outlined within this report.

5. CONSULTATION AND SUBMISSIONS

The public exhibition and consultation involved numerous stakeholders. Public exhibition occurred over a 30 day period and the consultation involved public authorities, internal referrals to Council Departments and submissions from members of the public. Comments made by these stakeholders and assessment are contained below

5.1 Public Exhibition Details

Under Section 79A of the EP&A Act, the Development Application must be notified or advertised in accordance with the provisions of a development control plan if the development control plan provides for the notification or advertising of the application.

It is noted that the application is 'Integrated Development' under section 91 of the Environmental Planning and Assessment Act 1979, requiring a Controlled Activity Approval under the Water Management Act 2000.

In accordance with Part 2 of the Canada Bay Development Control Plan 'Notification and Advertising', the application was notified to adjoining and nearby property owners and occupiers.

After accepting the Development Application, Council undertook the following actions:

- Made the Application publicly available from **11 June 2013 to 12 July 2013** (min 30 days)
 - On the Canada Bay Council website;
 - At the Canada Bay Council Administration Office
- Notified local landowners and residents of proposal (and exhibition period) - 1166 letters sent;
- Signage was placed on the development site
- A Public Notice was placed in the Inner West Courier (Tuesday 11 June 2013)
- A Community Information Session on the proposal was also held on Saturday 22 June 2013 at Five Dock Library. Plans and documents relating to the proposal were on display and Council staff and representatives of the applicant were in attendance to answer questions.

The location map below depicts those properties around the site that were notified of the proposal.



5.2 Submissions from Public Authorities

The application was referred to a number of public authorities and utility providers for comment.

5.2.1 NSW Department of Environment, Climate Change and Water (DECCW)

Under section 91 of the Environmental Planning and Assessment Act 1979, the proposed application is classified as 'Integrated Development' requiring a Controlled Activity Approval under the Water Management Act 2000 to be issued by the NSW Office of Water.

General Terms of Approval were issued by the NSW Office of Water on the 9 July 2013.

5.2.2 NSW Maritime

Clause 29 of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (deemed SEPP) states that the consent *authority must not grant development consent to the carrying out in the Foreshores and Waterways Area of development listed in Schedule 2, unless it has referred the development application to the Advisory Committee and taken into consideration any submission.*

The committee undertook a water based inspection on the 16 August 2013 and provided formal comments which are outlined and considered within the assessment of the application.

5.2.3 Sydney Water

Sydney Water was notified of the development application being an adjoining land owner and provided correspondence confirming the availability of water and waste water infrastructure. The provision of a large water connection due to automatic sprinkler requirement as well as trade waste information and the need for a Section 73 Certificate were also outlined.

5.3 Internal Referrals

5.3.1 Heritage Conservation

Council's Heritage Advisor viewed the proposal as '*generally sympathetic to and relatively neutral in the context of the adjacent heritage item and is acceptable in heritage terms*'.

5.3.2 Stormwater Management

Council's Engineering Department reviewed the application and requested additional information in respect to submitted stormwater detail and potential flooding issues to the ground floor and basement. Comments provided were forwarded to the applicant though no response has been received to date.

5.3.3 Landscaping

Council's Tree Services Department reviewed the application and submitted Arborist Report. As previously outlined within this report objections were raised in respect to extent of excavation within the TPZ of trees identified as 43, 44 and 48 which are to be retained. Furthermore the removal of trees identified as 50, 52, 55 and 56 is opposed. Comments provided were forwarded to the applicant though no response has been received to date.

5.3.4 Environmental Health

Council's Environmental Health Department reviewed the proposal and requested additional detail in respect to the hydrotherapy pool, warm water system, floor layout of their food preparation and food storage area and treatments available within the hairdresser. Comments provided were forwarded to the applicant though no response has been received to date.

5.3.5 Waste Management

Council's Waste Management Officer reviewed the submitted waste management report and raised no objections from a waste perspective and provided conditions should the application be approved.

5.4 Public Submissions

In response to notification 147 submissions raising objection; 1 petition containing 198 signatures representing 138 households as well as 5 submissions of support were received. Key issues that were raised have been outlined and addressed below with a list of submitters provided at Appendix A.

Permissibility

...area is not zoned for such a facility

...commercial development should be restricted to existing commercial areas

...sets a precedent for other commercial activity to be established in the area

Comment - The site is zoned R2 'Low Density Residential' under the Canada Bay Local Environmental Plan 2008 (CBLEP). Under the CBLEP the proposed development is defined as 'Seniors Housing' which is prohibited within the zone. The proposal is permissible under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (clause 4)*.

Compliance with Seniors Living SEPP

Comment - A detailed assessment of the proposal against the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is provided within section 3 of this report with areas of non compliance identified and discussed in detail.

Traffic and Parking

...entrance via Charlton Street is not appropriate as there are no footpaths and this street will result in a pedestrian conflict

...loss of on street parking and increased traffic flow

...turning circles provided for trucks / vans / ambulances seems inadequate

...tandem parking cannot work as there will be a doubling up as staff will need to be present during changeover shifts

Comment - Council commissioned an independent Traffic Consultant (Traffix) to peer review the submitted Traffic and Parking Assessment. The report considered the application in respect to a number of components which are outlined within section 5 of this report. Comments provided within the report are considered to address matters raised above and have been endorsed by Council.

Bulk and Scale

- ...out of character with other developments within Charlton and St Albans Street and does not reflect low density character of the area*
- ...when viewed from St Albans Street the proposal has considerable height / bulk and scale and minimal articulation and modulation*
- ...stepped ceilings make compliance questionable*
- ...setback from the mean high watermark infringed*

Comment - The bulk and scale of the proposal has been assessed in section 3 of this report in response to the provisions of SEPP (Housing for Seniors or People with a Disability) 2004 as well as established court principles which relate to seniors living developments in low density zones. As concluded within that section concern is held in respect to the bulk and scale of the development.

The proposal provides compliance with the foreshore building line applicable to the site.

View Loss

- ...no view corridors have been provided*
- ...proposal not consistent with DCP and planning principles*
- ...lift overrun impacts upon views*
- ...location of plant equipment i.e. air-conditioning and exhaust vents not depicted*

Comment - A view loss analysis has been undertaken and outlined within section 5 of this report.

Tree Removal

Comment - The site contains significant vegetation, much of which is proposed to be removed as a result of the proposal. An Arborist Report accompanied the application and identified specific trees to be removed as well as those to be retained and outlined protection measures. As previously discussed Council's Tree Services Department reviewed this report and raised objection to the protection measures identified for trees identified as 43, 44 and 48 which are to be retained. Furthermore the removal of trees identified as 50, 52, 55 and 56 was opposed. All trees are located to the southern component of the site adjacent to Charlton Street and contribute to the public domain.

Foreshore Access

- ...proposed extension of foreshore walk to Henry Lawson Park does not allow easy access for residents due to gradients*
- ...proposed path needs to be widened as north end council requirements stipulates waters edge*
- ...if Council was concerned about access to foreshore land it could purchase the land from the existing or new owners)*
- ...public access should be via dedication and not easement as nothing legally precludes removal of an easement*
- ...no details of foreshore structures and fencing in this area is unclear*
- ...substation should be contained within built form or adjacent to building*

Comment - The applicant has proposed public access in accordance with Clause 6.4 of the CBLEP which requires the consent authority to consider whether and to what extent the development would encourage the following:

- (a) *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- (b) *public access to link with existing or proposed open space,*
- (c) *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- (d) *public access to be located above mean high water mark,*
- (e) *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Parts 5 and 6 of the Canada Bay DCP which are not directly applicable provide that public access along the foreshore by a means of (as a minimum) a 3m strip of land between the mean high watermark and the development be provided. The proposed path is consistent with this requirement.

As previously identified Sydney Water owns the parcel of land to the north that separates the subject site from the park with an overland pipe apparent, hence provision of a fulfilled formal access would be subject to further consultation with relevant parties.

Lack of detail in respect to foreshore structures and fencing has been noted and if such structures were to be endorsed additional information depicting their form would be required.

It would be preferable that the electrical substation be within or directly adjacent to built form though given the context of the site and fact that the substation in its proposed location has been effectively screened from the public domain through landscape, no objection is raised.

Visual privacy

...aged care beds that will look straight over the street into opposing development

...CCTV monitoring the streets

...roof terrace indicated on plans

...lighting strategy should be required

Comment - The subject site is separated from adjoining residential development by St Albans Street to the east and Charlton Street to the south. As the upper level of the development is provided with a floor level which on average is only 1m higher than the St Albans Street verge no adverse overlooking is foreseen from this elevation. Private open space of 63 St Albans Street to the south, particularly the elevated terrace is likely to be impacted from bedrooms on the upper levels. However as this space is already visible from the street and noting the separation from the development, impacts may be mitigated to a certain degree. Design amendments recommended in respect to the upper level footprint and side boundary setbacks would also be beneficial from a privacy perspective.

In response to CPTED principles the use of CCTV cameras has been noted and in this regard its primary objective is to act as a deterrent against criminal activity and provide assurance, security and safety to people that would reside in the facility. Surveillance provided by CCTV is more so in and around the site, hence should not impact upon or compromise the privacy of surrounding residents.

The roof plan submitted is provided with the notation 'roof terrace'. It is understood the roof is not intended to be utilised as a terrace and in this regard no access has been provided.

If the application were supported conditions would be applied to ensure that lighting on the site be designed so as not to cause a nuisance to other residences in the area and to ensure no adverse impact on the amenity of the surrounding area by light overspill. Furthermore all lighting would be required to comply with relevant standards.

Waste Management

...more detail required in respect to the types of bins

Comment - A Waste Management Plan was submitted with the application and identified likely waste and subsequent volumes per week that would be generated. Council's Waste Services Officer reviewed this and raised no objections. It is noted that servicing is via a private contractor which is to occur twice per week as required. Furthermore the garbage room is contained within the basement level of the building and is considered capable of holding required bins / waste between collections.

Acoustic Amenity

...24 Hour operation (deliveries etc) will result in adverse noise

...noise will result from air-conditioning plant, nursing home residents and visitors

...access to roof from servicing of fans not shown on plans though documented in acoustic report

Comment - The proposed development is permitted and by nature entails 24 hour operation.

In respect to acoustic privacy a noise emissions report was prepared for the application. This report assessed plant noise in against the Canada Bay DCP and NSW EPA Industrial Noise Policy.

The report concluded that analysis carried out indicates that it is feasible to install the assumed plant and comply with noise criteria. Recommendations for the provision of acoustic treatment in principle have been given and will require detailed design when the equipment selections are finalised.

The submitted statement of environmental effects notes the removal of all condenser decks from the roof and provision of a roof that includes pebbles. The acoustic report however contradicts this to a certain degree stating in reference to the opposing residential flat building within St Albans Street that 'upper floor units are likely to have rooftop views of plant'. In correspondence to the applicant clarification was sought in respect to the exact location of plant though no response was received.

Poor amenity for residents of the facility

Comment - Issues of amenity such as solar access are addressed in section 3 of this report.

Contamination

...need for environmental impact study as this was a heavy industrial area

Comment - Council records do not indicate that any of the sites that make up the proposed development have been utilised for any contaminating activity. Each site does have an extended history of residential use and as such it can be reasonably concluded that the subject site is not contaminated and is suitable for the use proposed.

Noise and disruption during construction

Comment - If consent were to be granted to the application it would be subject to conditions which would restrict hours of and noise associated with construction activities.

Fire Safety

Comment - A Preliminary BCA Assessment Report accompanied the application and concluded that the development could readily achieve compliance with the relevant provisions of the BCA 2013.

Odours from kitchen

Comment - Should the application be supported standard conditions requiring compliance with AS 1668.2-2002 'The use of ventilation and air conditioning in buildings - Ventilation design for indoor air contaminant control' and the Protection of the Environment Operations Act 1997 would be imposed.

Dementia care patients

...No delineation in plans between the high care dementia patients and aged patients

...concern in respect to high care dementia patients and location of the site on the foreshore

Comment - The submitted Statement of Environmental Effects outlines that the lower ground floor includes a secure area of 13 rooms suitable for residents whose dementia requires increased support.

Property values

Comment - Impact upon property values is not a direct consideration under the E & A Act 1979; rather the application has been assessed against applicable environmental planning instruments.

Foreshore degradation

Comment - Under section 91 of the Environmental Planning and Assessment Act 1979, the proposed application is classified as 'Integrated Development' requiring a Controlled Activity Approval under the Waste Management Act 2000 to be issued by the NSW Office of Water. In this regard General Terms of Approval were issued by the NSW Office of Water on the 9 July 2013. Following on from this a

Controlled Activity Approval needs to be obtained and in this regard such documentation as a vegetation management plan, erosion and sediment control plan, soil and water management plan are required with the intent of mitigating any impact towards the foreshore during construction works.

6. ASSESSMENT OF ENVIRONMENTAL IMPACTS

The following is an assessment of the proposal against the Heads of Consideration under Section 79C of the Environmental Planning and Assessment Act 1979 - predominantly Section 79C(b) Likely Impacts of the Development. Issues discussed within this section are limited as many considerations such as solar access, privacy, bulk and scale, streetscape and landscaping are addressed within section 3 of this report in response to provisions of applicable environmental planning instruments.

6.1 View Corridors / View Sharing

Given the location of the site upon the foreshore, topography and existing built form that surrounds a number of submissions were received raising objection to the issue of view loss.

It is noted that a visual impact assessment did accompany the application and identified potential view loss from the street and private domain with site inspections of a number of surrounding properties undertaken and photo montages developed showing the proposed building in context.

Properties deemed to be potentially impacted are considered to be the following:

68 St Albans Street

An elevated dwelling above lower level garage is located on this site though development approval was granted in November 2010 for redevelopment which will provide three two storey townhouses above partially elevated basement parking. At present this property attains views over St Albans Street primarily between the built form of 69 and 71 St Albans Street.

Being located largely at grade the current above-mentioned views would be screened.

It is also noted that the visual impact assessment conducted an analysis from a level equivalent to the second floor of an approved dwelling and concluded that distant water views would be retained.

1 - 5 Gow Street

A three storey residential flat building containing eighteen (18) units is located on this site. The configuration of the units is unique in that each is split level. The lower level units are oriented to the west and provide living areas at ground floor adjacent to a courtyard with the first floor associated with bedrooms which are provided with associated balconies. The upper level units are provided with bedrooms on the first floor having an eastern orientation with living areas located above on the second level of the building, provided with dual aspect and outdoor terrace areas on the western elevation.

This development is considerably elevated above the subject site and enjoys views towards Hen and Chicken Bay primarily from the upper level terrace areas in a westerly direction over existing development upon 60 and 68 St Albans Street and the subject site. Filtered views from the first floor level balconies adjacent to bedrooms may also be apparent from select units over existing built form of 68 St Albans Street and open space located to its south. The recent development approval on this site previously outlined is noted and likely to impact upon these view corridors to a certain degree.

In respect to view loss from this property, given the elevation of this site and fact that views from the upper level terrace areas are from some height down over the subject site the proposed development is unlikely to have any significant impact upon views that are currently attained.

6 Gow Street

A two storey detached residential dwelling is located on this site and provides balconies to the street to an elevated ground floor and first floor level of the building. This property enjoys views of Hen and Chicken Bay in a south west direction over Gow and St Albans Streets and existing dwelling of 69 St Albans Street that forms a component of the subject site.

Post construction it is considered that views from the lower level balcony would be impacted to a certain degree though more distant vistas towards Exile Bay and the Canada Bay foreshore attained. The upper level of this property due to its elevation is unlikely to be adversely impacted.

60 – 66 St Albans Street

An existing residential flat building consisting three levels above basement parking is located upon this property. The building has a unique in that it possesses a u shape with small rear wings. A number of units are located within the primary facade and provided with large balconies and windows oriented directly towards St Albans Street and over the subject site. Recessed units to the rear of the development are also provided with an orientation and balconies that provide a westerly outlook.

Views attained from this building which directly oppose the subject site are primarily over the existing dwelling upon 69 St Albans Street and between side setbacks to the north and south, somewhat impeded by vegetation. Close water glimpses are noted as well as a more distant land water interface.

The proposal will have a direct impact on the filtered views of the elevated ground and first floor levels of this building and effectively eliminate these. A limited impact will result to the upper level units as whilst close glimpses of the water between built form will be screened more distant views over the site will be retained and opened to a certain degree through the removal of existing vegetation.

In respect to view loss the provisions of the Canada Bay Development Control Plan are not directly applicable in this instance and as such an assessment has been provided against the planning principles established in *Tenacity Consulting v Warringah Council*; [2004] NSWLEC 140.

In the aforementioned case, Senior Commissioner Roseth of the Land and Environment Court set out certain planning principles for the assessment of the impact of development on view sharing. The proposed development has been considered against those principles as follows:

1. *Assessment of the value of the view lost. Water views are valued more highly than land views. Iconic views are valued more highly than land views. Whole views are valued more highly than partial views.*

Comment: Views currently attained from surrounding properties are generally considered distant towards Hen and Chicken Bay and the opposing Cabarita foreshore. These views in many cases are impeded by built form and existing vegetation which is scattered throughout the subject site.

2. *Protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. The protection of a view when seated is also more difficult to protect than a view obtained from a standing position. An expectation that a side view across an adjoining property must be protected is generally unrealistic and given limited weight.*

Comment: Views attained are generally in a westerly direction from surrounding properties over the long axis of the site, both along and over site boundaries and between existing built form.

3. *The impact on views from living areas (particularly kitchen areas) is more significant than from bedrooms or service areas.*

Comment: Views from surrounding properties are attained primarily from balconies adjacent to living areas as well as from low use rooms such as bedrooms. In respect to qualitatively assessment outlined by Roseth SC, given the extent of views and degree to which they will be compromised, 1 - 5 and 6 Gow Street could be considered minor. The impact upon lower levels of 60 - 66 St Albans Street moderate and considered minor to the upper floor level. In respect to 68 St Albans Street the impact is considered moderate in respect to existing and proposed built form.

4. *A development that complies with all planning controls must 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. Where a complying proposal compromises a view corridor which is considered significant under the above tests, would a more skilful design which provides the applicant with the same development potential and amenity and reduces the impact on the views of neighbours, be possible? If the*

answer to this question is no, then the view impact of a complying development is likely to be acceptable and the view sharing reasonable.

Comment: Views attained over the subject site are primarily a result of the modest built form of existing dwellings on 67 and 69 St Albans Street and significant separation provided by side access driveways to the aforementioned sites as well as 71 St Albans Street. The proposal whilst permissible is not characteristic of a low density residential zone. However in this regard redevelopment of each of the sites utilising a building envelope set out by Part 5 of the Canada Bay DCP would also result in significant view loss, narrowing primary views corridors attained over and between existing built form.

View loss in this instance is considered to stem directly from the fact that the subject proposal involves the consolidation of four (4) existing allotments which in turn has eliminated the view corridors experienced between the existing detached residential dwellings. Furthermore as the view corridors are attained generally through the central component of the site retention is considered difficult.

From a bulk and scale perspective the proposal is significantly excavated within the site and the height as previously discussed presented to the street is limited and considered acceptable. Noting this the only way in which views could realistically be retained from the lower levels of the opposing flat building would be through the separation of the proposed building or upper level. Noting applicable development provisions this could be seen to unreasonably restrict development potential of the site.

The Seniors Housing SEPP has a two storey height limit though a three storey component is incorporated to the rear which in principle can be reasonably entertained due to the fall of the site. As previously stated Council has raised issue with the extent of the upper level foot print to the rear. From a view loss perspective the leading edge of the upper level to the rear is considered to have a direct impact on the extent of view loss experienced by surrounding properties, most notably from the upper level units of 60 - 66 St Albans Street and a hence a reduction of this to the two upper level wings would slightly improve close proximity water views and result in a more reasonable outcome.

In summary view loss resulting from the proposed development is generally considered acceptable with the exception of that created by the extent of the upper level outlined above. As previously discussed impacts are considered to stem more so from the means by which view corridors are attained, modest existing built form and proposed site amalgamation as opposed to poor design.

6.2 Traffic Generation, Parking and Loading

Council commissioned an independent Traffic Consultant (Trafix) to peer review the submitted Traffic and Parking Assessment. The report considered the application in respect to a number of components which are outlined below:

Site Access Location

In our view, the proposed access is the optimal location and is in accordance with RMS Guidelines. Charlton Street is a low-order local road (a dead-end) and would be expected to accommodate moderate traffic and parking demands at the present time, mainly associated with recreational access to Hen and Chicken Bay, including access to the existing public footpath along the foreshore. Charlton Street is capable of accommodating the traffic generated by the development, if it is assumed that minimal on-street parking occurs, which is discussed further below. In this regard, Charlton Street has a carriageway width of 7 metres, presently with no parking restrictions. Clearly, if parking was to occur on even one side of this street over any significant length, the effective carriageway width to accommodate through traffic movement would be a maximum of 4.9 metres, which is insufficient to permit safe two-way flow. Therefore, for Charlton Street to continue to operate satisfactorily, it is considered that on-street parking will need to be regulated, to ensure that blocking effects do not occur in relation to access to the subject site, as well as public access more generally. In view of the fact that the applicant has opted for a minimum supply of parking broadly in accordance with the Housing for Seniors SEPP (23 spaces provided compared with 22 under the SEPP), it is considered likely that some reliance on on-street parking in Charlton Street will occur at peak times. It is also possible that this will occur irrespective of the amount of on-site parking that is provided. It is therefore considered reasonable that the applicant prepare a parking plan for Charlton Street for consideration by Council's Traffic Committee prior to implementation of such a plan, with the objective of maintaining safe access (including for ambulances and service vehicles), while maximising on-street parking availability.

Concern is raised over the proposed one-way ramp to basement parking. In order for one-way movement to occur safely with volumes of less than 30 veh/hr, either clear sight lines need to be

provided from either end, or traffic signal operation installed. We note that the applicant has opted for the latter and this is supportable in principle and is permitted under AS2890.1. However, the signals operations need to ensure that the 98th percentile queue is accommodated on-site on the basis of conventional queuing theory, as stated in Clause 3.5 of AS2890.1. This analysis has not been undertaken. Furthermore, even in the event that there is no requirement for an on-site queuing space, any on-street queuing needs to be formalised as part of the parking plan for Charlton Street as discussed above.

Site Access Design

Concern is raised over the proposed one-way ramp to basement parking. In order for one-way movement to occur safely with volumes of less than 30 veh/hr, either clear sight lines need to be provided from either end, or traffic signal operation installed. We note that the applicant has opted for the latter and this is supportable in principle and is permitted under AS2890.1. However, the signals operations need to ensure that the 98th percentile queue is accommodated on-site on the basis of conventional queuing theory, as stated in Clause 3.5 of AS2890.1. This analysis has not been undertaken. Furthermore, even in the event that there is no requirement for an on-site queuing space, any on-street queuing needs to be formalised as part of the parking plan for Charlton Street as discussed above.

Notwithstanding, it is considered that in circumstances where the site is relatively large and unconstrained, the optimal access arrangement would be for a two-way ramp that overcame any potential for signals and hence for on-street queuing to occur, irrespective of the results of a probability analysis. We consider that the combined effects of the narrow width of Charlton Street, on-street parking demands within Charlton Street and the installation of a sub-optimal signal controlled ramp is likely to result in an increased preference for staff and visitors to park on-street within St Albans Street, which is undesirable and otherwise avoidable.

In summary, a two-way ramp is considered optimal and should therefore be provided, in a manner that contains all queuing within the site and not on-street.

Charlton Street forms the stem of a 'T' junction with St Albans Street. Sight distances at this intersection are acceptable. However, it is recommended that 'No Stopping' signs be installed on all approaches, to ensure that parking close to corners does not occur.

Loading Arrangements

It is considered that a single loading space should be provided within the basement for use by cars, vans and station wagons. This would also be available for use by couriers and possibly by pathology collection agencies, cleaners etc., should these be required.

The proposed turntable raises concerns in that the turntable would need to be located within a secure area, so that other vehicles and pedestrians (including children accessing the foreshore) could not traverse this area when it is in use. This would require some form of gate and this has the potential to block access to the basement ramp, depending on the design solution adopted. It is also likely to result in on-street queuing while a delivery driver waits for the gate to be opened, to the point where it may be easier for a truck driver to simply park on-street. This may also be a source of noise and disturbance to residents opposite.

In our view the turntable solution is also sub-optimal and if it is to be pursued, it requires a more detailed assessment. It is preferred that a solution be found that does not require a turntable to be used. The design vehicle for servicing is a small truck which is a 6.4m long SRV as defined in AS 2890.1. The provision of a turning area within the site is a reasonable expectation and should be pursued to overcome the need for a turntable.

Finally, while it is not a traffic planning issue per se, the location of a loading area immediately adjacent to a major forefront access road is considered poor planning and as a minimum, loading activity should be physically and visually segregated from the public domain. In this regard, the provision of a loading facility within the basement would provide the optimal outcome and overcome all on-street queuing, manoeuvrability, safety and amenity concerns. We see no reason why the local community should not expect an optimal servicing outcome, assuming that the development is otherwise supportable. In this regard, we consider that some concessions to the ramp gradients/transitions and head heights could be considered by Council, subject to the applicant being able to demonstrate satisfactory operation for the appropriate design vehicle/s.

Parking Provision

It is noted that the proposed parking is in accordance with the Housing for Seniors SEPP as well as the RMS Guidelines. Furthermore, we are aware that Council cannot refuse the application with the quantum of parking that is proposed. Therefore, the parking is considered sufficient subject to a suitable condition that limits staff to a maximum of 26 employees on-site at any one time.

It is emphasised in this regard that the SEE refers to a maximum of 26 staff in a day shift and this is the basis of the parking assessment. However, this is not necessarily the number on-site at shift changeover times. Hence, while it is understood that rosters will be staggered, a more detailed assessment is considered necessary to identify how staff levels change throughout the entire day, given the sensitivity of the parking assessment to this staff activity.

Traffic Generation and External Traffic Impacts

The CBHK traffic report has applied a trip rate of 0.21 trips/hr/bed to the assessment of peak traffic conditions during both the morning and afternoon on-street (network) peak periods. This is slightly higher than the maximum RMS trip rate of 0.2 trips/hr/dwelling unit (room) and the resulting assessment of peak period conditions is accepted, resulting in 17 veh/hr (two-way flow).

This underscores that this is a low order traffic generating use that would be comparable to a medium density residential development with some 30 units. The resultant impacts on the road network will not be significant and can be accommodated in terms of both the capacity of the road network and the environmental amenity of local residential streets, as discussed in the RMS Guidelines.

With regard to the latter, we note that the resultant two-way volumes on all local residential streets examined in the CBHK report remains below 50 veh/hr (existing volumes plus development volumes). This is substantially below the RMS environmental 'goal' of 200 veh/hr on a local residential street.

We note however that the development peak volumes (which can occur at any time) are higher than 0.21 trips/dwelling unit, based on RMS research published in August 2013 (Technical Direction TDT 04a). This identifies a peak volume of 0.4 trips/unit across the 5 metropolitan sites surveyed and it is noteworthy that these facilities made use of a village bus. With 81 rooms, this would result in a development peak volume (outside the network commuter peaks) of about 32 veh/hr. While this raises no particular issues for the external road network it does reinforce the need to provide a ramp with uninterrupted two-way flow as discussed above. This higher trip rate would also need to be adopted for any queuing theory assessment, should the applicant still intend to pursue a one-way access option under traffic signal control.

Internal Design Aspects

We have reviewed the DA plans and we consider that the following design deficiencies need to be overcome, in addition to the matters raised above:

- i. The ramp from the basement has a gradient of 1 in 8 in close proximity to the public footpath. This is non-compliant and a grade of 1 in 20 is required for a distance of 6 metres within the site, measured along the inside radius of an exiting car;*
- ii. As discussed above, provision of uninterrupted two-way flow is considered warranted on the access driveway and internal ramp for at least a sufficient distance to overcome the need for any on-street queuing, with assessment based on the peak development volumes;*
- iii. As discussed above, the turntable layout is not resolved and in addition, is not considered the optimal arrangement for servicing;*
- iv. The ambulance bay should be able to operate independently of the loading area;*
- v. A vehicle entering the ramp is unable to undertake the required 'U' turn manoeuvre to access the western parking aisle. This will result in the need to either perform a 3 point turn; or to reverse into that section of aisle. Either manoeuvre is considered unacceptable.*
- vi. The van/people mover will need to undertake this manoeuvre but in addition, will need to reverse along the aisle either on entry or exit, which is unacceptable.*

- vii. *It is unclear from the plans whether an intercom is required for use by visitors and this would seem to be a design requirement that is unresolved, noting that any waiting vehicle would need to stand wholly within the site.*
- viii. *The traffic report indicates that passing is available at the top and bottom of the single lane ramp. This is questioned. No swept path analysis has been provided at the base of the ramp, where a vehicle may need to undertake a 'U' turn manoeuvre using the full available area. At the top of the ramp, passing without encroaching into a secured turntable area has not been demonstrated.*

Based on the above it was concluded that while the proposed use is generally supported in principle on this site in traffic planning terms, the development application is not supportable in its present form due to the matters raised above and the application should be refused or the applicant invited to submit amended plans that deal with these issues.

Council has adopted the Traffix recommendations and did provide a copy of the report to the applicant. To date no response has been received.

7. CONCLUSION

Council has assessed the Development Application in accordance with Section 79C(1) of the Environmental Planning & Assessment Act 1979 and all relevant instruments and policies.

In view of the assessment contained within this report the proposal is not supported by Council as it contravenes Section 79C (1) (a)(i) of the Environmental Planning and Assessment Act in that a number of compliance issues with State Environmental Planning Policy (Housing for Seniors or People with a Disability) have been identified.

The proposal is also considered to contravene Sections 79C (1)(b) (c) in that issues pertaining to the scale, bulk, traffic, parking, tree preservation and stormwater disposal have not been given due consideration and as such the development is likely to have adverse impacts on the natural and built environment surrounding the site with the site not considered suitable for the proposed development.

The proposal is recommended for refusal for the reasons contained in the Recommendation below.

8. RECOMMENDATION

Pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 (as amended)

THAT the Sydney East Joint Regional Planning Panel, as the determining authority, refuse Development Application No. 197/2013 for the demolition of existing structures and construction of a new residential aged care facility on land at 65 - 71 St Albans Street, Abbotsford as shown on plans numbered DA-A1000 to DA-A9202 (issue A) prepared by architectus, dated 28/05/2013 for the following reasons;

1. Pursuant to Section 79C(1)(a)(i) and (c) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Clause 26 'Location and Access' of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 which in turn is considered to result in the proposed development being a prohibited use on the subject site. It is also noted that the development is prohibited within zone R2 'Low Density Residential' under the Canada Bay Local Environmental Plan 2008;
2. Pursuant to Section 79C(1)(a)(i) and (c) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Clause 26 'Location and Access' of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 which in turn is considered to result in the proposed development being a prohibited use on the subject site;
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is considered unsatisfactory with respect to Clause 33(c)(i) and (f) of State

Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 with the proposed setbacks and resultant bulk and scale presented likely to have an adverse impact upon the streetscape with the issue of tree preservation not given due consideration;

4. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is considered unsatisfactory with respect to Clause 35(a) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 with inadequate solar access provided to several habitable rooms and areas of private open space;
5. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is considered unsatisfactory with respect to Clause 40(4)(b) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The extent of the three storey component of the development is considered excessive and valid application not been made pursuant to clause 4.6 of the Canada Bay Local Environmental Plan 2008;
6. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is considered unsatisfactory with respect Clause 48(c) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
7. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 and noting the issues outlined above the proposed development is considered unsatisfactory with respect to Clause 2(1)(c) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
8. Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development has not satisfactorily resolved issues of streetscape, bulk and scale, tree preservation, view loss, vehicular access, parking and stormwater disposal.
9. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, having regard to the reasons above as well as the submissions received in response to the application, approval is not in the public's interest.

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