

<b>JRPP No.</b>	<b>2013SYW047</b>
<b>Development Application No.</b>	<b>DA-412/2013</b>
<b>Proposed Development</b>	<b>Alterations and additions to the Scalabrini Village pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</b>
<b>Property Description</b>	<b>Lot 10 DP 801303, 199 Epsom Road CHIPPING NORTON</b>
<b>Applicant</b>	<b>Scalabrini Village</b>
<b>Land Owner</b>	<b>Scalabrini Village – Austral</b>
<b>Cost of Work</b>	<b>\$29.7 Million</b>
<b>Recommendation</b>	<b>Approval, subject to conditions</b>



## **1. EXECUTIVE SUMMARY**

### **1.1 Reasons for the Report**

Pursuant to the requirements of Schedule 4A of the Environmental Planning and Assessment Act 1979, the proposed development is referred to the Sydney West Joint Regional Planning Panel (JRPP) for consideration and determination as the Development Application has a Capital Investment Value over \$20 million.

This report summarises the key issues in consideration of the proposal in accordance with the

provisions of the Environmental Planning and Assessment Act 1979.

### **1.2. The Proposal**

Council has received a Development Application for alterations and additions to the existing Salabrini Village (a residential care facility), including the construction of a three storey residential care facility building, alterations to existing facility buildings, landscaping, car parking and site works.

### **1.3 The Site**

The subject site is known as Lot 10 DP 801303 and is located at 199 Epsom Road, Chipping Norton. The site has an area of 1.537 hectares and a frontage of 95.7 metres to Epsom Road. Existing improvements on the site consist of two residential care facility buildings, an administration building, chapel, multipurpose building, car parking, six garden gazebos and a waste storage area.

### **1.4 The issues**

The proposal seeks to exceed the maximum height controls contained in Liverpool Local Environmental Plan 2008 and State Environmental Policy (Housing for Seniors or People with a Disability) 2004; and the allowable FSR controls contained in Liverpool Local Environmental Plan 2008. The applicant has submitted written requests pursuant to SEPP 1 and Clause 4.6 of LLEP 2008 to vary the development standards. The proposed three storey Building D, would exceed the two storey height controls by one storey.

### **1.5 Exhibition of the proposal**

The proposal was exhibited from 8 May 2013 to 7 June 2013 in accordance with Liverpool Development Control Plan 2008. Four submissions were received in response to the proposal. The overall number of objectors to the proposals is nine persons.

### **1.6 Conclusion**

The application has been assessed pursuant to the provision of the Environmental Planning and Assessment Act 1979. Based on the assessment of the application and the consideration of the written requests to vary the development standards, it is recommended that the application be approved subject to the imposition of conditions.

## **2. SITE DESCRIPTION AND LOCALITY**

### **2.1 The Site**

The subject site is known as Lot 10 DP 801303 and is located at 199 Epsom Road, Chipping Norton. The site is of an irregular shape and has an area of 1.537 hectares and a frontage of 95.7 metres to Epsom Road. The site adjoins the public reserve known as Chauvel Park to the West. The subject site is shown below in Figure 1.



**Figure 1: Subject site**

The site has a secondary frontage to the access road to Chauvel Park with existing driveway access. The access road to Chauvel Park is gated. Existing improvements on the site consist of two two storey residential care facility buildings, an administration building, a chapel, a multipurpose maintenance building, car parking, six garden gazebos and waste storage areas.

Photographs of the site are shown below in Figures 2 to 6.



**Figure 2: Front Entry to Site**

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**SYDNEY WEST JOINT REGIONAL PLANNING PANEL**

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**Figure 3: Existing Building B – Hostel**



**Figure 4: Driveway to rear of site and view of adjoining properties to South**



**Figure 5: Location of Proposed Building D and view towards existing nursing home**



**Figure 6: Existing waste facilities and driveway to Council access road**

## **2.2 The Locality**

The surrounding locality is characterised as an established residential area containing a mixture of single and double storey free standing dwellings and medium density townhouse style developments. The subject site adjoins a medium density development to the North, Chauvel Park to the West and a number of free standing dwellings to the South. An aerial view of the locality is shown below in Figure 7.

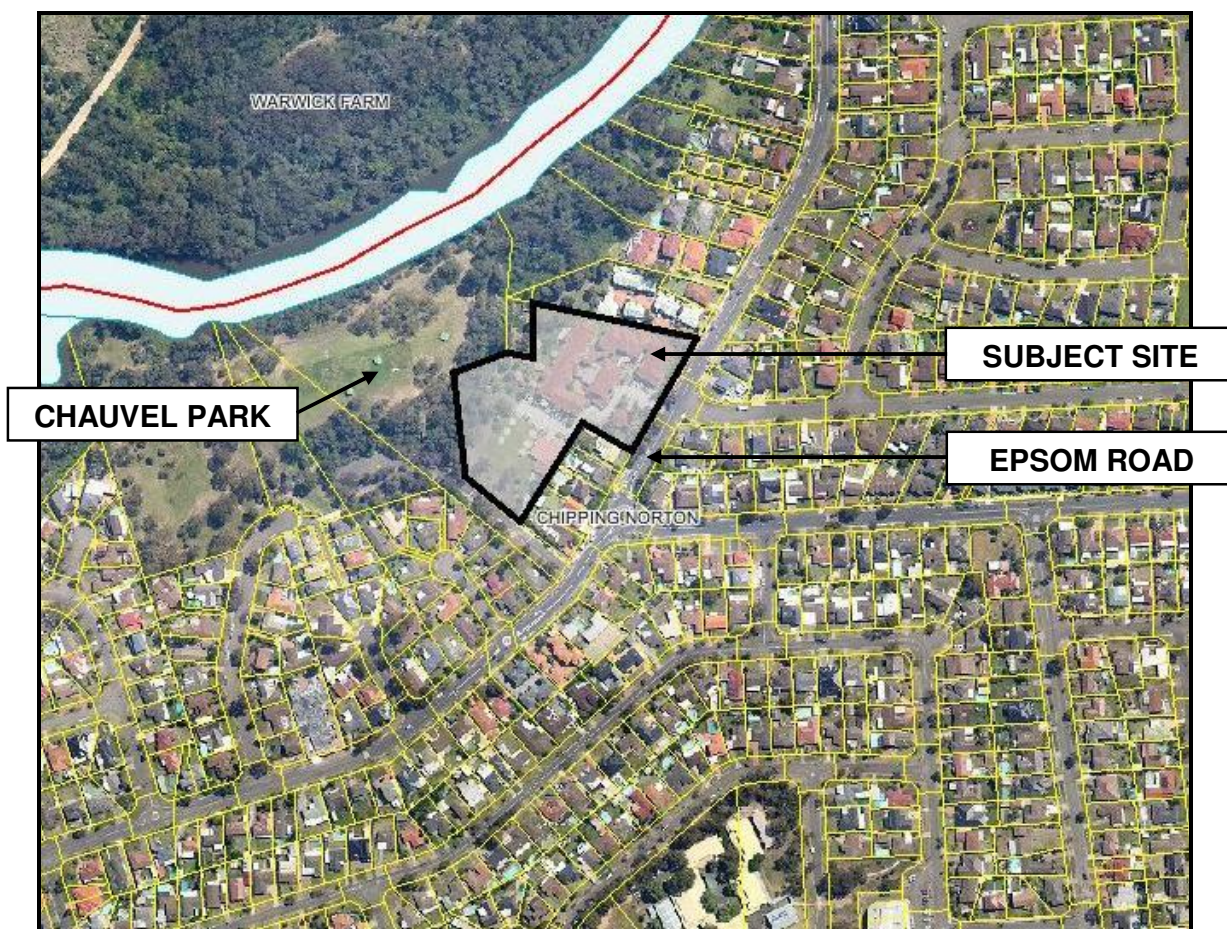


Figure 7: Aerial view of locality

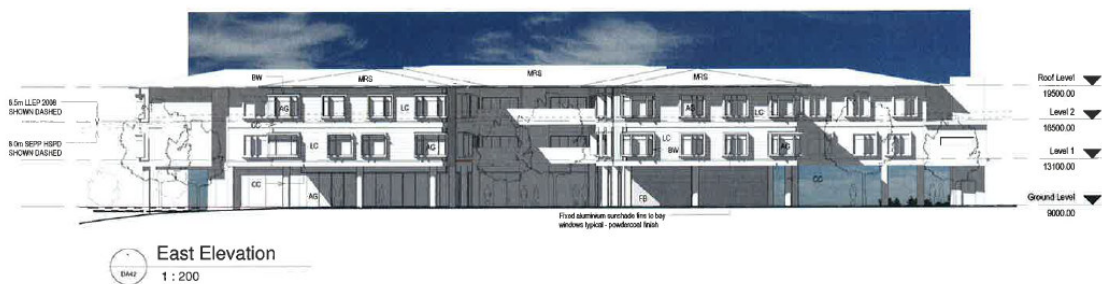
### 3. DETAILS OF THE PROPOSAL

The development application seeks consent for alterations and additions to the existing residential care facility, the construction of a new three storey residential care facility, landscaping, car parking and site works over three stages as follows:

- Stage 1: Demolition works. Erection of new three storey residential care facility (Building D) containing 72 high care beds with ancillary facilities.
- Stage 2A: Conversion of existing low care hostel (Building B) into 30 high care beds
- Stage 2B: Conversion of existing administration building (Building C) into community facilities
- Stage 3: Conversion of existing nursing home (Building A) into 49 high care beds
- Landscaping
- Site works
- Fencing

Copies of the architectural plans are contained in attachments. Extracts of the plans for proposed

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[illegible]



2 North Elevation  
1 : 200



3 South Elevation  
1 : 200



4 West Elevation  
1 : 200

#### 4. STATUTORY CONSIDERATIONS

##### 4.1 Zoning

The subject site is zoned R3 Medium Density Residential Zone pursuant to Liverpool Local Environmental Plan 2008 (LLEP2008). The proposal is defined as 'seniors housing' which is defined in LLEP 2008 as follows:

**seniors housing** means a building or place that is:

- (a) a residential care facility, or
- (b) a hostel within the meaning of clause 12 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, or
- (c) a group of self-contained dwellings, or
- (d) a combination of any of the buildings or places referred to in paragraphs (a)–(c), and that is, or is intended to be, used permanently for:
  - (e) seniors or people who have a disability, or
  - (f) people who live in the same household with seniors or people who have a disability, or
  - (g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place, but does not include a hospital.

Seniors housing is permissible in the R3 Medium Density Residential Zone with Council consent.

An extract from LLEP 2008 zoning map is shown below in Figure 8.

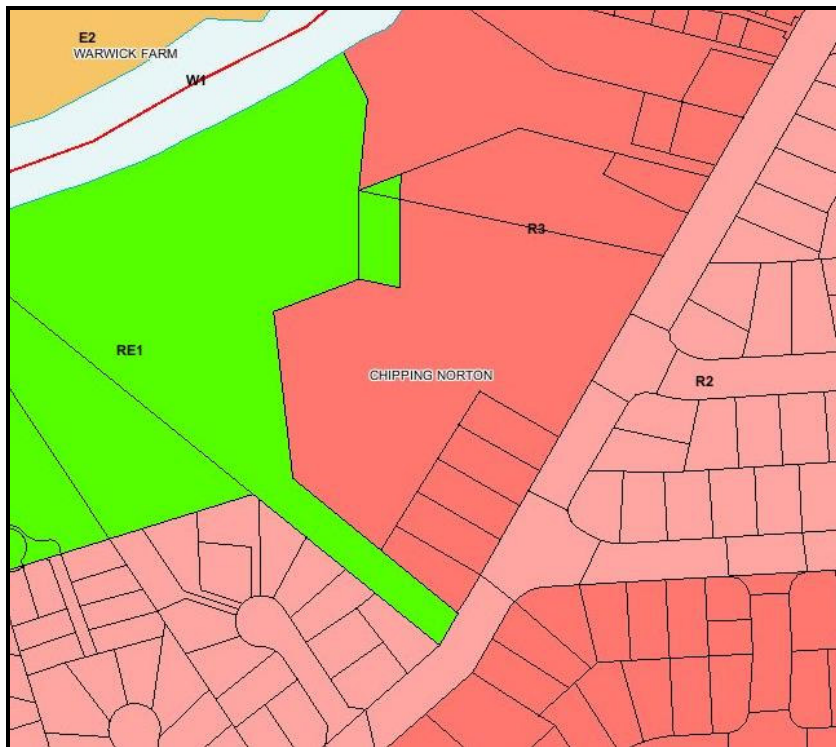


Figure 8: Extract of LLEP 2008 zoning map

## 4.2 Relevant matters for consideration

In addition to LLEP 2008, the following Environmental Planning Instruments (EPI's), Development Control Plan and Codes or Policies are relevant to this application:

- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy No. 1 – Development Standards
- Liverpool Local Environmental Plan 2008
- Liverpool Development Control Plan 2008
- Liverpool Contributions Plan 2009

## 5. ASSESSMENT

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 79C of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation as follows:

### 5.1 Section 79C(1)(a)(1) – Any Environmental Planning Instrument

#### (a) Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (now a deemed SEPP).

It is considered that the proposal satisfies the provisions of the GMREP No.2. Subject to appropriate sedimentation and erosion controls during construction, the development will have minimal impact on the Georges River Catchment. General Terms of Approval have been issued by the NSW Office of Water for the proposal and a Controlled Activity Approval is required to be obtained for the proposal.

#### (b) State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

The applicant has submitted a stage one soil preliminary contamination investigation for the site as part of the application. The report has assessed the potential of contamination for the site and concludes that the site's soils are suitable for residential development.

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

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP) applies to the proposal. The application has been made for seniors housing as a residential care facility as defined in the SEPP. An assessment of the proposal against the applicable provisions contained in the Seniors Housing SEPP has been undertaken and is detailed in the table below.

PROVISIONS	PROPOSAL	COMPLIANCE
<b>26 Location and access to facilities</b>	The village has its own community bus and is located less than 400m from a local bus service.	Complies
Site must have access to services such as shops, banks and commercial services, medical services, community and recreation facilities.		

<p>Site must have access to services such as shops, banks and commercial services, medical services, community and recreation facilities.</p> <p>Site must have access to shops, banks and commercial services, medical services, community and recreation facilities.</p> <p>Access must be within 400m via a suitable access with gradient of no more than 1:14.</p>		
<p>Bus services must be available to and from the site at least once between 8am to 12 noon per day and at least once between 12 noon and 6pm on weekdays</p>		
<p>Bus services within 400m must be available to and from the site at least once between 8am to 12 noon per day and at least once between 12 noon and 6pm on weekdays.</p>		
<p><b>27 Bush fire prone land</b></p> <p>Land in the vicinity of bush fire prone land or vegetation buffer to consider general location of development, means of access to and egress from the general location and matters listed in (a) to (i).</p>	<p>A vegetation buffer runs along the Georges River located adjacent to Chauvel Park. Access and egress from the site along Epsom Road is away from the fire risk across the river and risk can be managed by the preparation of an evacuation plan. The proposal has been referred to the NSW RFS for comments.</p>	<p>Submitted evacuation plans to be amended to include considerations of fire risk prior to the release of any Construction Certificate.</p>
<p><b>28 Water and sewer</b></p> <p>Written evidence to demonstrate that housing will be connected to a reticulated water system and will have adequate facilities for sewage disposal.</p>	<p>Site is fully serviced for water and sewerage. Upgrades may be required for installation of sprinklers.</p>	<p>Complies</p>
<p><b>29 Site compatibility criteria</b></p> <p>A consent authority, in determining a development application to which this clause applies, must take into consideration the criteria referred to in clause 25 (5) (b) (i), (iii) and (v).</p> <p>(i) the <b>natural environment</b> (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,</p> <p>(ii) the impact that the proposed</p>	<p>(i) Site is an existing seniors housing facility. The impact on the natural environment would not be significant and measures are proposed for construction to minimise impacts.</p> <p>(ii) Future land uses in the area are likely to be residential and park lands.</p> <p>(iii) Existing facilities are able to accommodate increased demand from new facility. Some upgrades to water services may be required for the installation of fire sprinklers as advised by Sydney Water.</p>	<p>Satisfactory</p>

<p>development is likely to have on the uses that, in the opinion of the Director-General, are likely to be the <b>future uses of that land</b>,</p> <p>(iii) the <b>services and infrastructure</b> that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,</p> <p>(iv) in the case of applications in relation to land that is zoned open space or special uses—the impact that the proposed development is likely to have on the provision of land for open space and special uses in the vicinity of the development,</p> <p>(v) without limiting any other criteria, the <b>impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development</b>,</p> <p>(vi) if the development may involve the clearing of native vegetation that is subject to the requirements of section 12 of the <a href="#">Native Vegetation Act 2003</a>—the impact that the proposed development is likely to have on the conservation and management of native vegetation.</p>	<p>(iv) No rezoning proposed.</p> <p>(v) Impact of the new and existing facility is minimised due to location of new building at rear of site with setbacks to adjoining dwellings. See more discussion below regarding the merits of the application to exceed the height standards.</p> <p>(vi) No native vegetation proposed to be removed.</p>	
<p><b>30 Site analysis</b></p> <p>Submission of a site analysis and supporting statement identifying how the development has been designed having regard to site analysis required.</p>	A site analysis has been included as part of the application.	Complies
<p><b>32 Design of residential development</b></p> <p>A consent authority must not consent to a DA unless it is satisfied that the development demonstrates adequate regard to the principles of Division 2.</p> <p>A consent authority must not consent to a DA unless it is satisfied that the development demonstrates adequate regard to the principles of Division 2 (Clauses 33 to 39 ).</p>	See clauses 33 to 39 below.	See below.
<b>33 Neighbourhood amenity and</b>	Streetscape maintained by location of	Satisfactory

<p><b>streetscape</b></p> <p>Development should: recognise desirable elements of current character and desired future character; maintain reasonable amenity and residential character by building setbacks to reduce bulk and overshadowing, building form and siting relative to the land form; compatible building heights; consistent front setback; and consistent landscaping.</p>	<p>new building at rear and setbacks which limit overshadowing.</p>	
<p><b>34 Visual and acoustic privacy</b></p> <p>Appropriate site planning, location and design of windows and balconies, screening devices.</p> <p>Locating bedrooms away from driveways, parking areas and footpaths to ensure acceptable noise levels.</p>	<p>No balconies proposed. Windows would face towards adjoining properties. Screening proposed by vegetation and sun shades.</p> <p>Bedrooms located away from driveways.</p>	<p>Satisfactory</p>
<p><b>35 Solar access and design for climate</b></p> <p>Ensure adequate daylight to main living areas of neighbours and residents; and sunlight to private open space. Site planning to reduce energy and maximise use of solar energy and natural ventilation.</p>	<p>Solar access maintained to neighbour's living areas.</p>	<p>Satisfactory</p>
<p><b>36 Stormwater</b></p> <p>Control and minimise disturbance and impacts of stormwater runoff. Include on-site detention or re-use for second quality water uses.</p>	<p>Stormwater design assessed by Council's Engineering staff.</p>	<p>Satisfactory</p>
<p><b>37 Crime prevention</b></p> <p>Provide personal property security for residences and visitors and encourage crime prevention.</p>	<p>Centralised secure access to each building.</p>	<p>Satisfactory</p>
<p><b>38 Accessibility</b></p> <p>Provide obvious and safe pedestrian links from the site that provide access to public transport services or local facilities.</p> <p>Provide obvious and safe pedestrian links from the site that provide access to public transport services or local facilities.</p> <p>Provide attractive and safe pedestrian and motorist environments with convenient access and parking.</p>	<p>Accessibility report submitted with application provides recommendations to achieve access in accordance with DDA and BCA</p> <p>Improved pedestrian access to site required</p>	<p>Complies</p> <p>Amended site landscaping plan required with separate pedestrian access required to issue of any CC</p>
<p><b>39 Waste management</b></p> <p>Provide waste facilities that maximise</p>	<p>Waste facilities provided including recycling</p>	<p>Complies</p>

recycling.		
<b>40 Development standards minimum sizes and building height</b>  Site size: 1,000m <sup>2</sup> minimum.  Site frontage: 20m minimum.  Height in residential zones where residential flat buildings are not permitted: 8m maximum (and maximum 2-storeys).  Building located at rear 25% of the site must not exceed 1-storey.	Site size: 1.537 hectares Frontage: 95m to Epsom Road  Height: 14m Three stories  No buildings in rear 25% of site	Complies Complies  Does not comply. Variation sought pursuant to SEPP 1  Complies
<b>48 Development standards that cannot be used to refuse development consent for residential care facilities</b>  Building height: if all buildings are 8m or less in height. Buildings exceed 8m in height but are satisfactory and comply.  Density and scale: if density and scale when expressed as FSR is 1:1 or less.  Landscaped area: if minimum 25m <sup>2</sup> of landscaped area per bed.  Parking for residents and visitors: if at least: 1 space per 10 beds 1 space per 2 staff, 1 ambulance space.	Height: 14m Three stories  FSR: 0.64:1  61m <sup>2</sup> per bed  40 spaces 2 ambulance	Does not meet requirement.  Complies Complies Complies
<b>55 Fire sprinklers</b>  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.	Details to be provided prior to construction certificate.	Complies

**(d) Seniors Living Policy: Urban Design Guidelines for Infill Development**

The *Seniors Living Policy: Urban design guidelines for infill development*, sets out a range of design principles which are to be considered in the design and assessment of seniors housing development under the Seniors Housing SEPP. An assessment of the proposal against the design guidelines is detailed below.

**(i) Responding to context**

PRINCIPLES	COMMENT
<b>Street layout and hierarchy:</b> Development be of an appropriate scale and	Existing road pattern.

character to reinforce existing road patterns	
<b>Block and lots:</b> Have regard to block and lot patterns and suitability for intensification of use.	Proposed location of buildings sympathetic to surrounding dwellings.
<b>Built environment:</b> Consider pattern and massing of existing buildings and neighbourhood character.	New Building D is set back from street towards rear of the site.
<b>Trees:</b> Consider the existing patterns of plantings in front and rear gardens of area.	Landscaping proposed throughout site. Large trees along perimeter in similar fashion to street tree planting.
<b>Policy environment:</b> Consider desired character of area as described in Council's planning instruments.	Proposal represents a higher built form than surrounding area that is well setback from the street.

**(ii) Site planning and design**

PRINCIPLES	COMMENT
<b>General:</b> Optimise internal amenity and minimise impacts on neighbours. Optimise solar access to private open space. Buffer quiet areas.	Garden areas proposed. Impact to neighbours minimised through setbacks.
<b>Trees, landscaping and deep soil zones:</b> Retain existing trees; use new mature or semi mature trees. Provide deep soil areas, at least 10% of site area as a single area at rear. Use of onsite detention and retain stormwater for re-use.	Existing trees retained where possible. Over 25% of site deep soil area. Rainwater tanks proposed.
<b>Parking, garaging and vehicular circulation:</b> Consider centralized parking. Maintain existing crossing and driveway location on the street.	Parking centralized at rear. Existing entry maintained.
<b>Rules of thumb:</b> Proportion of site given to landscaped area should be increased in less urban areas, on large lots, and in areas already characterized by a high proportion of open space and planting.	Landscaping exceeds required amount.

**(iii) Impacts on streetscape**

PRINCIPLES	COMMENT
<b>General:</b> Respond the desired streetscape by designing development to be sympathetic to existing streetscape.	Development set back from street.
<b>Built form:</b> Reduce visual bulk.	Buildings screened by vegetation and setback.
<b>Trees landscaping and deep soil zones:</b> Retain existing trees and planning in front and rear setbacks and road reserve.	Existing trees retained where possible and new plantings proposed.

<b>Residential amenity:</b> Define threshold between public and private space. Provide a high quality transition between the public and private domains. Provide pedestrian entry and is separate from vehicular entries. Locating and treating garbage storage areas and switchboards to visual impact is minimized.	Front entry clearly defines private space. Separate pedestrian access throughout site. Garbage storage areas located away from adjoining dwellings.
<b>Parking, garaging and vehicular circulation:</b> Avoid long straight driveways. Use planting to soften edges. Vary materials. Limit width. Use screening.	Driveways screened from the street.
<b>Rules of thumb:</b> Respond to Council planning instruments that specify the character or desired character for the area.	Proposal has sought variation to Council's controls based on the individual circumstances of the proposal.

**(iv) Impacts on neighbours**

PRINCIPLES	COMMENT
<b>Built form:</b> Relationships between buildings and open space to be consistent with the existing patterns in the block. Maintain existing orientations. Setting upper stories back behind side or rear building line. Broken roof lines to reduce bulk. Minimise overlooking.	Proposal represents higher built form than surrounding development. Larger setbacks proposed to mitigate against impacts to neighbours. Broken lines in roofing to reduce bulk.
<b>Trees, landscaping and deep soil zones:</b> Use vegetation as buffer. Use species that are characteristic of the local area.	Landscaping along boundaries to be retained and plantings proposed.
<b>Residential amenity:</b> Protect sun access and ventilation by ensuring adequate separation. Design dwellings so they do not directly overlook neighbour's private open space.	Separation between buildings and adjoining properties provided. No direct overlooking.
<b>Parking, garaging and vehicular circulation:</b> Provide planting and trees to screen noise and reduce visual impacts.	Screening provided along driveways.
<b>Rules of thumb:</b> Living rooms of neighbouring dwellings should receive minimum of 3 hours of direct sunlight between 9am to 3pm mid-winter. Solar access to the POS of neighbours should not be unreasonably reduced.	Over 3 hours of solar access to living rooms of neighbouring dwellings maintained. Some overshadowing to neighbours after 1pm mid-winter.

**(v) Internal site amenity**

PRINCIPLES	COMMENT
<b>Built form:</b> Maximise solar access to living areas and POS Clearly define entries.	Open spaces at rear of site.
<b>Parking, garaging and vehicular circulation:</b> Locate habitable rooms away from driveways and	Habitable rooms setback from driveways. Use of different materials on ground covers.

parking areas. Use physical separation where not possible. Avoid large areas of hard surface. Screen parking. Single driveways with passing bays rather than double driveways throughout.	Parking screened from street.
<b>Residential amenity:</b> Provide distinct separate pedestrian circulation to the site. Minimise opportunities for concealment. Provide POS. Provide communal open space that is accessible and includes facilities. Locate service facilities such as garbage storage to reduce visual prominence.	Pedestrian access within the site provided. Communal open space areas provided. Garbage storage areas screened from view. Improved pedestrian access to site required.
<b>Rules of thumb:</b> Separation of 1.2m from habitable rooms and driveways or car park of other dwellings, or screen.	Screening provided.

**(e) State Environmental Planning Policy No. 1 – Development Standards**

The applicant has made a written request to the vary development standards contained in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1). The standard proposed to be varied is the height of buildings standard contained in Clause 40(4) of the Seniors Housing SEPP which prescribe a maximum building height of 8 metres and two storeys in locations where residential flat buildings are not permitted. The proposal would be 14 metres and three stories in height.

The applicant has provided justification for the variation of the standards in accordance with the five question test in *Winten Property Group Ltd v North Sydney Council* [2001] NSWLEC 46 as follows:

1. Is the planning control in question a development standard?

**Submission:** The height control is not framed as a prohibition and should be read as a development standard.

2. What is the underlying object or purpose of the standard?

**Submission:** The objectives of the height standard although not expressly stated can be assumed to relate to preservation of amenity, avoidance of abrupt changes in streetscape, to provide greater flexibility to social housing providers. The applicant also details how the proposal achieves supportable outcomes in relation to privacy, solar access, outlook, views, and streetscape.

3. Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?

**Submission:** Compliance with the 8 metre height and two storey limit would result in a redesign of the proposal which would have reduced setbacks to adjoining dwellings, increased building footprint, reduced open space and landscaping, the reduction of beds if the floor area is reduced. Thus the attainments of the objects specified in the act would be hindered.

4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

**Submission:** Thus compliance is unreasonable given the site constraints, topography, impacts of the proposal, merit of providing aged care beds, compliance with FSR, the not for profit status of the Scalibrini organisation.

5. Is the objection well founded?

**Submission:** For the above reasons the proposed departure from the building height development standards is well founded.

In a subsequent matter *Wehbe v Pittwater Council* [2007] NSWLEC, Preston CJ listed the requirements to uphold SEPP 1 objections:

1. The consent authority must be satisfied that the objection is well founded, be in writing, be an objection that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specify the grounds of that objection.
2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979* which are to encourage: "(1) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, (2) the promotion and coordination of the orderly and economic use of developed land."
3. The consent authority must be satisfied that a consideration of the matters in Clause 8(a) and (b) justifies the upholding of the SEPP1 objection. These matters are: "(a) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning, and (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument".

Preston CJ lists five ways of establishing that compliance is unreasonable or unnecessary.

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to

the land and compliance with the standard would be unreasonable or unnecessary.

The applicant has not specifically made reference to any of these five tests although it does make reference to the case. From the submitted information it would appear that the applicant's submissions in general would best fit in reference to Question 1 in establishing that compliance is unreasonable or unnecessary.

In consideration of the second and third points Preston CJ raises in requirements to uphold a SEPP 1 objection, it is considered that the merits of the merits of varying the standards contained in LLEP 2008 should also be discussed. These items are addressed at Item (f) below.

**(f) Liverpool Local Environmental Plan 2008**

**(i) Permissibility**

The subject land is zoned R3 Medium Density Residential Zone under the provisions of LLEP 2008. Seniors housing is permitted in the R3 Medium Density Residential Zone with development consent.

**(ii) Objectives of the zone**

Objectives of the R3 Medium Density Residential Zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

**(iii) Principal Development Standards**

The following principal development standards are applicable to the proposal:

DEVELOPMENT PROVISION	REQUIREMENT	PROPOSED	COMMENT
4.3 Height of Buildings	Maximum height 8.5m	12.3m to 14.5m	Does not comply. Variation is sought
4.4 Floor Space Ratio	0.5:1	0.54:1	Does not comply. Variation is sought.
5.6 Architectural roof features	Architectural roof feature that exceeds or causes building to exceed height limit may be approved with development	The roof feature does not cause the building to exceed the height limit. The structure exceeds the height limit	Not applicable

	consent. Consent authority to be satisfied the roof feature: - comprise of decorative element on the uppermost portion of building - is not an advertising structure - does not include or is not capable of including floor space area - will cause minimal overshadowing - signage or equipment for servicing building is integrated into the design of the roof.	regardless of the design of the roof.  The design of the roof does integrate servicing equipment.	
5.9 Preservation of trees or vegetation	Provides when consent is required to be granted subject to the provision of this clause to remove trees or vegetation	Landscaping plan and arboricultural report identifies trees to be retained and removed	Complies
6.5 Public Utility Infrastructure	Public utility infrastructure must be available	Provided by conditions of consent	Complies
7.8 Flood planning	Development consent required. Development not to adversely affect flood behaviour and other properties. Occupation and evacuation to be safe. No detriment to environment. Compatible with flow of waters.		
7.9 Foreshore building line	Development within foreshore line restricted to items listed in (2)	New building works outside of foreshore building line.	Complies
7.31 Earthworks	Council to consider matters listed (a)-(g)	Matters addressed by applicant and considered by Engineers – conditioned as required	Complies

#### Clause 4.6 Variation

Written applications have been submitted pursuant to Clause 4.6 of LLEP 2008 to vary the development standards contained in Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio (FSR). The proposal represents a variation of 70% to the Height of Buildings standard and a variation of 8% to the Floor Space Ratio standard. Clause 4.6(2) provides that in certain circumstances, consent “...*may be granted for development even though the development would contravene a development standard imposed*” by the LLEP 2008. The variation to the maximum height standard is in excess of 10% and would be required to be determined by Council if the application were not to be determined by the JRPP.

The objectives of Clause 4.6 are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(3) prescribes:

*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 development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant has submitted the following information to address the above requirements:

- Flexibility should be applied to the proposal as the increased height allows for a greater separation to the adjoining dwellings along Epsom Road.
- The proposal is under the allowable FSR under the Seniors Housing SEPP.
- The available building footprint is limited by the foreshore building line.

Compliance with the standards is unreasonable as:

- The DA is made pursuant to the Seniors Housing SEPP which measures the height to the ceiling (as apposed the roof).
- Flood levels, existing buildings and the foreshore building line limit the available building footprint.
- Building D will not be visible from Epsom Road.
- Setbacks of 13.5m to 14.2m are proposed to the adjoining dwellings along Epsom Road minimising the loss of privacy, solar access and visual impact.
- Submitted solar diagrams show that a two storey scheme would have a similar solar impact as the submitted three storey proposal.
- The maximum height of 14.5m occurs over a small section of the building at the rear where the site falls to the Council Reserve and river.
- A portion of the proposal with a height greater than 8.5m is an architectural roof feature, which pursuant to Clause 5.6 of LLEP 2008 may exceed the height standard.
- The proposal is in the public interest as it satisfies the objectives of the zone by adding to the variety of housing types and meeting the community's need for additional aged care beds.
- The Seniors Housing SEPP allows for an FSR of 1:1 which overrides the applicable LLEP 2008 FSR standard.

Clause 4.6(4) prescribes that:

*Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) 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.*

*(b) the concurrence of the Director-General has been obtained.*

The objectives of the Height of Buildings standard are as follows:

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

The applicant submits the proposal meets these objectives in following manner:

- The proposal does not utilise the allowable FSR under the Seniors Housing SEPP.
- A high quality urban form for Building D is proposed.
- Houses adjoining the site along Epsom Road receive uninterrupted solar access until 1pm. The shadow increase after 1pm is comparable to a complying two storey scheme.
- The location of Building D is such that it will not be visible from Epsom Road. The visual impact of the proposal on the residents on the dwellings adjoining will be minimised by the proposed setback.

Objectives of the Floor Space Ratio standard are as follows:

- (a) to establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic,*
- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different locations,*
- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (f) to facilitate design excellence in the Liverpool city centre by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.*

The applicant submits the proposal meets these objectives in following manner:

- The proposal extends an existing residential care facility and the additional traffic generation is minimal.
- The existing and future low to medium density residential character of the area will be preserved.
- The impacts of the proposal on the adjoining properties is minimal and reasonable.
- The site has a large area and can accommodate the additional floor area.

The objectives of the R3 Medium Density Residential Zone as previously stated are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The applicant has submitted that the proposal is consistent with the zone objectives as it adds to the variety of housing types and meets the community's need for additional aged care beds.

Upon consideration of the submitted information in support of the variation to develop the Height of Building and Floor Space Ratio standards contained in LLEP 2008 pursuant to Clause 4.6 the following is noted:

- The proposal for a seniors housing aged care facility provides a service and housing options for the wider community in accordance with the zone objectives.
- The objectives of the height of buildings controls contained in LLEP 2008 are met notwithstanding the non compliance with the standard.
- The allowable FSR under the Seniors Housing SEPP is greater than that allowed under LLEP 2008. The proposed FSR of 0.54:1 is well below the allowable FSR of 1:1 under the Seniors Housing SEPP which prevails of the LLEP 2008 standard. Further, the objectives of the FSR controls are still met.
- The proposed design allows for separation between buildings and adjoining dwellings that allows the objectives of the height of building controls and FSR controls to be met.

Accordingly it is considered that the Clause 4.6 variation to the standards can be supported in the circumstances of the proposal. Additionally, the SEPP 1 variation to the Seniors Housing SEPP can also be supported.

The granting of a variation would provide flexibility in the planning controls, and would support the objectives specified in 5(a)(i) and (ii) of the Act, and outweighs the public benefit that would be achieved by maintaining the planning control.

It must be noted that the recommendation for support of the variation is based on the individual circumstances of the proposal including the attributes of the site. The approval of the variation

does not set a precedent for further applications to vary the Height of Buildings or Floor Space Ratio standards. Rather, any future proposal must still be assessed on the circumstances of the site, the merits of the proposal, and the provisions of LLEP 2008.

### 5.2 Section 79C(1)(a)(ii) - Any Draft Environmental Planning Instrument

No applicable draft planning instruments apply to the proposal.

### 5.3 Section 79C(1)(a)(iii) - Provisions of any Development Control Plan

Liverpool Development Control Plan 2008 (LDCP 2008) applies to the site. Part 1.1 – General Controls for all Development; Part 1.2 – Additional General Controls for Development are relevant to the proposed development. An assessment of the proposal against the controls contained within LDCP 2008 are outlined in the table below:

CONTROLS	COMMENT	COMPLIES
<b>PART 1.1 – GENERAL CONTROLS FOR ALL DEVELOPMENT</b>		
TREE PRESERVATION	Submitted report identifies trees to be retained and removed.	Yes
LANDSCAPING	Trees to be retained where possible and new plantings provided.	Yes
BUSHLAND AND FAUNA HABITAT PRESERVATION	Land not ESL or contain threatened species.	Yes
BUSH FIRE RISK	Land is not bushfire affected. Referred to NSW RFS for comment as land is in vicinity of bush fire buffer area.	Yes
WATER CYCLE MANAGEMENT	A Stormwater Concept Plan submitted.	Yes
DEVELOPMENT NEAR CREEKS AND RIVERS	Site located within 40m of Georges River. Referred to Office of Water as integrated development. Flooding affectation assessed.	Yes
EROSION AND SEDIMENT CONTROL	An Erosion and Sediment Control details submitted.	Yes
FLOODING RISK	Subject land is in flood affected area. Site flood impact assessment and management evacuation plan submitted and reviewed by Council.	Yes
CONTAMINATION LAND RISK	A preliminary contamination assessment has been provided and concludes land suitable for residential development.	Yes
SALINITY RISK	Applicant has assessed risk as minimal.	Yes
ACID SULFATE SOILS RISK	The subject site is not identified on the Acid Sulfate Soils Map.	Yes
WEEDS	Noxious plants to be removed.	Yes
DEMOLITION OF EXISTING DEVELOPMENT	Demolition and waste management plan submitted.	Yes
ON-SITE SEWERAGE DISPOSAL	No on-site sewage disposal proposed.	Yes
ABORIGINAL ARCHAEOLOGY	No identified items.	Yes
HERITAGE AND ARCHAEOLOGICAL SITES	No heritage sites.	Yes

NOTIFICATION OF APPLICATIONS	The proposal was advertised and notified in accordance with LDCP 2008 and regulations. Submissions are discussed below.	Yes
<b>PART 1.2 – ADDITIONAL GENERAL CONTROLS FOR DEVELOPMENT</b>		
<b>CONTROLS</b>	<b>PROVIDED</b>	<b>COMPLIES</b>
PRELIMINARY	Applies to proposed development.	
CAR PARKING: 3 accessible spaces per 100 spaces	1 accessible space (of 40).	Yes
WATER CONSERVATION: Water Management Plan to be submitted for development greater than \$1M.	Energy efficiency statement submitted.	More details required prior to any construction certificate.
ENERGY CONSERVATION: Comply with BCA energy efficiency provisions.	Proposal to comply with BCA.	Yes
LANDFILL	Minimal cut or fill proposed. To be in accordance with DCP requirements.	Yes
WASTE DISPOSAL AND RE-USE Waste management plan WMP to be submitted and implemented.	WMP for construction submitted. Additional details of ongoing waste management required.	Additional details required prior to any construction certificate.
OUTDOOR ADVERTISING	No signage proposed.	N/A

#### 5.4 Section 79C(1)(a)(iv) – The Regulations

No additional items for consideration.

#### 5.5 Section 79C(1)(b) – The Likely Impacts of the Development

##### Natural and Built Environment

The impacts of the development on the natural environment have been assessed and the development is considered to be acceptable and unlikely to cause adverse impacts. Issues considered included, but were not limited to: soil contamination; earthworks; flooding; stormwater management; erosion and sediment control; and landscaping.

The impacts on the built environment have also been assessed and are also considered to be acceptable and unlikely to have significant negative impacts. Issues considered included, but were not limited to: the traffic impacts; adequacy of car parking; built form (height, bulk, scale); streetscape and visual impacts; overshadowing; compatibility with the future character of the locality; design; acoustic impacts; access; site layout; compliance with Building Code of Australia (BCA) and Australian Standards (AS); fire safety requirements; adequacy of site services; waste management; and potential impact on amenity of locality.

##### Social Impacts and Economic Impacts

The proposal is unlikely to cause any adverse social impacts in the locality. Overall, the proposal is likely to contribute positively to the locality by providing beneficial aged care services to the local and wider community and is acceptable with respect to any potential social impacts.

The potential economic impacts of the development in the locality are acceptable. The development is likely to have a positive contribution to the local economy via the capital investment value associated with the proposal and on going employment opportunities.

#### **5.6 Section 79C(1)(c) – The Suitability of the Site for the Development**

The which currently contains an existing aged care facility is considered to be suitable for the proposed development including the construction of an additional aged care facility building. The size of the allotment allows for appropriate siting of the building and ancillary works.

#### **5.7 Section 79C(1)(d) – Any submissions made in relation to the Development**

##### **(a) Internal Referrals**

The following comments have been received from Council's Internal Departments:

DEPARTMENT	COMMENTS
Engineering	Approval subject to conditions
Building	Approval subject to conditions
Environmental Health	Approval subject to conditions
Flooding	Approval subject to conditions
Traffic	Approval subject to conditions
Landscaping	Approval subject to conditions
Property	Use of access road not supported.
Community Planning (Access Committee)	Consideration of wheelchair access

The existing driveway access to the Council reserve road was approved in 1992 by Council for the purposes of emergencies and not as a permanent and regular driveway. Council's property section has indicated that the current arrangements should be maintained and that the reserve road should not be regularly accessed as part of the proposed traffic arrangements as proposed. It is therefore considered that an amended car parking layout be submitted to Council for approval as a deferred commencement condition reflecting this requirement.

##### **(b) External Referrals**

DEPARTMENT	COMMENTS
NSW Office of Water	General Terms of Approval issued
NSW Rural Fire Service	Awaiting response

##### **(c) Community Consultation**

The proposal was exhibited from 8 May 2013 to 7 June 2013 in accordance with Liverpool Development Control Plan 2008. Four submissions were received in response to the proposal with

a number of signatories in some submissions. The overall number of objectors to the proposals is nine persons.

The range of issues which were raised in the submissions, and a response to each, are summarised below:

**Issue 1: Car Parking and Traffic**

Concerns have been expressed that the proposed development does not provide adequate parking for the proposal. The concern is also expressed that the development would result in increased traffic to the area.

**Comment**

The proposal has provided car parking in accordance with the rates required in the Seniors Housing SEPP. The increased demand the proposal would generate on the local traffic network has been assessed by Council's Traffic staff who have deemed that would not have a significant impact.

**Issue 2: Height of Buildings**

Concerns have been expressed that the height of Building D exceeds the height of buildings standards in LLEP 2008 and the Seniors Housing SEPP. The height of the building would result in a loss of privacy to dwellings adjoining the site on Epsom Road.

**Comment**

The merit in supporting the proposed height of Building D has been discussed above. The privacy of residents adjoining the site will be maintained through the setbacks provided of 13.5m to 14.2m from Building D to the boundary; and through the provision of existing and proposed landscaping along the rear boundary of the adjoining dwellings at Epsom Road.

**Issue 3: Loss of Recreational Space**

Concerns have been expressed that the proposal results in a loss of existing open space at the site.

**Comment**

The proposal would result in the loss of open space, however the proposal is within the allowable floor space ratio specified in the Seniors Housing SEPP. The proposal also provides for landscaping space in excess of that required under the Seniors Housing SEPP.

**Issue 5: Internal Road System**

Concerns have been expressed that the layout of the internal road system would be dangerous and cause excessive noise to residents adjoining the site along Epsom Road. Delivery vehicles in the early hours would cause excessive noise.

**Comment**

The submitted road layout has been reviewed and assessed by Council's Traffic staff. The design of the road layout has also been modified to reduce the impact on the neighbouring properties. Delivery hours to the site will be restricted via conditions of consent to ensure that impacts on amenity are restricted.

**5.8 Section 79C(1)(e) – The Public Interest**

The proposal is considered to be in the public interest as will provide a significant community benefit. The merits of the proposal and the potential impacts have been assessed and it is considered that the objects of the planning controls can be achieved whilst applying flexibility to the numerical controls.

## **6. DEVELOPMENT CONTRIBUTIONS**

The Liverpool Contributions Plan, 2009 levies contributions for Seniors Housing. The applicant has made a request to waive the imposition of contributions for the proposal for the following reasons:

- The proposed facilities are for aged care residents with high needs that will spend the majority of their time at the facility and not utilise the citywide community and recreation facilities included in the contribution plan works.
- The village itself provides facilities for residents.
- Scalibrini is a not for profit organisation.

It is noted that such requests from other similar organisations have been supported by Council in the past for similar seniors housing applications.

## **7. CONCLUSION**

The application has been assessed under the provisions of the Environmental Planning and Assessment Act 1979. The proposed development is permissible with consent in the R3 Medium Density Residential Zone. The application has been made as seniors housing under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The proposal generally complies with the applicable development standards with the exception to the height standards contained in the Senior Housing SEPP and LLEP 2008 and the floor space ratio standard contained in LLEP 2008.

Written applications have been submitted pursuant to SEPP 1 and Clause 4.6 of LLEP 2008 to exceed the allowable height and floor space ratio standards. The justification for the variations as provided by the applicant have been reviewed and supported on the basis that it has been demonstrated that the objectives of the development standards and the requirements contained in SEPP 1 and Clause 4.6 have been met.

Approval of the application is therefore recommended subject to conditions.

## **8. RECOMMENDATION**

- (a) That the report for Development Application DA-412/2013 for alterations and additions to the Scalabrini Village pursuant to State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004 be received;
- (b) That variations to Clause 40 of State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004 pursuant to State Environmental Planning Policy 1, and variations to Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio of Liverpool Local Environmental Plan 2008 pursuant to Clause 4.6 of Liverpool Environmental Plan 2008 be supported; and
- (c) That Development Application DA-412/2013 be approved, subject to the following conditions being imposed:
  - Deferred commencement conditions requiring the submission of an amended car parking layout including emergency access only to the Council access road and separate pedestrian access provided to the site.
  - An amended evacuation plan be submitted to include contingencies for bush fire threat prior to the issue of any Construction Certificate.

- Restrictions on the hours of delivery vehicles visiting the site.

**9. ATTACHMENTS**

1. Plans of the proposal;
2. SEPP 1 variation
3. Clause 4.6 variation
4. NSW Office of Water Advice
5. Recommended conditions of consent