



## SEPP 1 Objection: Height of Building

Prepared by Inspira Property Group

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# 1.0 Development Standard

This Request for Exception to the Development Standard addresses the development standard contained in the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (hereafter SEPP Seniors Living), specifically Clause 40: Development Standards – Minimum Sizes and Building Heights relating to **Height of Building** for a proposed Residential Aged Care Facility (RACF).

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## 1.1 Background

A Development Application with supporting reports and a Statement of Environmental Effects was submitted Friday 5 April 2013 and given number DA0102/13. The application was exhibited and assessed, and subsequently the assessment process was suspended while the design was amended in consultation with Council officers and urban design consultants. Supplementary reports and drawings have now been submitted under the same DA number to support the amended design for the proposed facility.

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## 1.2 Overview

This SEPP 1 Objection has been prepared for Midson Group Project Managers on behalf of Bupa Care Services Pty Ltd (Bupa) in relation to a proposed RACF development to be located at 238 – 240 Mona Vale Road, St Ives, in Ku-ring-gai Municipal Council Local Government area (LGA).

The report is to accompany a Development Application (DA) for the construction of a three storey residential aged care facility (RACF) (nursing home) with basement parking.

There is a fourth storey element of approximately 590 square metres in area set back from the frontage to Link Road and Mona Vale Road which forms a ‘gateway’ corner element on the building.

The site is 5,539 square metres in area.

The Application is made under the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (hereafter SEPP Seniors Living). Chapter 1, Clause 5, S (3) of the Policy states:

“(3) If this Policy is inconsistent with any other environmental planning instrument, made before or after this Policy, this Policy prevails to the extent of the inconsistency.”

The facility will provide 98 beds comprising 68 low and high care beds and 30 specialised beds for dementia care.

Bupa Care Services works to a person-centred model of care. It is therefore very important that the facilities are a home to the residents that occupy them. The proposed development is to be set amongst the mature camellia trees of the former Camellia Grove Nursery site.

The site is located opposite the St Ives Town Centre shopping precinct and is within the boundaries of the land identified in the *Ku-ring-gai Local Environmental Plan (Local*

*Centres*) 2012 (Local Centres LEP), gazetted in early 2013. The site is zoned R3 Medium Density and Seniors Living uses are permissible with consent under the LEP.

The Development Application has been prepared with regard for the SEPP Seniors Living, the Local Centres LEP, the Local Centres Development Control Plan (DCP) and the *Kuring-gai Multi-unit Housing Development Control Plan No. 55 – Railway/Pacific Highway Corridor and St Ives Centre*.

The Maximum Height of Building (HoB) in the LEP 2013 is 3 storeys or 11.5 metres. The proposed HoB at its highest point (the 4 storey element on the corner) is 14.11 metres.

The 3 storey sections are 11.5 metres in height.

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### 1.3 Policy and Guidelines for its application

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"*State Environmental Planning Policy No.1 – Development Standards*" was introduced to permit flexibility in the application of development standards where it can be shown that strict compliance is unreasonable or unnecessary in the circumstances of the case, or would tend to hinder the attainment of the objects of the Act as specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act (EPAA) 1979.

The Policy allows a grant of consent for development that cannot be carried out without contravening a development standard, but only if one of the above circumstances is found to exist.

The objectives specified in Section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act, 1979 state the following:

"5(a) to encourage -

- I. the proper management, development and conservation of natural and man-made 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;
- II. the promotion and co-ordination of the orderly and economic use of and development of land;"

Clause 8 of the Policy sets out other criteria for assessing SEPP 1 objections where it states:

"the matters that shall be taken into consideration in deciding whether concurrence should be granted are -

- a) Whether non-compliance with the development application 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."

A development application must be supported by a written objection, which specifies the grounds for objection to the particular standard. The determining authority must be satisfied that:

1. The objection is well founded (i.e. compliance is unreasonable or unnecessary):
2. Granting of consent meets the objectives of the policy

3. Non-compliance does not raise matters of significance for State or regional environmental planning; and
4. Strict compliance with the development standard would tend to hinder attainment of the objects 5(a) (ii) of the EPAA 1979.

The relevant test is the identification of the objective of the particular standard to be varied and whether or not the proposed development is consistent with the underlying object or purpose of the standard and the broader planning objectives for the locality. It is not sufficient merely to demonstrate that a proposed development will have no harmful environmental effects, or that it is compatible with existing surrounding development where such development does not comply with a development standard or is inconsistent with the broader planning objectives of the locality.

The draft SEPP (Application of Development Standards) 2004 described the assessment test, which is still relevant, as follows:

“A key assessment test of an application under the policy is the comparison between the outcome where the development standard is complied with, and the outcome under the varied development standard. The comparison should appreciate both quantitative and qualitative effects of the departure from the development standard in the context of the overall development. The development has to be shown to be better than would have been possible had the development standard been met.”

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## 1.4 Interpretation

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The SEPP Seniors Living provides the following Interpretation of Development Standards.

### Clause 40

Clause 40: Development Standards – Minimum Sizes and Building Heights provides an interpretation of the minimum area and building heights for land on which a seniors living development is proposed.

The objection detailed in this report specifically refers to Clause 40 (4) (a) and (b). The basis for the objection is detailed later in this report.

#### **“40 Development standards-minimum sizes and building height**

1. General: A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.
2. Site size: The size of the site must be at least 1,000 square metres.
3. Site frontage: The site frontage must be at least 20 metres wide measured at the building line.
4. Height in zones where residential flat buildings are not permitted:  
If the development is proposed in a residential zone where residential flat buildings are not permitted:
  - a) the height of all buildings in the proposed development must be 8 metres or less, and

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

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

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

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

#### Clause 48

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

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

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

Note: The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent.”

Compliance with Clause 48 is described in the planning reports attached to the application.

**The proposed facility complies with Clause 48 as it has a floor space ratio of 1:1. There is adequate parking provided and the landscaped area exceeds the minimum requirement described in Clause 48 (c).**

The SEPP Seniors Living includes the following definitions for the Development Standards:

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

**landscaped area** means that part of the site area that is not occupied by any building and includes so much of that part as is used or to be used for rainwater tanks, swimming pools or open-air recreation facilities, but does not include so much of that part as is used or to be used for driveways or parking areas.

**floor space ratio** in relation to a building, means the ratio of the gross floor area of the building (exclusive of the area of any car port or garage) to the area of the allotment on which the building is or is proposed to be erected.

**gross floor area** means the sum of the areas of each floor of a building, where the area of each floor is taken to be the area within the outer face of the external enclosing walls (as measured at a height of 1,400 millimetres above each floor level):

- (a) excluding columns, fin walls, sun control devices and any elements, projections or works outside the general lines of the outer face of the external wall, and
- (b) excluding cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts, and
- (c) excluding car parking needed to meet any requirements of this Policy or the council of the local government area concerned and any internal access to such parking, and
- (d) including in the case of in-fill self-care housing any car parking (other than for visitors) in excess of 1 per dwelling that is provided at ground level, and
- (e) excluding space for the loading and unloading of goods, and
- (f) in the case of a residential care facility—excluding any floor space below ground level that is used for service activities provided by the facility.”

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## 1.5 Development Metrics

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The following development metrics apply to the proposal:

Site Area	5539m <sup>2</sup>
Gross Floor Area	5557m <sup>2</sup>
Floor Space Ratio	1:1
Landscaped Area	2885m <sup>2</sup>
Landscaped Area per Bed	29.5m <sup>2</sup>



Deep Soil Landscaped Area	2,827 m <sup>2</sup> or 51%
Height of Building	14.11 metres/ 4 storey element 11.5 metres/ 3 storey sections
Number of Car Spaces	27 visitors and staff, 2 disabled, Total 29 Spaces

In summary, the density and scale of the building is compliant at 1:1. However the Height of Building exceeds the development standard of 8 metres or 2 storeys described in Clause 40 (4) (a) and (b). The Height of Building permissible in the R3 zone is 3 storeys. The proposed building has a four storey corner or 'gateway' element with 3 storey residential wings.

The objection to this Development Standard is detailed further in this report.

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## 1.6 Development Standards Objected To

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As noted above, the development standard objected to in this report is specifically noted in SEPP Seniors Living Clause 40 (4) (a) and (b), noted earlier.

The basis for the objection is that the particular site is:

- a) In an R3 Medium Density "transition zone" between the 5 and 6 storey buildings located in the St Ives Centre core, and the low density two storey buildings to the north across Killeaton Street; and
- b) The site is unique in that it is an "island" and all its boundaries are contiguous with road corridors rather than other buildings, in particular low density residential dwellings
- c) The site forms a 'gateway' to St Ives and is at the junction of two main roads, therefore a gateway element is an appropriate design response which has been designed to also serve as the services core.

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## 1.7 Objectives of the Development Standard

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In determining whether a development standard should be set aside to permit the granting of a development consent, it must be demonstrated that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case, having regard to the stated and underlying objectives and intent of the standard and broader planning objectives for the locality.

### Objectives/Intent of the Development Standard: SEPP Seniors Living

The overall Aims of the SEPP Seniors Living are to be achieved by:

- a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and
  - b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and
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- c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.

The objective of the development standard is described in Division 2, Design Principles, noted following. Compliance with these principles is described in the planning reports attached to the Development Application.

## **Division 2 Design principles**

### **33 Neighbourhood amenity and streetscape**

The proposed development should:

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

### **34 Visual and acoustic privacy**

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

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

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

### **35 Solar access and design for climate**

The proposed development should:

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

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

### **36 Stormwater**

The proposed development should:

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

### **37 Crime prevention**

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

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

### **38 Accessibility**

The proposed development should:

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

### **39 Waste management**

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

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## 1.8 Locality Objectives: Ku-ring-gai Local Centres LEP

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The locality objectives of the R3 Medium Density Residential zone in the Local Centres LEP are as follows:

### **Zone R3 Medium Density Residential**

#### **1 Objectives of zone**

- 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 a transition between low density residential housing and higher density forms of development.

### **Height of Building Development Standard**

The objectives of the Height of Building development standard in the Local Centres LEP are as follows:

#### **“4.3 Height of buildings**

(1) The objectives of this clause are as follows:

- a) to ensure that the height of development is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres,
- b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,
- c) to enable development with a built form that is compatible with the size of the land to be developed.”

## 2.0 Response

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### 2.1 Reasons why Development Standard is Unreasonable or Unnecessary

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The subject site is an unusual and difficult configuration, being triangular, with two major roads forming two boundaries to the south-east and south-west, and a local street to the north. The site was historically market gardens, and for more than 40 years operated as a Camellia nursery, with camellia specimens grown and sold from the property.

The subject site is an isolated parcel and because of the distance between the proposed development and the nearest development on the northern side of Killeaton Street, there is little potential for overshadowing or overlooking. The 3 storey height limit which applies to the land in the Local Centres LEP was determined for this reason.

The objectives of the development standards in relation to building height, siting, design, bulk, scale, materials, and character of the proposed building is compatible with medium density residential development and seniors developments in the near vicinity.

The separation distances between the proposed development and nearby developments, and the orientation of the windows of bedrooms, ensures that nearby residential properties will not be adversely affected in terms of overshadowing, loss of visual or aural privacy or views.

The proposed development is compliant with building setbacks.

The proposed development exceeds the guidelines for landscaped area per bed.

The proposed elevations are well articulated to reduce visual bulk, and mature trees will be retained on the perimeter of the site and further embellished with new plantings, further softening the scale and bulk of the building.

The building sits at the 'gateway' to St Ives and is located within the boundary of the St Ives Town Centre. The architect has designed the building with the services core forming the apex of the proposed development at the road junction. Through careful siting and design, the residential wings address Killeaton Street and enjoy a northerly aspect, ensuring the residents enjoy residential amenity, privacy, sunlight and views, despite the location of the facility.

For these reasons, and as further detailed in this report, it is unnecessary and unreasonable for the building, specifically the four storey corner element, to maintain compliance with Height of Building standard.

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### 2.2 Environmental Planning Grounds to Justify Contravening the Standard

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#### Context and Setting

The site itself is bordered by two major roads, Link Road and Mona Vale Road, with no immediately adjoining neighbouring properties. The site is on key transport and road links near the town centre.

The local area surrounding the site is undergoing transition subsequent to the recent making of the Ku-ring-Gai Town Centres LEP 2012. To the north of the site is low density

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residential development. There are numerous independent living units in the vicinity of the proposed RACF, including on Killeaton Street itself. There are a number of RAC facilities in the locality, reflecting the ageing demographic.

Architectural styles range from the Arts and Crafts period to modern masonry two-storey dwellings with 'traditional' landscaping styles and masonry fences.

Development to the west of the site is recently characterised by 5 and 6 storey apartment buildings.

Development to the east of the site includes medium density apartments, some detached residential dwellings, and a Church and school in landscaped grounds.

Development to the south comprises high density residential apartments and the town centre of St Ives.

### Design Quality and Design Approach

Analysis of the site and its surrounds established the following significant elements that the proposed design seeks to draw upon:

- The site is a three sided island of land with small scale residential buildings to the north and large scale residential apartment buildings to the south;
- The public entry off Killeaton Road is to be established with a safe and pleasant amenity;
- Vegetation that will be affected by the proposed development has been addressed by the landscape architect.
- Providing an appropriate town planning scale junction between small and larger scaled residential buildings;
- Providing a 'gateway' to St Ives; and
- Centralisation of key services such as kitchen and laundry within the overall facility with separation from the residential wings.



## Site Planning

The proposed building will be located directly parallel to Link and Mona Vale Roads, appropriately set back, however 'backing onto' these two very busy roads. The site therefore opens up to the north, to the smaller scaled neighbouring buildings and to a quieter pedestrian friendly street.

The four-storey element proposed is on the southern "corner" of the triangle at the junction where Link and Mona Vale Roads meet.

With reference to the site analysis and design response drawings, the proposed building siting is heavily influenced by both its connection to the existing southern apartment buildings, site storm water management, and by environmental considerations.

The communal spaces all have a northerly orientation towards large open external spaces that act as a connection point to the views of the single and two-storey buildings on Killeaton Street. This orientation allows for excellent solar penetration and natural light into the building, thus reducing the reliance upon artificial lighting as well as heating and cooling mechanical equipment. This can result in lower running costs for the facility and a saving on energy usage.

The courtyards to the north have been designed to facilitate residents with varying levels of dependency and mobility, which has resulted in fenced courtyards to the far west and east, with the central entry area left open and without obstruction.

Back of house deliveries and pickups are all located off Link Road. These facilities have been designed to be as unobtrusive as possible, with full compliance with Roads and Maritime Services (RMS) requirements.

## Building Planning and Views

The concept of the design is the notion of a central facilities building core flanked on two sides by two residential buildings. Although this is one building, these components are to be separated by deep and wide setbacks fronting Link and Mona Vale Roads creating an appropriate transition in height, while also addressing the major intersection at this junction.

The concept is to create a corner building component which acts as a 'gateway' to St Ives, easily read by vehicles at speed. In harmony with this are the residential scale buildings to each side. Lounge areas of the proposed building are located at the ends of each wing, with a Level 3 residents' lounge and open terrace co-located with various group activity spaces, café, and hairdresser.

Addressing the entrance requirements for this facility is a porte-cochere and covered walk way which is domestic in scale and ties into the west and east courtyard awnings.

The porte-cochere and entry component of the building forms a natural separation between the two residential accommodation wings.

The building has its planning based around the provision of one, 30-bed and two, 34-bed zones, which underpin the management systems used by the aged care provider.

All rooms have a direct outlook to external garden spaces.

Another key element to the design philosophy is the need to centralise the essential services such as kitchen, laundry, and staff facilities. All of these services will have direct access to the services / loading zone that will be accessed off Link Road, and at the same time this will be appropriately screened from the street by landscape, fencing and public art.

## Architectural Form and Palette of Materials

Key ingredients in the exterior palette of materials were the following:

- References to local residential buildings, single storey and multi storey;
- A new identity for the 'gateway' to St Ives;
- The overall building to be read as a series of residential scaled forms, however unified in their totality.

Neighbourhood character in terms of the architectural expression of the surrounding dwellings is extremely varied. Residential dwellings take the form of typically single detached and semi-detached dwellings that comprise single dwellings on separate allotments (the dwellings to the north of the site), and multi-storey apartments (to the south of the site).

A diverse palette of materials will create a smaller-scaled experience of the proposed building whilst providing the required variety for residential reference. Materials include face brick at lower levels, lightweight cladding in painted and metal finish, vertical and horizontal timber-look cladding, and dark and light tones in a relatively neutral colour scheme.

The corner/intersection component of building is surrounded by vertical timber-look cladding which holds up an articulated section of building: the 'gateway' which references the higher scaled, contemporary, modern materiality of apartment living in St Ives. The corner addresses the building in a forward thinking way, welcoming passersby to St Ives, a contemporary, modern place to live and work.

Facades are to be broken up along the wings of the building by pushing out 'Juliet balcony' articulation and having varying external building materials.

To enable the entire facility to be read as a unified building, the building components, however varied, are in harmony through careful placement, choice of material and colour.

## Setbacks

The subject land is uniquely located as a triangular "island" site which addresses arterial roads on two of its three frontages. Bupa intends to design and develop this site with a view to ensuring that its prominent location favourably presents the Bupa brand to the local market and captures interest.

The site is 5,539 square metres in area.

The Killeaton Street frontage is 124.4 metres.

The Mona Vale road frontage is 102.3 metres.



The Link Road frontage is 85.4 metres with a splayed north-west corner onto Killeaton Street of 16.6 metres. This splayed corner allows for a left turning lane onto Link Road heading east.



FIGURE 5: SITE BOUNDARIES AND LOCAL AREA

The development is proposed to be mainly 3 storeys high, as per the R3 Medium Density height controls, and there is no prospect of overshadowing other properties.

There is a small fourth storey set back from the corner which comprises a lounge, library and cafe. The corner of Link Road and Mona Vale Road has a minor raised parapet wall in contrast with the adjacent west and east wings of the building.

The setbacks from Link Road are proposed to be six metres to 10.6 metres.

The setbacks from Mona Vale road are proposed to be 6 metres to 8 metres.

The setback from Killeaton Street is proposed to be 9 (nine) metres.

The building has been designed to ensure the wings of the facility are efficient and streamlined with a residential character. It has also been configured to ensure that as many rooms as possible address the northern frontage and that the building presents to Killeaton Street with a similar character and built form to other buildings in the area.

The fourth storey element and parapet on the southern 'tip' of the triangle, creates a corner building component which acts a 'gateway' to St Ives.

### Solar Access & Overshadowing

The Architectural Drawings which form Appendices to the Development Application indicate that there will be no solar access impacts on adjacent property or residences.

## Privacy and Overlooking

Care has been taken to ensure that the design of the facility maximises solar access and ventilation, privacy and amenity, while ensuring that the visual appeal of the building from each angle is retained, noting its highly visible location.

The building facades and the building itself have been articulated and modulated to suit the site and provide a functional layout for the RACF. The design is modern and uses strong geometric forms and façade materials, providing light, contrasting textures and colours which blend with the local environment and architecture.

While the design permits casual surveillance of surrounding areas by both staff and residents, privacy for residents is achieved with sunscreens, articulated fenestrations and balconies.

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## 2.3 State or Regional Environmental Planning

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*Does Non-Compliance Raise Matters of significance for State or regional environmental planning?*

With regard to the location, design, siting, scale and lack of any heritage items in the immediate vicinity of the proposed development, the proposed development will not raise matters of significance for State or regional environmental planning. Approval of the proposed development is unlikely to set a precedent for future developments in the Kuring-gai LGA. The particular characteristics and history of use of this site have been described in this application, in the Statement of Environmental Effects supporting the Development Application, and the subsequent supplementary planning reports.

The land use, spatial and planning relationship is with the St Ives Town Centre as it forms a transitional island development between the high density apartments of the Town Centre and the low density residential development to the north. The site has been in continuous use as a retail garden centre for the last half century.

The proposed RACF development meets the objectives for the R3 Medium Density Residential zone and the development standards described in the SEPP Seniors Living.

The unique characteristics of the site, its long term uses, and the design approach, aim to achieve the development of a building which represents an appropriate transition between the character of St Ives Town Centre and medium density residential development, within the environmental capacity of the site.

For these reasons, supporting the proposal is not a matter of significance for State or regional environmental planning, however strict compliance with the development standards in the LEP would hinder the attainment of the objects of the *Environmental Planning and Assessment Act 1979*.

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## 2.4 Summary of Environmental Planning Compliance

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The proposed development is in keeping with the bulk and scale of the immediate locality, in particular the residential apartments to the south, while representing a transition in height from five and six-storey apartments to the south, to the two storey residential developments to the north.

The proposed development:

- Has appropriate visual impact on its “exposed” southern corner at the gateway to St Ives;
- Has appropriate residential amenity, scale and privacy on its northern ‘residential’ side;
- Does not disrupt views;
- Does not result in loss of privacy or loss of solar access;
- Enhances the public domain by having deep landscaped setbacks on each side; and
- Provides a welcoming, accessible, safe and weather-proof entry off Killeaton Street.

Having regard to:

- the need to create an efficiently and feasibly designed RACF development;
- the massing of the building to provide pleasant views, privacy and solar access to all rooms;
- the appropriate scale of the building in relation to the height of town centre buildings, and the fact that it provides a transition from the 5 and 6 storey development to the south of the site and the one and two-storey buildings to the north of the site; and
- the need to provide a very high quality modern design in a ‘transition’ zone which permits medium density development at the fringe of the St Ives Town Centre,

the proposed development represents an appropriate use of the site that is entirely compatible with its environmental capacity, zoning and land use.

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## 2.5 Compliance with Residential Zone Objectives

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In the Land and Environment Court judgement (The Court Judgement) *Wehbe v Pittwater Council* [2007] NSW LEC 827, the Hon. Brian Preston, Chief Justice of the Land and Environment Court, expressed a view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. the objectives of the 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. That is, the particular parcel of land should not have been included in the particular zone.

The proposed development is consistent with R3 Medium Density residential zone objectives in that:

- The proposed development provides for the housing needs of the seniors community within a medium density residential environment with a modern, high quality, well-designed facility in high demand in the area;
- The proposed development provides residential aged care facilities, meeting the acknowledged need for these services close to transport and services;
- The proposed development is proposed to include services to meet the day to day needs of residents, as well as a specialised dementia wing;
- A high level of residential amenity will be achieved by the modern design which is also water and energy efficient;
- The rooms are spacious, and the location of the facility will not adversely affect the surrounding residential amenity;
- The proposed development will add landscaped area to the property, it will conserve existing Camellia specimens and a number of trees and shrubs which have local anecdotal significance;
- The proposed development will activate the site, improving safety and vitality at the pedestrian and street level;
- The proposed development is located in close proximity to St Ives Town Centre and is in fact located within the identified boundaries of the town centre. The area is well serviced by bus transport, with a number of schools, parks, playing fields, and medical services located nearby.

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## 2.6 Strict Compliance Would Tend to Hinder the Attainment of the Objects of the EPAA

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The relevant object of the EPAA as specified in Section 5 is:

- (a) To encourage:
  - a. 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,
  - b. The promotion and coordination of the orderly and economic use of development land.

If Council insisted on strict compliance with the Height of Building Development Standard described in the *SEPP Seniors Living Clause 40 (4) (a) and (b)*, such a decision would hinder the attainment of the above objects of the Act in that:

- The development of man-made resources that is compatible with the character, height, scale and bulk of existing development in the surrounding locality and recognises the site's proximity and accessibility to local shopping facilities, public
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transport, and a variety of natural and man-made services and facilities would be discouraged;

- The social and economic welfare of the community would not be promoted as it would prevent the construction of high quality, energy and water efficient residential development for the aged and disabled;
- The development of seniors housing to meet demographic demand close to shops, services and transport would be discouraged;
- The co-ordination of the economic and orderly use and development of the land would be discouraged as it would prevent the construction of well-designed residential aged care and dementia facilities with excellent access to facilities, services and infrastructure.
- The proposal if refused due to strict compliance with the above development standards would discourage the attainment of the State Government's objectives for the provision of housing for seniors and those living with disabilities.

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## 2.7 The Public Interest

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In the Court Judgement, an assessment of a Request for Exception to the Development Standard must consider "the public benefit of maintaining the planning controls adopted by the environmental planning instrument".

The proposed RACF will provide modern, well-designed seniors residences and allied health services in a location which is well serviced by public transport, and close to shops and other services.

The proposal includes 29 car spaces including 2 disabled car spaces. The entire building meets the standards for accessibility and visitability.

The building will replace an existing site which has become derelict and vacant in a very high profile location.

The design has sought to provide an efficient and sustainable building, which is within the environmental capacity of the site, and which does not cause impacts on existing adjacent residential development.

It is entirely within character of the locality and provides a transitional zone between the St Ives Town Centre and low density residential development. A smaller building could not feasibly provide the same public benefits as the proposed building. If the planning controls which apply to the site are strictly maintained, the site is unlikely to be developed.

The fourth storey element which exceeds the height controls provides a "gateway" feature to the suburb of St Ives in a highly visible junction between two main roads.

## 3.0 Conclusion

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### 3.1 Is the objection well founded?

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While the development does not strictly comply with the standard for Height of Building contained in the *SEPP Seniors Living Clause 40 (4)*, it nevertheless satisfies the stated and underlying objectives of the development standards of the SEPP and the broader planning and zoning objectives for the locality.

The siting, design and external appearance of the proposed building are considered to be appropriate and relate sympathetically to the scale and character of existing and proposed surrounding development in the locality.

The proposed development will maintain an acceptable level of visual and aural privacy for residents and those of nearby properties, through the design of balconies, design and placement of windows, and the use of screening measures.

The building does not cause solar access impacts on any development in the vicinity.

The proposal provides for a high quality, environmentally sustainable form of development that recognises the site's proximity and accessibility to public transport, local shops and services, without detrimentally impacting the amenity of surrounding residential development, and will make a positive contribution to the visual amenity and character of the streetscape.

Compliance with the development standards is therefore unnecessary and unreasonable in the circumstances of the case, the objection is well founded, and refusal of the development application on these grounds is not warranted.



Helen Spira

**Managing Director CPP MPIA REINSW**

