

Development Assessment Report

SUBJECT: Determination of Development Application

ADDRESS: 43-51 Queen Street & 3-7 New Street, Ashfield

DA NO: 2013.98.1

JRPP REF: 2013SYE045

PREPARED BY: Philip North, Specialist Planner

PREPARED FOR: Sydney East Joint Regional Planning Panel

DATE: 29 July 2013

Overview of Report

1.0 Description of Proposal

Pursuant to Clause 78A(1) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended) this application seeks Council's consent for the construction of seniors housing and associated works. It consists of:

Building	Details
Building 1	Two storey residential flat building containing: <ul style="list-style-type: none"> • 7 dwellings, • private gardens, patios and balconies, • community function room, • associated amenities, • sun court, and • garbage collection point.
Building 2	Part two and part three storey residential flat building containing: <ul style="list-style-type: none"> • 16 dwellings, • store rooms, and • private gardens, patios and balconies.
Building 3	Four storey residential flat building containing: <ul style="list-style-type: none"> • 24 dwellings, • private gardens, patio and patios, • communal lounge/dining/billiards room, kitchenette, bar, admin office, and games room.
Building 4	Single storey building containing: <ul style="list-style-type: none"> • 2 dwellings; • 2 private ground level single garages, and • private courtyards.
Building 5	Two storey building containing: <ul style="list-style-type: none"> • 4 dwellings,

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	<ul style="list-style-type: none"> • 4 private ground level single garages; • private courtyards and balconies.
Basement	63 car parking spaces (including 6 accessible spaces and 12 larger spaces), 3 lift cores, rainwater storage, plant rooms, switch, 2 garbage storage rooms and loading/unloading areas
General	<ul style="list-style-type: none"> • Site landscaping • Pedestrian pathways • Village Square • Communal vegetable garden
TOTAL	53 dwellings, community facilities, 63 basement car parking spaces, 6 ground level private single car garages and 4 ground level visitor spaces.

The proposal also includes a plan to landscape Lewis Herman Reserve.

Plans of the proposal are included at **Attachment 1**.

2.0 Summary Recommendation

The proposal, with a maximum height of four storeys, significantly exceeds both the maximum height and FSR of both the SEPP (Housing for Seniors or People with a Disability) and the Draft Ashfield LEP 2013. As a consequence, it is significantly out of scale with the surrounding one and two storey existing low density residential environment. It also has severe and unacceptable overlooking and overshadowing impacts upon existing detached dwellings on adjacent sites. The degree of this impact is reflected in the extent of objections expressed to the proposal from the public during the notification period. The development is consequently recommended for refusal.

Background

3.0 Application Details

Applicant	:	Ashfield Baptist Homes Limited
Owner	:	Baptist Church Of NSW Prop Trust
Value of work	:	\$24,139,000
Lot/DP	:	LOT: 1 DP: 782844
Date lodged	:	16/05/2013
Date of last amendment	:	N/A
Building classification	:	9A
Application Type	:	Local
Construction Certificate	:	No
Section 94 Levy	:	Yes

4.0 Site and Surrounding Development

The subject site is a large irregularly shaped area of land consisting of five individual lots with frontages to Queen and New Streets as well as the area of land fronting Holden Street which is allocated for future use as Lewis Herman Reserve. It currently contains four single storey dwellings and is burdened by a Sydney Water easement traversing the northern part of the site from east to west. It is directly adjacent 31 Clissold Street which is in the same ownership and occupied by an existing aged care facility including high care, dementia and

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respite accommodation. Other surrounding development generally comprises detached dwellings and two storey residential flat buildings. Refer to **Attachment 2** for a locality map.

The site consists of the following individual lots:

Street Address	Lot No.	Deposited Plan	Title System	Total Site Area (by title)
43 Queen Street	2	1105116	Torrens	4,691m ²
51 Queen Street	1	782844	Torrens	768.3m ²
3 New Street	4	9280	Torrens	493.2m ²
5 New Street			Torrens	486.9m ²
7 New Street			Torrens	480.6m ²
TOTAL AREA				6,920m ²

5.0 Development History

Previous building and development applications submitted to Council for the subject site include:

No.	Date	Address	Proposal	Determination
10.2005.92.2	08.05.2012	86 Holden Street	Amendments to original consent including demolition of existing dwelling house at 43 Queen Street	Approved
10.2005.92.1	05.05.2005	86 Holden Street	Small lot dwelling development comprising 11 attached/detached dwellings and subdivision	Approved

Consent 10.2005.92.1 was commenced by way of preliminary site works within the required 5 year period and which secured the consent. Following this, consent 10.2005.92.2 for the demolition of the dwelling at 43 Queen Street was also acted upon. As a result, the above consents remain valid and could still be acted upon.

Assessment

6.0 Zoning/Permissibility/Heritage

- The site is zoned 2(a) - Residential under the provisions of Ashfield LEP 1985.
- The property is located within the vicinity of a heritage item/heritage conservation area.

The proposed works are prohibited under the provisions of Ashfield LEP 1985 but are permissible with consent by virtue of the operation of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

7.0 Section 79C Assessment

The following is an assessment of the application with regard to the heads of consideration

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under the provisions of Section 79C of the EP&A Act.

7.1 The provisions of any Environmental Planning Instrument

7.1.1 Local Environmental Plans

Ashfield Local Environmental Plan 1985 (as amended)

It is considered that the proposal does not comply with the aims and objectives of Ashfield LEP 1985 in that it does not retain and enhance the identity of Ashfield due to its excessive density, height and scale.

7.1.2 Regional Environmental Plans

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

It is considered that the carrying out of the proposed development is generally consistent with the objectives of the Plan and would not have any adverse effect on environmental heritage, the visual environment, the natural environment and open space and recreation facilities.

7.1.3 State Environmental Planning Policies

State Environmental Planning Policy No. 1 – Development Standards

- **Clauses 40(4)(a), (b) and (c) of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004**

Clause 40(4) of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 states the following:

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

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

(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.

“Height” in this clause is defined as

the greatest vertical distance (expressed in metres) between any level of the natural surface of the site area on which the building is, or is to be, erected and the ceiling of the topmost habitable floor of the building;

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The proposal fails to comply with the development standards stated in clauses 40(4)(a), (b) and (c).

Accordingly, an objection to these development standards has been submitted on behalf of the applicant under the provisions of State Environmental Planning Policy (SEPP) No. 1 – Development Standards.

Lloyd J., in the case of Winton Property Group v. North Sydney Council (2001), posed five questions to be addressed in SEPP 1 Objections. The submitted SEPP 1 Objection is assessed against these criteria as follows:

SEPP 1 Objection Assessment: Objection to cl. 40(4)(a), (b) & (c) of SEPP (Housing for Seniors and People with a Disability) 2004			
No.	Question	Applicant's argument	Assessment
1.	Is the Planning Control a Development Standard?	Clauses 40(4)(a), (b) & (c) is a development standard not a prohibition and therefore can be varied.	Satisfactory. The clauses are considered to be development standards.
2.	What is the underlying object or purpose of the standard?	The SEPP 1 Objection does not identify the objectives of the development standards to be varied.	Unsatisfactory. Applicant does not identify objectives of standards. Whilst there is no stated objective for Clause 40(4)(a) and (c) of the SEPP, the assumed objectives are to minimise the impact of development on adjoining land, to control the bulk and scale of development and promote two storey building scale except where adverse impacts would result on adjacent properties. The proposal results in a building well in excess of two storeys in an environment which is predominantly one and two storeys in scale and is clearly at odds with the objectives of the standard. The SEPP does, however, identify the objective behind clause 40(4)(b): <i>to avoid an abrupt change in the scale of development in the streetscape.</i> The applicant has not identified this objective but it appears that the proposal, which is no more than two storeys at its street frontages, is generally consistent with this objective.
3.	Is compliance with the development standard consistent with the aims of the	Compliance with the standard would hinder the attainment of the objects of the Act as follows: 1. This clause in the SEPP only	Unsatisfactory. The applicant has not clearly addressed the question regarding the consistency

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	<p>Policy, and in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act?</p>	<p>applies on land where residential flat buildings are not permitted. If residential flat buildings were permitted, these standards would not apply. Under the Draft Ashfield LEP 2013, a seniors housing residential flat building will be a permissible use and these clauses will not apply.</p> <ol style="list-style-type: none"> The master planned proposal for seniors living on the subject site will have the benefit of the facilities available in the ABH residential aged care facility. These facilities include a cafe, convenience store, hydrotherapy pool, meals, and other support facilities that may be required by people as they age. The proposal has been designed to minimise the impact on adjoining properties. ABH RACF and part of the proposal occupy the majority of the property boundary to the south. The existing dwelling at no. 53 Queen Street will receive some additional overshadowing. However, the north facing windows of no. 53 Queen Street will receive some sunlight during the day. The existing vegetation at the rear of the property is likely to overshadow the rear open space and on this basis, additional impact would be minimal. Draft Ashfield LEP 2013 proposes to zone the Stocklands Retirement Village the same zoning as the ABH seniors living facility, which is R2. While seniors living is a permissible use in the R2 zone, the Stocklands site will have the benefit of a height limit of 12.5m and an FSR of 1:1. A submission has been made to Ashfield Council arguing that to be fair and equitable the subject site should benefit from the same standards. The the 2 storey Building 5, adjacent to the northern boundary (classified as the rear of the site for the purpose of this SEPP1) is fair and reasonable. Building 3, the four (4) storey building is sufficiently setback to have no built form in the rear 25% of the site (measured from the boundary of ABH RACF). Building 4 is single storey and complies with the limit. Building 5 is appropriate 	<p>of the development standard with its (assumed) objective.</p> <p>The applicant's points defend the proposal but do not bear directly upon the question of whether compliance would hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act?</p> <p>Notwithstanding that many of these points are of little relevance to the question, each of the points raised is addressed as follows:</p> <ol style="list-style-type: none"> This is not correct. Under the Draft Ashfield LEP 2013, residential flat buildings would continue to be prohibited in this zone. The quality of the facilities and their benefits to the community are not relevant to determining the acceptability or otherwise of the variation. Lack of adverse impacts on adjacent properties is a pertinent argument but in this instance it is not agreed that the amenity impacts would be acceptable. This argument is not relevant in determining the acceptability of the variation. It is agreed that application of Clause 40(4) (c) to this site is not relevant given the atypical site form and the difficulty of establishing exactly what the rear 25% of the site actually is. Nevertheless, it is considered that the implied amenity objectives of the clause have not been achieved given that the rear 25% of adjacent standard residential lots are burdened by exposure to elements of the proposal which exceed s single storey scale. <p>It has therefore not been demonstrated that compliance with the standard would hinder the attainment of the objectives objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act .</p>
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		as two storey dwellings are permitted in this location and will be in scale and context with existing buildings. In addition, the interface between Building 5 and the adjoining dwelling is similar to a side boundary of a two storey dwelling. Also, the clause that would restrict this site to 1 storey will not apply when the Draft LEP 2013 is gazetted.	
4.	Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?	No reasons supplied specifically addressing the matter of "unreasonable or unnecessary".	Unsatisfactory. The applicant has not specifically addressed this critical criteria at all.
5.	Is the objection well founded?	The applicant asserts that for the above reasons it is considered that the objection is well founded.	No. See comment below.

The purpose of the development standard can be reasonably assumed to produce a consistent scale of urban development and avoid excessive impacts of bulk and scale upon existing low density residential development. It has not been demonstrated either that the application satisfies the objectives of the standard and that compliance is therefore unnecessary or that compliance is unreasonable under the circumstances. For these reasons it is considered that the SEPP 1 Objection to Clause 40(4)(a)(b) & (c) of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 is not well founded and cannot be supported.

State Environmental Planning Policy No. 55 – Remediation of land

The applicant has provided the following site investigation reports:

- Site Audit Report, 43-49 Queen Street, Ashfield, no. AS121323/JE006, prepared by Environ and dated March 2013; and
- Preliminary Contamination Assessment for 51 Queen Street and 3, 5 & 7 New Street, Ashfield, Ref: E25760KGrpt. Dated June 2012.

These suggest that the site has been, or could, be made suitable for the proposed use.

Should the application be approved, appropriate conditions would be applied to the consent to ensure that any site contamination is suitably addressed.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

The proposal is defined as a residential flat building under the provisions of the SEPP and as such has been referred to Council's SEPP 65 assessor for comment (see **Attachment 3**). The assessment concludes that the proposal is generally satisfactory, in terms of compliance with the SEPP, subject to minor changes and details being provided which could be addressed via conditions of consent were the application to be supported.

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

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2004

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSDP) was gazetted on 28 September 2007 and came into force on 12 October 2007. The development application is has been lodged under this SEPP.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 Chapter 3 Development for seniors housing Summary Compliance Table				
Clause No.	Clause	Standard	Proposed	Compliance
Part 2	Site-related requirements			
26	Location and access to facilities			
26(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:	Complies with the locational criteria under this Chapter.	Yes
26(1)(a)		shops, bank service providers and other retail and commercial services that residents may reasonably require, and	A regular bus service to Ashfield Town Centre is located in compliance with cl. 26(2)(b).	Yes
26(1)(b)		community services and recreation facilities, and	A regular bus service to Ashfield Town Centre is located in compliance with cl. 26(2)(b).	Yes
26(1)(c)		the practice of a general medical practitioner.	A regular bus service to Ashfield Town Centre is located in compliance with cl. 26(2)(b).	Yes
26(2)		Access complies with this clause if:		
26(2)(a)		the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development that is a distance 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	The facilities noted above are not generally located within 400mm of the site and reliance must be placed upon cl. 26(2)(b).	

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		<p>of 15 metres at a time,</p> <p>(ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,</p> <p>(iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time, or</p>		
26(2)(b)		<p>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:</p> <p>(i) that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and</p> <p>(ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and</p> <p>(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 each day from Monday to Friday (both days inclusive),</p> <p>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 referred to in subclause (1)) complies with subclause (3), or</p>	<p>The site is benefited by the following regular bus services:</p> <ul style="list-style-type: none"> No. 418: located in front of the site on Queen Street which connects to Ashfield town centre as well as Tempe and Burwood via Ashfield. No. 491: located in front of the site on Holden Street connects Five Dock with Hurstville Ashfield. Burwood and Hurstville. 	Yes
28	Water & sewer			
28(1)		<p>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 the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.</p>	<p>The proposal has been the subject of a Services Report and Design Statement that confirms suitable availability of water and sewage system.</p>	Yes
Part 3	Design Requirements			

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Division 2	Design principles			
33	Neighbourhood amenity and streetscape	The proposed development should:		
33(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, and	It is considered that the proposal is excessive in height and scale.	No
33(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	The proposal is not located within close proximity of any heritage conservation areas or heritage items.	N/A
33(c)		maintain reasonable neighbourhood amenity and appropriate residential character by:		
33(c)(i)		providing building setbacks to reduce bulk and overshadowing, and	The proposed building setbacks have unreasonable overshadowing impacts upon the properties at: <ul style="list-style-type: none"> 9 New Street; and 53 Queen Street. 	No
33(c)(ii)		using building form and siting that relates to the site's land form, and	The largest and tallest building (Building 3) is located on the most elevated part of the site which exacerbates its excessive height and scale.	No
33(c)(iii)		adopting building heights at the street frontage that are compatible in scale with adjacent development, and	The heights of the buildings along the street frontages are of two storeys and generally consistent with the neighbouring buildings of one to two storeys.	Yes
33(c)(iv)		considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and	Walls of the majority of the buildings are located too close to neighbouring properties and produce adverse privacy and overshadowing impacts.	No
33(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, and	The front buildings are appropriately set back.	Yes
33(e)		embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape,	Proposed planting scheme is considered satisfactory.	Yes

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		and		
33(f)		retain, wherever reasonable, major existing trees, and	The site is largely treeless, however, any significant existing trees are generally maintained.	Yes
33(g)		be designed so that no building is constructed in a riparian zone.	The site is not located in proximity to a riparian zone.	N/A
34	Visual & acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:		
34(a)		appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and	The proposal results in severe overlooking of adjacent low-density residential properties, in particular from Buildings 2 & 5 and the location of their upper level balcony areas.	No
34(b)		ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	Car parking and the majority of vehicular circulation is located underground.	Yes
35	Solar access & design for climate	The proposed development should:		
35(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, and	Proposed buildings 1 & 3 have excessive overshadowing impacts upon the private open space areas of properties at: <ul style="list-style-type: none"> • 9 New Street; and • 53 Queen Street. 	No
35(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.	85% of living areas are located with a northerly orientation.	Yes
36	Stormwater	The proposed development should:		
36(a)		control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and		Issue can be addressed via conditions
36(b)		include, where practical, on-site stormwater detention or		Issue can be

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		re-use for second quality water uses.		addressed via conditions
37	Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:		
37(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, and	Site is well designed for passive surveillance.	Yes
37(b)		where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and	Shared entries involve security lobbies.	Yes
37(c)		providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	Dwellings could be fitted with intercoms.	Issue can be addressed via conditions
38	Accessibility	The proposed development should:		
38(a)		have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and		Yes
38(b)		provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.		Yes
39	Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.		Yes
Part 4	Development standards to be complied with			
Division 1	General			
40	Development standards – minimum sizes and building height			
40(1)	General	A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.		
40(2)	Site size	The size of the site must be at least 1,000 square metres.	6920m ²	Yes

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40(3)	Site frontage	The site frontage must be at least 20 metres wide measured at the building line.	c. 44m	Yes
40(4)	Height in zones where residential flat buildings are not permitted	If the development is proposed in a residential zone where residential flat buildings are not permitted:		
40(4)(a)	“	the height of all buildings in the proposed development must be 8 metres or less, and	14.4m	No
40(4)(b)	“	a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and	Buildings 2 & 3 are adjacent boundaries of the site and exceed 2 storeys.	No
40(4)(c)		a building located in the rear 25% area of the site must not exceed 1 storey in height.	Being an atypical and irregularly shaped site, this control cannot be applied directly. Nevertheless, buildings located in positions corresponding to similar locations on adjacent properties generally exceed one storey in height and include: <ul style="list-style-type: none"> • Building 1: 2 storeys; • Building 2: 3 storeys; • Building 3: 4 storeys. 	No
Part 7		Development standards that cannot be used as grounds to refuse consent		
Division 4		Self-contained dwellings		
50	Standards that cannot be used to refuse development consent for self contained dwellings	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 self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds:		
50(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)	14.4m	Can refuse on height
50(b)	Density and scale	if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,		Can refuse on FSR
50(c)(i)	Landscaped area	in the case of a development application made by a social housing provider - a minimum 35 square metres of landscaped area per dwelling	N/A	N/A

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		is provided, or		
50(c)(ii)	Landscaped area	in any other case - a minimum of 30% of the area of the site is to be landscaped,	34%	Yes
50(d)	Deep soil zones	if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the deep soil zone). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres.	20% with 79% in the rear	Yes
50(e)	Solar Access	solar access: if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.	86%	Yes
50(f)(i)	Private open space	in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and	All dwellings meet this requirement.	Yes
50(f)(i)	Private open space	in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area,	All dwellings meet this requirement.	Yes
50(h)(i)	Parking	0.5 car spaces for each	<ul style="list-style-type: none"> 8 x 1 bedroom 	Yes

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		bedroom where the development application is made by a person other than a social housing provider, or	apartments <ul style="list-style-type: none"> 39 x 2 bedroom apartments 6 x 3 bedroom apartments Total 52 car parks <i>required</i> Total 73 car parks provided	
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As demonstrated in the above table, the proposed development does not satisfy a number of important provisions of the SEPP, in particular:

- Significantly excessive FSR; and
- Significantly excess height.

Taken together, these result in non-compliances with the controls relating to overshadowing and privacy.

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

The applicant has submitted a valid BASIX certificate with the application and the proposal is considered to satisfy the requirements of the SEPP.

7.2 The provisions of any Draft Environmental Planning Instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority.

Draft Ashfield Local Environmental Plan 2013 (Draft ALEP 2013) was placed on public exhibition on 27 June 2012 and endorsed by Council on 28 March 2013 for referral to the Department of Planning and Infrastructure under section 59 of the Environmental Planning and Assessment Act 1979 and is a matter for consideration. The following table summarises the compliance of the application with Draft ALEP 2013.

Draft Ashfield Local Environmental Plan 2013 Summary Compliance Table				
Clause No.	Clause	Standard	Proposed	Complies
2.3	Zone objectives and land use table	Zone R2 Low Density Residential	Seniors Housing	Yes
4.1AB	Minimum subdivision lot size	174m ² - 450m ² and not exceed 11 lots	No subdivision proposed 6,920m ²	Yes
4.3	Height of buildings	8.5m	14.4m	No
4.4	Floor space ratio	0.7:1	1.067:1	No
4.6(3)	Exceptions to development standards	Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the	No written request submitted.	No

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		development standard by demonstrating:		
4.6(3)(a)	“	That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	Not demonstrated.	No
4.6(3)(b)	“	That there are sufficient environmental planning grounds to justify contravening the development standard.	Not demonstrated.	No
4.6(4)	“	Development consent must not be granted for development that contravenes a development standard unless:		
4.6(4)(a)	“	The consent authority is satisfied that:		
4.6(4)(a)(ii)	“	The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	Not adequately addressed.	No
4.6(4)(a)(iii)	“	The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and	The proposed development is not consistent with the objectives of the standard or of the zone.	No
4.6(4)(b)	“	The concurrence of the Director-General has been obtained.	No	No

As demonstrated in the above table, the proposed development does not comply with the following provisions of Draft ALEP 2013:

- Cl. 4.3, Height: the proposal significantly exceeds the maximum height permitted under this clause by 5.9m; and
- Cl. 4.4, Floor Space Ratio: the proposal significantly exceeds the maximum floor space ratio permitted under this clause by 0.37:1.

Given these significant breaches of key development standards and the lack of any justification under clause 4.6, the proposal is considered to be inconsistent with the objectives of Draft ALEP 2013.

7.3 The provisions of any Development Control Plan.

The proposal has been considered against the provisions of the Ashfield Development Control Plan (DCP) 2007:

C1	ACCESS AND MOBILITY	Satisfactory.
C5	MULTI-UNIT DEVELOPMENT IN RESIDENTIAL FLAT ZONES	This part does not apply to the proposal – only applies to land in 2(b) and 2(c) zones.
C11	PARKING	Satisfactory. Complies with minimum total required car parking

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		spaces.
C12	PUBLIC NOTIFICATION IN THE PLANNING PROCESS AND ALL ASPECTS OF LAND MANAGEMENT	The proposal has been notified in accordance with Council's policy.
C16	43-49 QUEEN STREET ASHFIELD	Does not comply. The proposal is completely inconsistent with the type of development envisaged by this site specific DCP.
	C16(2) The land may be subdivided into 11 small allotments as per ALEP Amendment 114.	Complies. No subdivision proposed.
	C16(5) All ground floor dwellings must be visitable by a person with disabilities.	Complies.
	C16(6) All ground floor dwellings shall be designed to comply with Universal Design Principles and have a ground floor toilet visitable by a person with a disability.	Complies
	C16(7) Dwellings situated one level above ground shall have a stair wide enough to take a stair inclinator.	N/A – all dwellings accessible by lift.
	C16(8) Development shall comprise free-standing and attached dwellings. Dwellings at 3-7 New Street	Does not comply.
	C16(10) Built Form: Dwellings fronting Queen Street shall reflect the early 20 th Century garden suburb.	Does not comply. The proposal does not adequately respond to these requirements.
	C16(18) An easement or right of carriageway (min 2m wide) to benefit Ashfield Council is to be established along the line of a pathway from Queen Street to the Lewis Herman Reserve to enable public access to the reserve from Queen Street.	Does not comply. This feature does not appear to have been provided in the proposal and would not appear to be compatible with the site planning in respect of general site planning and site security. Furthermore, the proposed gate between the site and the reserve would inhibit pedestrian through traffic.

The application complies with some relevant components of Ashfield DCP 2007 outlined above but does not comply with the provisions of Part C16 of the DCP in respect of providing detached and semi-detached dwellings with a single storey form fronting New Street.

7.4 Any matters prescribed by the regulations that apply to the land to which the development application relates.

These matters have been considered in the assessment of this application.

7.5 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality.

These matters have been considered as part of the assessment of the development application. It is considered that the proposed development will have adverse environmental impacts upon the locality including:

- Adverse impacts upon the privacy of the dwellings at 1 & 9 New Street and 41 Queen Street;
- Adverse overshadowing impacts upon 9 New Street and 53 Queen Street; and
- Excessive and overbearing bulk and scale upon the dwellings at 1 & 9 New Street;

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- Excessive and overbearing bulk and scale upon Lewis Herman Reserve and the locality generally.

7.6 The suitability of the site for the development

These matters have been considered as part of the assessment of the development application. The proposed development is considered to be excessive in scale and density for the site.

7.7 Any submissions made in accordance with this Act or the regulations

The proposal was notified to all adjoining and nearby affected property owners and occupants, and Councillors from 30 May 2013 until 24 June 2013.

7.7.1 Summary of submissions

36 submissions (**Attachment 3**) were received during the notification of the development application (3 in support and 33 opposed):

Submissions in Support
Rev J. Morrison Ashfield Baptist Church 19 Holden Street, Ashfield NSW 2131
L. Parks 10 New Street, Ashfield NSW 2131
D. Trefry dtrefry@optusnet.com.au

Submissions in Opposition
K. Allum 21 Foord Avenue, Hurlstone Park NSW 2193
M. Allum 21 Foord Avenue, Hurlstone Park NSW 2193
R. Attard 48 Queen Street, Ashfield NSW 2131
W. Blackledge 77 Holden Street, Ashfield NSW 2131
L. Burney, MP, State Member for Canterbury On behalf of: F. D'Souza, 1/63 Queen Street Mr & Mrs Williams, 61 Queen Street L. Bennett & J. Watson, 3/63 Queen St S. Gibbins & R. Ward, 4/63 Queen Street
M. Cannovlo 37 Queen Street, Ashfield NSW 2131
L. Fang 38 Robert Street, Ashfield NSW 2131
L. Higgins 50 Robert Street, Ashfield NSW 2131

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Submissions in Opposition
A. Khabbaz 4 New Street, Ashfield NSW 2131
C. Kheng 39 Queen Street, Ashfield NSW 2131
K. Lam 52 Robert Street, Ashfield NSW 2131 (two letters)
Y. Li & L. Chen 53 Queen Street, Ashfield NSW 2131 (two letters – additional from L. Chen)
H. Goh 56 Queen Street, Ashfield NSW 2131
S. & S. Lo Giudice 41 Queen Street, Ashfield NSW 2131 (two letters)
P. Kulen 62 Queen Street, Ashfield NSW 2131
S. Kvesic 34 Robert Street, Ashfield NSW 2131
C. Kwan 84 Queen Street, Ashfield NSW 2131
M. Lefant 64 Queen Street, Ashfield NSW 2131
C. & D. Lee 54 Queen Street, Ashfield NSW 2131
Y. Li 94 Queen Street, Ashfield NSW 2131
H. & Q. Lu 66 Queen Street, Ashfield NSW 2131 (two letters)
B. Ma & C. Wong 62 Queen Street, Ashfield NSW 2131
T. Mar 25 Robert Street, Ashfield NSW 2131
P. Nair 46 Robert Street, Ashfield NSW 2131
J. Sheldon 90 Queen Street, Ashfield NSW 2131
A. & W. Stedman 50 Queen Street, Ashfield NSW 2131
W. Troy 2 New Street, Ashfield NSW 2131
F. Vasilios 86 Queen Street, Ashfield NSW 2131
J. Volpe for 6 New Street, Ashfield, NSW 2131
C. Wigbout 45 William Street, Ashfield NSW 2131
G. & J. Williams 61 Queen Street, Ashfield NSW 2131
W. Wong 13/30 Queen Street, Ashfield NSW 2131

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Submissions in Opposition

L. & W. Zhang
58 Queen Street, Ashfield NSW 2131

Submission Issue	Assessing Officer's Comment
Two structures exceed the current two storey height limit which will be ugly and overbearing.	Agreed that the 3 and 4 storey structures are excessive and will have an overbearing impact upon surrounding low density residential development.
Parking is inadequate.	The total amount of parking exceeds the minimum required by the applicable controls and is considered satisfactory.
Proposal is excessive in scale and an overdevelopment of the site.	Agreed.
The developer suggested that if they don't develop it, it may be sold and another larger development may take its place.	This is not necessarily the case and any development application exceeding the planning controls for the site may also not be supported.
Traffic congestion.	There is no evidence to suggest that the increase in traffic would be beyond the capacity of the local road network.
Value of nearby properties may be reduced.	This is not a matter for consideration in the planning assessment nor has any evidence been presented which justifies this assertion.
Proposal is ugly and industrial in appearance.	The aesthetics of the proposal are not considered inappropriate for the locality (except for the excessive size).
The New Street entrance may be used to pick up and drop off residents.	There is nothing to prevent this from happening although the extent to which this may or may not be problematic has not been determined.
Building 2 blocks views of local trees and Ashfield Mall.	Local views of nearby vegetation and structures such as Ashfield Mall are not protected by Council's planning controls. Although 2 storeys is not considered inappropriate on the New Street frontage, it is agreed that 3 storeys is excessive at the rear.
The developer has not taken community feedback into consideration when formulating its submission.	Noted.
Four storeys in a two storey zone is unacceptable.	Agreed.
Building 3 will have adverse privacy impacts on dwellings in Robert Street.	Agreed.
Headlights of vehicles leaving the basement car park will disturb residents across Queen Street.	Noted.
Noise created by traffic will disturb nearby residents.	It is unlikely that the extent of traffic generated by the development would create a level of noise sufficient to warrant concern.
General concerns about privacy.	Agreed that the proposal will have unacceptable privacy impacts on nearby dwellings.

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Submission Issue	Assessing Officer's Comment
Excessive overshadowing of Lewis Herman Reserve.	The overshadowing of Lewis Herman Reserve would be confined to the early morning and is considered minimal and acceptable.
Use of reserve for construction purposes is not acceptable.	Agreed that there would be issues with this arrangement.
Overshadowing of 6 New Street.	This property would not be overshadowed at any time by the proposal.
Loss of views from 6 New Street due to 3 storey building fronting New Street.	The proposal will front New Street with what would appear to be only a two storey building which is considered acceptable in the context and would not unreasonably alter the outlook from existing properties.
Loss of privacy to 6 New Street.	Only the front setback area of properties on New Street would be subject to any loss of privacy resulting from increased traffic, pedestrians and residents. This is not considered unacceptable as this area does not constitute private open space.
Drop off and turning area should be provided in front of Building 2 on New Street.	This may serve to encourage and increase traffic flows in New Street and would create a building with an inconsistent street setback.
Excessive bulk of Building 3 presenting to Lewis Herman Reserve.	Agreed.
Concern that the heights of buildings will need to be increased to provide required plant and equipment.	If the application were approved, it would be with conditions requiring the ridge levels not exceed a certain height. Any increase of height or change to the roof forms would thus require a subsequent application which may not be approved.
Additional impacts from community facility proposed on Queen Street frontage.	This is not considered to present any planning concerns in respect of Council's controls.
Additional overflow of lighting from development.	This is not considered to present any planning concerns in respect of Council's controls.
Structural impacts upon nearby dwellings.	Conditions would be placed on any consent requiring protection of adjacent structures and rectification of any damage.
Adverse impact upon historic streetscape of New Street and loss of historic dwellings.	None of the dwellings proposed for demolition is either located in a heritage conservation area nor is a heritage item. Furthermore, the main area of New Street neither contains any heritage items nor is in a heritage conservation area (the only heritage item is the building on the south west intersection of New Street with Queen Street and the proposal is unlikely to have any adverse impacts upon this site). Given this, it is considered that the proposal would not have adverse heritage impacts.
The proposal is inconsistent with the previous consent for the site of 11 dwellings of no more than two storeys.	Agreed.
Period allowed for submissions unsatisfactory.	The notification period was in accordance with Council's policy.
Contemporary style of proposal is not	It is considered that the aesthetic proposed is

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Submission Issue	Assessing Officer's Comment
appropriate in the locality.	generally sympathetic to the locality in terms of roof forms, articulation and the like (although the height and scale is problematic). Should the application be approved, conditions would be applied to any consent to ensure the use of materials which are consistent with those typical of the local area.
Access through the site from Lewis Herman Reserve to Queen Street should be maintained.	Agreed.
Ashfield Baptist Homes have shown themselves to be good institutional citizens and good neighbours.	This is not challenged but is not a matter for consideration in the planning assessment.
Plans are thoughtful and innovative.	This is not challenged.
There is a need for medium density housing aimed at the aging.	This is not challenged.
Access to integrated facilities on site for the aging is desirable.	Agreed.
Proposal will provide a desirable residential facility in a good location for its occupants.	Agreed.
Integration of the proposal with the existing aged care facilities at the adjacent nursing home and its facilities is a desirable feature.	Agreed.

7.8 The public interest

Matters of the public interest have been taken into consideration in the assessment of the application. Given the extent of community objection combined with the excessive height, scale and density of the proposal, it is considered that support for the proposal is not in the public interest.

8.0 Referrals

8.1 Internal

Internal Referrals		
Officer	Comments	Support
Building Surveyor	No comments received at writing of report but issues could be addressed through consent conditions.	Yes, with conditions
Traffic Engineer	The following issues have been identified: 1. Plans do not identify cross-sectional detail for headroom clearance which is vital to cater for Median Rigid (waste collection) vehicle travel path from the entry of the ramp to the loading dock area as required under AS 2809.2:2002. The headroom at the collection point has to also cater for bin loading operation. The loading bay position and operation at the western end of the car park conflicts and hinders with car parking in general. No plan of management is made to address how to overcome this issue. 2. The applicant needs to provide a template overlay of the size and	No, but could be addressed by way of conditions.

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	<p>type of vehicle to stand at the eastern side of the car park near the ramp and demonstrate how it will turn to move out in a forward direction.</p> <p>3. The applicant needs to provide a template overlay of the size and type of vehicle to stand at the southern side of the car park and demonstrate how it will turn to move out in a forward direction.</p> <p>4. All travel path and loading areas for service vehicles require the headroom clearance under AS 2809.2:2002.</p> <p>5. Bollards are required at shared bay areas to accessible parking zones in accordance to AS 2809.6.2009.</p> <p>6. The loading bays and standing area positions should be marked/signposted out accordingly.</p>	
SEPP 65	Generally supportive subject to conditions.	Yes, with conditions
Heritage Adviser	No impact on nearby heritage items but concerned about dramatic contrast in scale with the smaller scale residential context.	Expressed reservations
Stormwater Engineer	The stormwater design (OSD system) is still unresolved. Issues around discharge and storage need to be finalised.	No, but could be resolved by way of deferred commencement conditions
Environmental Health	No objection subject to conditions.	Yes, with conditions

8.2 External

External Referrals		
Officer	Comments	Support
Ashfield Police	No comments received at writing of report.	Unknown

9.0 Building Code of Australia (BCA)

A Construction Certificate will be required to be applied for by condition of consent should the application be approved.

Financial Implications

If approved, the proposal will be subject to section 94 contributions.

Other Staff Comments

See Section 8.1 of this report.

Public Consultation

See Section 7.7 of this report.

Conclusion

The application has been assessed in accordance with the provisions of the EP&A Act 1979

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with all matters specified under Section 79C (1) Clauses (a) to (e) having been taken into consideration.

With a maximum height of four storeys, the proposal significantly exceeds both the maximum height and FSR of both the SEPP (Housing for Seniors or People with a Disability) and the Draft Ashfield LEP 2013. As a consequence, it is significantly out of scale with the surrounding one and two storey existing low density residential environment. It also has severe and unacceptable overlooking and overshadowing impacts upon existing detached dwellings on adjacent sites. The degree of this impact is reflected in the extent of objections expressed to the proposal from the public during the notification period.

Given the above, it is considered that the proposal represents an overdevelopment of the site. It is considered unacceptable and is consequently recommended for refusal.

Attachments

Attachment 1 – Plans of the Proposal
Attachment 2 – Locality Map
Attachment 3 – SEPP 65 Comments
Attachment 4 – Submissions

Recommendation

That the consent authority pursuant to Clause 80(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) refuse Development Application No. 10.2013.98.1 for construction of Seniors housing consisting of 53 self care dwellings in five separate buildings of between one and four storeys with basement car parking, landscaping and associated works on Lot 2, DP 1105116, Lot 1, DP 782844 & Lots 2, 3, & 4, DP 9280, known as 43-51 Queen Street & 3-7 New Street, Ashfield, for the following reasons:

- 1. The SEPP 1 Objection to Clause 40(4)(a) of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 is not well founded and not supported.**
- 2. The proposed development represents an overdevelopment of the site and is excessive in bulk and scale.**
- 3. The proposed development does not comply with clause 40(4)(a) of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 in that it exceeds 8m in height.**
- 4. The proposed development does not comply with clause 40(4)(c) of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 in that buildings located in the rear 25% of the site exceed 1 storey in height.**
- 5. The proposed development does not comply with clause 4.3 of Draft Ashfield Local Environmental Plan 2013 in that the development exceeds the maximum building height of 8.5m.**
- 6. The proposed development does not comply with clause 4.4 of Draft Ashfield Local Environmental Plan 2013 in that the development exceeds**

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the maximum floor space ratio of 0.7:1.

7. The proposed development does not comply with Clause 8, Part C16 of Ashfield DCP 2007 in that the proposal does not comprise freestanding and attached dwellings and the dwellings to the north of 3-7 New Street are not of a single storey scale.
8. The proposed development does not comply with Clause 18, Part C16 of Ashfield DCP 2007 in that the proposal does not provide an easement or right of way dedicated to Ashfield Council to allow public pedestrian access between Lewis Herman Reserve and Queen Street.
9. The proposed development has excessive overshadowing impacts upon the private open space of 9 New Street and 53 Queen Street.
10. The proposed development has unacceptable privacy impacts upon the private open space of 1 & 9 New Street and 41 Queen Street.
11. The proposed development has excessive and overbearing bulk and scale impacts upon the dwellings at 1 & 9 New Street.
12. The proposed development is not in the public interest.