

## JOINT REGIONAL PLANNING PANEL (Sydney East Region)

<b>JRPP No</b>	2014SYE130
<b>DA Number</b>	LDA 2014/0419
<b>Local Government Area</b>	City of Ryde
<b>Proposed Development</b>	Demolition of all existing buildings and structures and the construction of a 141 bed residential aged care facility
<b>Street Address</b>	8-14 Sherbrooke Road and 78-82 Mons Avenue, West Ryde
<b>Applicant/Owner</b>	Opal Specialist Aged Care
<b>Number of Submissions</b>	43 submissions to the plans as lodged – all objections 35 submissions to the amended plans – all objections
<b>Regional development criteria</b>	General Development with a CIV over \$20 Million
<b>List of relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning &amp; Assessment Regulation 2000</li> <li>• Environmental Planning and Assessment Act 1979</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</li> <li>• Ryde Local Environmental Plan 2014</li> <li>• City of Ryde Development Control Plan 2014</li> <li>• Section 94 Development Contributions Plan 2007</li> </ul>
<b>Recommendation</b>	Refusal
<b>List all documents submitted with report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Reasons for refusal</li> </ul>
<b>Report by</b>	Brad Roeleven - City Plan Strategy & Development on behalf of Council
<b>Date</b>	29 July 2015

### Assessment Report and Recommendation

#### 1. EXECUTIVE SUMMARY

This report considers a proposal to demolish an existing residential aged care facility and construct in its place a new, 141 bed residential aged care facility.

The matter has been the subject of several pre-lodgement evaluations for which Council has consistently identified multiple concerns, and advised that such a proposal would not be supported.

Assessment of the application against the relevant planning framework has confirmed fundamental issues of concern with the proposal relative to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, being:

- The application is prohibited by virtue of failing to satisfy clause 26 (Location and access to facilities);
- Site planning and built form to meet fail clause 33 (Neighbourhood amenity and streetscape); and
- Variations to the height controls in clause 40 cannot be supported as the requests under clause 4.6 of Ryde Local Environmental Plan 2014 are not well founded.

Consequently this report recommends that the application be refused for the reasons provided at Attachment 1.

## 2. APPLICATION DETAILS

**Applicant:** Opal Specialist Aged Care

**Owner:** Opal Specialist Aged Care

**Estimated value of works:** \$26.18 Million

**Disclosures:** No disclosures with respect to the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 have been made by any persons.

## 3. SITE DESCRIPTION AND CONTEXT

The development site comprises the consolidation of 5 allotments. Total site area is 6,640m<sup>2</sup> with frontages of 106.6m to Sherbrooke Road and 45.7m to Mons Avenue. A secondary access, 4m wide, is available to Constitution Road to the south.



Figure 1: Site plan

(www.sixmaps.com.au)

The high point of the site is at its north east corner, at the boundary with Sherbrooke Road. From there the land falls away to the south, south west, and west - with following change in levels:

- 5.5m to the south, along the eastern boundary;
- 5.9m to the southwest, at the common boundary with 86 Mons Avenue;
- 12.4m to the southwest, at the street frontage of 82 Mons Avenue;
- 8.2m to the west, at the intersection with Mons Avenue, along the Sherbrooke Road frontage.

Key stands of vegetation are located at the southwest corner of 8-14 Sherbrooke Road at the rear of No. 82 Mons Avenue, and along the Sherbrooke Road frontage. The site is not burdened by any easements.

The street block within which the site is located is uniformly residential in land use. Predominantly development is low density, with the non-characteristic elements being the present aged care facility at Nos. 8-14 Sherbrooke Road, the residential flat building adjoining the site at Nos. 4-6 Sherbrooke Road and two residential flat buildings adjoining to the rear at Nos. 101 and 103 Constitution Road.

The wider locality is also predominantly residential, with key non-residential land uses being:

- St Michaels Catholic Primary School, about 140m north east (1)
- Meadowbank railway station about 450m east (2)
- Neighbourhood shops about 450m east (3)
- Ausgrid depot about 450m east (4)
- Meadowbank sports fields ,about 150m south (5)



Figure 2: Site and its wider setting

(www.sixmaps.com.au)

#### **4. SITE DETAILS**

The site has the following legal description:

- Lots 1 and 4 , DP 201757; and
- Lots 6, 7 and 8 DP 2322.

#### **5. PROPOSAL**

Consent is sought to demolish existing structures and construct and operate a residential aged care facility, as summarised in the following table:

Table 1: Scope of works

<b>Phase</b>	<b>Details</b>
Demolition and site works	<ul style="list-style-type: none"><li>• Demolition of existing 72 bed residential care facility and all associated ancillary structures at Nos. 8-14 Sherbrooke Road;</li><li>• Demolition of the 3 x dwelling houses and associated structures at Nos. 78, 80 and 82 Mons Avenue; and</li><li>• Removal of 30 trees, and the relocation of 4 trees elsewhere on the site.</li><li>• Bulk excavation to create the partial basement level and building platform</li></ul>
Construction	<ul style="list-style-type: none"><li>• Construction of a 141 residential care facility, of which 25 beds are dedicated for dementia patients. The built form varies as follows:<ul style="list-style-type: none"><li>○ 2 storeys over undercroft level to Mons Avenue</li><li>○ 3 storeys over basement level through the centre of the site</li><li>○ 3 storeys at the eastern end of the site</li></ul></li><li>• Secondary at grade parking area located adjacent to the southern edge of the site, accessed via Constitution Road</li><li>• Associated landscaping and fencing</li><li>• Associated stormwater drainage works</li></ul>
Operation	<ul style="list-style-type: none"><li>• 24/7 operation, in 3 shifts; and</li><li>• 150 staff, with a maximum of 36 on duty for the day shift.</li></ul>





**Figure 3: Montage showing Sherbrooke Avenue elevation**



**Figure 4: Montage showing Mons Avenue streetscape looking north**

## 6. BACKGROUND

The following table provides a summary of key steps in the assessment of this application:

Table 2: Key stages of assessment

19 September 2009	<p><b>Pre-lodgement meeting</b> for a proposal to demolish existing facility and construct a new 120 bed residential care facility. Council advised the proposal would not be supported due to excessive height and gross floor area and consequential impacts for:</p> <ul style="list-style-type: none"> <li>• Streetscape and neighbourhood character</li> <li>• Traffic and associated issues</li> <li>• Impacts upon significant historic trees</li> </ul>
10 October 2013	<p><b>Urban Design Review Panel</b> evaluation of a proposal to demolish existing facility and construct a new 140 bed residential care facility Key comments noted by the Panel were:</p> <ul style="list-style-type: none"> <li>• Increase setbacks to Sherbrooke Road</li> <li>• Conform to general principle of siting new buildings on the footprint of existing buildings, including to Mons Ave</li> <li>• Site rear 'wing' at right angles to Sherbrooke Road rather than on a diagonal</li> <li>• Ensure built form is distributed more carefully, possibly towards adjacent flat building, and eliminate any 4 storey elements</li> <li>• Visitors using basement car park do not benefit from intuitive arrival sequence</li> <li>• Better resolution of loading and waste management required</li> <li>• Architectural resolution is not yet a matter for detailed consideration</li> </ul>
10 October 2013	<p><b>Pre-lodgement meeting.</b> Council staff advised that, as presented, the proposal is unlikely to be supported due to concerns regarding the following major points:</p> <ul style="list-style-type: none"> <li>• Comments from Urban Design Review Panel</li> <li>• Amenity impacts for adjoining properties</li> <li>• Tree removal</li> </ul>
	LDA 2014/0419 <b>application lodged</b>
20 October 2014 until 12 November 2014	<b>Public exhibition</b> of application as lodged. 43 submissions received all raising issues of concern or objections.
19 February 2014	<b>Briefing</b> to Joint Regional Planning Panel
16 February 2015	<b>Letter issued to applicant</b> advising of the status of assessment, the issues of concern and confirming the proposal is not supported.
25 March 2015	<b>Meeting held with applicant</b> to review issues in letter of 16 February 2015.

2 April 2015	Applicant advised that proposed design amendments not sufficient to resolve design concerns
1 May 2015	<p><b>Amended application lodged with following key changes:</b></p> <ul style="list-style-type: none"> <li>• Deletion of units over 2 levels to Sherbrooke Road and part of the upper level to Mons Avenue. The deleted units are partly replaced elsewhere on site.</li> </ul> <p>Changes to elevation treatments to further articulate the building elevations and scale adjacent to 84 Mons Avenue.</p> <ul style="list-style-type: none"> <li>• Building mass on Sherbrooke Road is broken into smaller elements.</li> <li>• Lowering of the basement floor level, and redesign of the basement.</li> <li>• Changing the roof pitch to respect surrounding dwellings.</li> <li>• Deletion of the vehicle access from Sherbrooke Road.</li> <li>• Adjusted site planning to increase existing tree retention.</li> <li>• Adjusted landscaping treatment to Sherbrooke Road.</li> <li>• Provide traffic management system for existing car parking Driveway on Constitution Road.</li> </ul>
12 May 2015	Amended plans renotified. 35 submissions received all raising issues of concern or objections.

## **7. APPLICABLE PLANNING CONTROLS**

The following planning policies and controls are of relevance to the development:

- Environmental Planning and Assessment Regulation 2000;
- Environmental Planning and Assessment Act 1979;
- State Environmental Planning Policy (State and Regional Development) 2011;
- State Environmental Planning Policy No.55 – Site Remediation;
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;
- Sydney Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005;
- Ryde Local Environmental Plan 2014; and
- Ryde Development Control Plan 2014.
- Section 94 Development Contributions Plan 2007.

## **8. PLANNING ASSESSMENT**

### **8.1 Environmental Planning and Assessment Regulation 2000**

Clause 92 of the Regulation prescribes certain matters to be considered by a consent authority in its determination of a development application. As the project includes demolition works the consent authority to take into consideration the provisions of AS

2601 Australian Standard AS 2601—1991: *The Demolition of Structures*, published by Standards Australia.

This matter would be addressed by conditions in any consent granted to this application.

## **8.2 Environmental Planning and Assessment Act 1979**

Key provisions from this Act are addressed below:

### **Section - 5A Threatened species, populations or ecological communities, or habitats**

This section of this Act requires a range of matters to be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats. The site does not have any ecological attributes which, if lost, would impact upon any threatened species, population, ecological community or habitat.

### **Section - 79C Matters for evaluation**

Section 79C (1) of the Act specifies those matters which a consent authority must consider when determining a development application, and these are addressed in the Table below.

Table 3: Section 79C assessment

<b>Section</b>	<b>Comment</b>
Section 79(1)(a)(i) Any environmental planning instrument	Refer to section 8.3, 8.4, 8.5, 8.6 and 8.7.
Section 79C(1)(a)(ii) Any draft environmental planning instrument	Not relevant to this application.
Section 79C(1)(a)(iii) Any development control plan	Refer to section 8.8.
Section 79C(1)(a)(iiia) Any planning agreement	Not relevant to this application.
Section 79C(1)(a)(iv) Matters prescribed by the regulations	Not relevant to this application.
Section 79C(1)(a)(v) Any coastal zone management plan	Not relevant to this application.
Section 79C(1)(b) - (e) Likely impacts of that development Suitability of the site Submissions Public interest	Refer to section 8.10.



## Section - 91 Integrated development

No approvals under the legislation nominated in this section of the Act are required and therefore this project is not integrated development for the purposes of the Act. Any consent granted to the application would however include an advice requiring that any necessary approval under the Water Management Act 2000, for dewatering, be obtained and provided to the Principal Certifying Authority prior to the issue of any Construction Certificate.

### **8.3 State Environmental Planning Policy (State and Regional Development) 2011**

This proposal has a Capital Investment Value of more than \$20 million, Part 4 of this Policy provides that the Joint Regional Planning Panel is the consent authority for this application.

### **8.4 State Environmental Planning Policy No 55 – Remediation of Land**

In accordance with Clause 7 of this Policy, the consent authority must consider if the land is contaminated and, if so, whether it is suitable, or can be made suitable, for the proposed use.

Relevant information about the use of the site is provided in the Heritage Impact Statement accompanying the application, which confirms:

- The original dwelling, which forms the core of the current nursing home complex, was constructed in 1890;
- The land has been used for residential purposes since; and
- Conversion of the original house into a nursing home appears to have occurred about 1966, with subsequent associated alterations and additions.

Given these details the applicant has not been requested to prepare a preliminary site investigation as it is apparent the site has only ever been used for residential purposes.

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

#### Application of the Policy

This application is submitted under the provisions of SEPP (Housing for Seniors or People with a Disability) 2004 (the Seniors SEPP). It is confirmed:

- The site meets the zoning and land use requirements in clause 4;
- A Site Compatibility Certificate is not required for the purposes of clause 24; and

- The site is not excluded from the Policy by virtue of Schedule 1 (environmentally sensitive land).

Accordingly this Policy is applicable to this proposal.

### Seniors housing

Clause 10 of the Policy defines seniors housing as:

*".....residential accommodation that is, or is intended to be, used permanently for seniors or people with a disability consisting of:*

- (a) a residential care facility, or*
- (b) a hostel, or*
- (c) a group of self-contained dwellings, or*
- (d) a combination of these,*

*but does not include a hospital."*

Clause 11 of the Policy defines a residential care facility as:

*"residential accommodation for seniors or people with a disability that includes:*

- (a) meals and cleaning services, and*
- (b) personal care or nursing care, or both, and*
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,*

*not being a dwelling, hostel, hospital or psychiatric facility."*

This application satisfies those definitions.

### Remaining provisions

The following table provides a summary assessment of the application against the relevant terms of the SEPP. Issues which require specific discussion are addressed after the Table.

Table 4: Seniors SEPP compliance table

Part	Compliance
Part 1 General	<b>Restrictions on occupation of seniors housing</b> Any consent would include a condition limiting occupation of the expanded nursing home in accordance with Clause 18.
Part 1A Site Compatibility Statements	Not applicable
Part 2	<b>Access to facilities</b>

<p>Site related requirements</p>	<p>Compliance with these requirements is contested. See further comments at section 8.5.1 at the end of this table.</p> <p><b>Water and sewer</b> All utility services are available to the site by virtue of the existing development. Those services would be augmented as necessary to meet the requirements of relevant service providers.</p> <p><b>Bushfire prone land</b> Not applicable</p>
<p>Part 3 Design requirements</p>	<p><b>Site analysis plan</b> The required information is provided.</p> <p><b>Neighbourhood Amenity and Streetscape</b> Elevation of neighbourhood amenity and streetscape is provided at section 9(e). The development fails to adequately address neighbour amenity and streetscape.</p> <p><b>Visual and acoustic privacy</b> Evaluation of privacy to adjacent site is provided at section 9(g) below. Acoustic considerations extend only to amenity for bedrooms within the development, relative to noise sources. This element of the proposal is satisfactory.</p> <p><b>Solar access and design for climate</b> Evaluation of solar access to adjacent sites is provided at section 9(g) below. Considerations relative to design for climate relate to matters of passive solar access, cross ventilation and measures for energy reduction. Arrangements are generally satisfactory noting also the need to satisfy Appendix J of the BCA, and that the proposal includes multiple solar panels.</p> <p><b>Stormwater</b> Arrangements satisfy relevant design principles. Refer to section 9(n) below.</p> <p><b>Crime prevention</b> Arrangements satisfy relevant design principles. Refer to section 9(q) below.</p> <p><b>Accessibility</b> The application does not provide any assessment of the adequacy of pedestrian safety relative to access to public transport services. Were issues associated with clause 26 of the SEPP otherwise satisfactory then any works identified to ensure pedestrian safety would be undertaken by the applicant as part of any conditional approval. Within the site pedestrian environments are convenient and safe.</p>

	<p><b>Waste management</b> Arrangements satisfy relevant design principles. Refer to section 9(k) below.</p>
<p>Part 4 General Development Standards</p>	<p><b>Site size</b> The site is 6,640m<sup>2</sup>, exceeding the minimum of at least 1,000m<sup>2</sup>.</p> <p><b>Site frontage</b> Both street frontage exceed the minimum of least 20m measured at the building line.</p> <p><b>Height in zones where flat buildings are not permitted</b> The site is zoned "R2 Low Density Residential" under Ryde LEP 2014. A residential flat building is not permitted in that zone and therefore the maximum height control is 8m (as defined). Refer to section 9(e).</p> <p><b>Height at the boundary</b> The control provides for a maximum of 2 storeys adjacent to a site boundary. The building is 3 storeys to all boundaries. Refer to section 9(e).</p> <p><b>Rear building height</b> The control provides that any part of the building within the rear 25% of the site is to be only 1 storey. The proposal is 3 storeys. Refer to section 9(e).</p>
<p>Part 5 Development on land adjoining land zoned primarily for urban purposes</p>	<p>Not applicable</p>
<p>Part 6 Vertical villages</p>	<p>Not applicable</p>
<p>Part 7 Development standards that cannot be used as grounds refuse consent – Division 2 – residential care facilities</p>	<p><b>Building height</b> Consent cannot be refused if the building height is less than 8m, measured to the ceiling of the top most floor. The proposal exceeds this standard. Refer to section 9(e).</p> <p><b>Density and scale</b> Consent cannot be refused if the floor space ratio is less than 1:1. The proposal has an FSR of 0.95:1.</p> <p>It is noted however that gross floor area (GFA) calculations provided are based on measurements to the inside face of the external walls of the building contrary to the GFA definition which requires measurement to the the outer face of the external enclosing walls.</p>

	<p><b>Landscaped area</b></p> <p>Consent cannot be refused if the minimum landscape supply is achieved. The application satisfies the control, providing a landscape area 3,525m<sup>2</sup> (i.e. 25m<sup>2</sup> per bed).</p> <p><b>Parking for residents and visitors</b></p> <p>Consent cannot be refused if parking is provided using the nominated calculation. A total of 41 spaces is provided in compliance with those requirements. Refer to further comments at section 9(i).</p>
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### 8.5.1 Access to facilities

#### Overview

Chapter 3, Part 2 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the Seniors SEPP) prescribes site related requirements for development for seniors housing. Clause 26 addresses "location and access to services" and provides that:

*"A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:*

- (a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
- (b) community services and recreation facilities, and*
- (c) the practice of a general medical practitioner."*

A site can comply with those requirements in one of two ways:

1. Those facilities are located within 400m of the site and a pathway to those facilities meets nominated design criteria; **or alternately**
2. There is a public transport service available that will take residents to those facilities, and that public transport service:
  - Is not more than 400 metres from the site; and
  - A pathway to that transport meets nominated design criteria; and
  - The public transport service operates at the nominated frequency of service.

#### Assessment of the application as lodged

The application as lodged claimed compliance with those requirements as follows:

- The site is within 400m of Meadowbank railway station and 600m from West Ryde railway station; and



- The site is within 400m to a bus stop in Adelaide Street.

The application acknowledged that sections of the pedestrian routes are in excess of the nominated design criteria but contended that while practical access to public transport is available, it is of little relevance because:

- Currently no residents at 'Fernleigh' own a motor vehicle, which is an indicator of their general health and mobility;
- Future car ownership is unlikely to be different;
- Broadly, the majority of residents are unlikely to be physically capable of walking to the shops, or public transport, regardless of the gradients of the pathways, and dementia patients could not do so unsupervised;
- Across the larger Opal portfolio, more than 50% of residents have dementia;
- The needs and nature of residents is such that all required services are almost entirely provided onsite, and where not possible excursions via a private minibus are arranged; and
- Staff escorts are provided for specialist medical treatment off site.

Council's position on this matter is set out below:

- On the available information, the site appears to be at least 410m from Meadowbank Station and compliance could only be confirmed by means of detailed survey;
- No continuous footpath exists between the site and that railway station. Notwithstanding, it is agreed that sections of the path of travel would likely exceed the prescribed gradients, however confirmation by survey would be needed;
- The bus stop in Adelaide Street is about 560m from the site and cannot be relied upon. No other bus stops are within 400m of the site;
- A private minibus service is not sufficient to meet the terms of clause 26, which refers only to public transport; and
- The terms of clause 26 of the Policy are not development standards that are able to be varied. Therefore where compliance cannot be demonstrated the terms of clause 26 act to prohibit a development.

#### Additional information

In response to the above the applicant provided the following additional contentions:

- Clause 26 applies to all types of seniors housing development and while pertinent to over 55's downsizing their accommodation, is of no practical relevance to an aged care facility whose residents have limited mobility through declining health;
- The practical solution is therefore to bring services to the site, as proposed;
- This same development could be permitted as a hospital, without any restrictions relative to proximity to services or transport, acknowledging that the FSR provision of 1:1 would not apply.

The applicant also provided the following additional information to address this matter:

- A specific legal opinion to the effect that the terms of Clause 26 are development standards; and
- A submission, via clause 4.6 of Ryde LEP 2014, seeking to vary clause 26 in this instance.

These matters are addressed below.

#### Assessment of the applicant's legal opinion

In summary the applicant's legal opinion contends the terms of clause 26 are development standards, and not a prohibition, for the following reasons:

- The Seniors SEPP is constructed in such a way that the only essential condition which determines permissibility is that the development is a residential care facility. Clause 26 does not have the effect of prohibiting particular development in any circumstances; and
- Clause 26 of the Seniors SEPP specifies requirements in respect of aspects of the development, being location or distance from certain points. Those are aspects of the way the development is to be carried out and not an essential or defining characteristic of the development itself. It does however set a benchmark or standard for how the development is to be carried out.

Recent judgements of the Land and Environment Court have been reviewed, in particular *Symon V Hornsby Shire Council [2015]* which specifically considers this matter. That Judgement noted:

- The fact that clause 26 includes provisions which fall within the definition of a "development standard" within the Environmental Planning and Assessment Act does not alone mean it is a development standard. Clause 26 must also be considered in its wider context of the Seniors SEPP as a whole;
- Chapter 3 of the Seniors SEPP covers the broad spectrum of development for seniors housing. Part 1 provides general requirements; Part 2 provides site related requirements; Part 3 provides design requirements; Part 4 provides development standards to be complied with while Part 7 provides development standards that cannot be used as grounds to refuse consent;
- Importantly the Seniors SEPP separates site related requirements, such as those in clause 26, from the development standards in Parts 4 and 7; and
- The proximity to services and transport specified in clause 26 as a site related requirement could be regarded as an essential element of the development rather than an aspect of the development. If so, then clause 26 is not a development standard that is able to be varied.

Ultimately that Judgement was not required to draw a position on whether clause 26 is prohibition or development standard, and despite the points above, the Commissioner concludes commentary on that issue by stating "the matter not free from doubt."

Nevertheless the commentary in the Judgement is instructive particularly as it appears that case law on this specific issue only relates to the terms of prior State Environmental Planning Policy 5 (Housing for Older People or People with a Disability) which was repealed in 2004 when the Seniors SEPP commenced.

While the matter is not clear cut, the conclusion for the purposes of this report is that clause 26 is not a development standard but a prohibition. As the applicant has not, and likely cannot, demonstrate strict compliance with its provisions, consent is not able to be granted to this application, regardless of any other considerations.

#### Assessment of the applicant's request to vary clause 26 of the Seniors SEPP

As noted, this report concludes that clause 26 is prohibition, such that a variation to its provisions is not able to be granted.

Nevertheless the development application is presented on the basis that clause 26 is a development standard, and is supported by a request, via clause 4.6 of Ryde LEP 2014, to vary its provisions to enable the proposal to be considered on its merits.

Therefore, for the purposes of completeness, provided below is an assessment of that request relative to the matters for consideration, and consistent with the "tests" established by long-standing judgements of the Land and Environment Court.

#### *(a) Is the planning control in question a development standard?*

As set out above, clause 26 is not a development standard but a prohibition.

#### *(b) What is the underlying object or purpose of the standard?*

The applicant contends the objectives of the standard must be assumed as they are not stated in the Policy. That assumed objective is stated by the applicant to be "*.... relate to the particular effect of the SEPP in allowing opportunities for seniors housing throughout residential zones and seeking to differentiate in favour of sites within residential zones that provide for reasonable access to services required by residents, including access to transport for those services.*"

It is agreed that clause 26 itself does not expressly include objectives to identify its purpose. However rather than the assumed objective provided by the applicant it is appropriate to instead refer to clause 14 which confirms the objectives of Chapter 3 of the Seniors SEPP, being:

*"The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age."*

The key distinction is that the applicant contends access to services needs only to be reasonable and, to that end, a distinction must be made between the needs of residents of independent dwellings and those in a care facility. However clause 14 makes no such distinction. Indeed it specifically encompasses all persons who may reside in housing facilitated by the Seniors SEPP and, through clause 26, nominates the location and access requirements which fulfil that objective.

The variation sought to clause 26 does not demonstrate how the proposal is otherwise located and designed to particularly suit all persons who may reside in the development.

*(c) 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?*

The grounds of the objection are general in nature and are not particular to the circumstances of this site. Reliance upon such universal contentions would create an adverse planning precedent, eroding the integrity of the control thereby creating an outcome contrary to the objects of the Act which, in part, include to encourage "the promotion and co-ordination of the orderly and economic use of land".

*(d) Are the objectives of the zone satisfied ?*

The relevant zone objectives are:

- *To provide for the housing needs of the community within a low 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 variety of housing types*

The first objective is not satisfied as the built form is not compatible for the low density residential environment in which the site is located. Refer to section 9(e).

*(e) Are there sufficient environmental planning grounds to justify contravening the development standard ?*

In summary the applicant contends the following environmental planning grounds justify contravening the development standard:

- The non-compliance is not significant, even if it was relevant. It will help achieve a socially beneficial outcome that expressly implements state planning policy;
- The proposal otherwise satisfies the planning objectives on a site that has a history of use for the same purpose with no evidence of any resident being disadvantaged because of a technical non-compliance with the standard;
- The intent of the standard is otherwise satisfied as residents have access to services they actually require;
- Blanket application of the standard is unnecessary where a high standard of onsite services is provided; and
- There are no material planning consequences that arise.

The above contentions are not agreed noting:

- The non-compliance is not quantified and so it cannot be claimed to be insignificant; and
- The social benefits of providing an aged care facility on this site is not lost if the clause 4.6 variation fails. A development application for this same type of facility could be made under Ryde LEP 2014 which permits, with consent "residential care facilities" in the R2 Low Density Residential zone. By relying upon the LEP instead of the Seniors SEPP the applicant would not need to contend with the specific provision of clause 26.

*(f) Is the development 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*

Clause 26 is considered to be a prohibition not a standard. Regardless, the development is not consistent with the objectives that underpin clause 26.

*(g) Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?*

The applicant contends strict compliance is unnecessary for the following reasons:

- Adequate services are provided onsite based on the substantial knowledge of the operator;
- The needs of residents of an aged care facility are different to other types of housing as typically they are frail or otherwise not independently mobile. The presumption underlying the standard therefore has limited application;
- The requirements of clause 26 are largely unchanged since 1982. In that time changes have been made to the way key services operate (e.g. internet banking and shopping) such that locations near to shops is less significant than it once was;
- The site has a long history of providing aged care services notwithstanding the nature of pedestrian access to services and public transport; and



- A variation to the standard would be consistent with the Objects of the Environmental Planning and Assessment Act.

As noted, these contentions are general in nature and are not particular to the circumstances of this site. Reliance upon such universal contentions would ultimately erode the integrity of the control thereby creating an outcome contrary to the objectives of the Act which, in part, include to encourage "the promotion and co-ordination of the orderly and economic use of land".

*(h) Is the objection well founded?*

Prior judgements of the Land and Environment Court have identified 5 different ways in which a request to vary a development standard may be evaluated as being well founded, being:

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 or 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; or
5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

In this instance the applicant relies upon "1" above. As demonstrated, it is not agreed that objective of clause 26 is achieved, and therefore the request to vary that clause is not well founded.

## **8.6 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

This Plan, now a deemed State Environmental Planning Policy, applies to the whole of the Ryde local government area. The aims of the Plan are to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole.

Given the nature of this project and the location of the site there are no specific controls that directly apply to this proposal.

## **8.7 Ryde Local Environmental Plan 2014**

This application is lodged under the Seniors SEPP and therefore the LEP will only prevail where it is not inconsistent with that State policy.

### **Zoning, permissibility and zone objectives**

The site is zoned "R2 Low Density". The proposal is defined as "Residential care facilities" and is permissible with consent under the LEP, although as noted, permissibility rests with the Seniors SEPP.

The zone objectives are not fully achieved as discussed at section 8.5.1 above.

### **Remaining provisions**

Compliance with remaining provisions in the LEP is considered in the following Table:

Table 5: RLEP 2014 compliance table

<b>Provision</b>	<b>Compliance and comment</b>
Clause 2.7 Demolition requires development consent	Yes - the application seeks consent for all required demolition works
Clause 4.3 Building height	N/A - The development standard is 9.5m however the SEPP controls prevail
Clause 4.4 FSR	N/A - The development standard is 0.5:1 however the SEPP controls prevail
Clause 4.6 Exception to development standards	The application relies on this clause to vary controls in the SEPP. Refer to sections 8.5.1.
Clause 5.1A Land to be acquired for a public purpose	The site is not required for future public purposes.
Clause 5.10 Heritage	N/A - however see comments at section 9(l).
Clause 6.1 Acid sulphate soils (ASS)	The site is mapped as Class 5 ASS. There is no requirement for a management plan to address this matter.
Clause 6.2 Earthworks	Yes - Relevant matters nominated in this clause have been considered and no concerns were identified. Appropriate

	conditions have been provided by Council's Development Engineer.
Clause 6.4 Stormwater management	Yes - Relevant matters nominated in this clause have been considered and no concerns were identified. Appropriate conditions have been provided by Council's Development Engineer.

### **8.8 City of Ryde DCP 2014**

The DCP has been considered only where there is no direct conflict with matters addressed by the Seniors SEPP. In that context, the following sections of the DCP are of relevance, being:

- Part 7.2 - Waste Minimisation and Management
- Part 8.1 - Construction Activities
- Part 8.2 - Stormwater Management
- Part 8.3 - Driveways
- Part 9.2 - Access for People with Disabilities

Noting the advice received from the various technical departments within Council the proposal is satisfactory in relation to those matters.

### **8.9 Section 94 Development Contributions Plan 2007 (Interim Update 2014)**

This Plan enables Council to impose a monetary contribution on developments that will contribute to increased demand for services as a result of increased development density.

Any consent granted to this application would include a condition requiring payment of the relevant contribution prior the issue of any Construction Certificate.

## **9 LIKELY IMPACTS OF THE DEVELOPMENT**

### **(a) Site context**

The Land and Environment Court planning principle on "compatibility with context" as established in *Project Venture Developments v Pittwater Council* provides guidance on whether a proposal is compatible within its context. The principle nominates two questions to be considered which are addressed below.

Q1 - Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites;

## Response

Yes - The impacts are either acceptable, or able to be made so, through further design amendments

Q2 - Is the proposal's appearance in harmony with the buildings around it and the character of the street

No. Various elements of the site planning and built form are not acceptable. Refer to section 9(e).

### **(b) Public domain**

The design allows for positive public domain outcomes as:

- The building addresses its three street frontages;
- Vehicle access is consolidated;
- Service areas are integrated into the building design and do not visually dominate the streetscape or pedestrian areas adjoining the site;
- Many areas within the building enjoy a direct visual connection to the street frontages ensuring a high degree of passive surveillance which will encourage a sense of safety within the public spaces around the site

Council's Public Works (Public Domain) team require the following works to be undertaken as part of any approval granted to the application:

- Street trees to Sherbrooke Road and Mons Avenue frontages;
- Removal of redundant vehicle crossings and re-instatement of kerb and gutter; and
- New footpath along the Mons Avenue frontage of the site

### **(c) Demolition**

Any consent granted to this application will include conditions which require:

- Identification of all hazardous materials prior to demolition;
- Removal of asbestos material in accordance with recommendations of the technical report accompanying the application; and
- Compliance with the Building Code of Australia and all relevant Australian Standards.

### **(d) Excavation**

The design requires excavation of between 3m-8m and accordingly the application is supported by a geotechnical report. That report:

- Indicates sandstone occurs anywhere between 0.2m- 2.3m below the surface;

- Indicates the strength of that sandstone varies from low, to medium and then high strength with increasing depth;
- Notes that free groundwater was not observed; and
- Provides recommendations for excavation support.

Council's Development Engineer has recommended conditions for inclusion in any consent notice which require the:

- Preparation of a geotechnical design, certification and monitoring program; and
- Implementation of that program during construction; and
- Lodgement of an application for temporary ground anchors, if needed.

The acoustic report supporting the application provides recommendations to manage impacts associated construction noise and vibration. Any consent would include conditions requiring the implementation of those recommendations.

#### **(e) Site planning and built form**

##### Setbacks

Relative to the eastern site boundary common with No. 4-6 Sherbrooke Avenue, other than for a small portion where the setback is 8.6m, almost all of the building is otherwise 19m from the common boundary giving a separation distance of 23m between it and that neighbouring building. Those outcomes are acceptable.

The setback to Mons Avenue is 11m, which is greater than that of the existing dwellings on that part of the site that are to be demolished and, with the exception of No. 84 Mons Avenue, greater than remaining dwellings in Mons Avenue south of the site.

The setback to Sherbrook Road varies significantly due to the alignment of the building footprint relative to the street boundary. At its western end the building is setback 8m, reducing to 4.5m at its eastern end. Through the central section of the building the setbacks range from 5m-6m, but reduce in part to only 3.5m.

A comparison to the existing pattern of development is difficult as the development site occupies about 2/3rds of the street block, with only one other adjoining building (Nos. 4-6 Sherbrooke Road).

Site planning for the proposal is predicated on the development occupying the same footprint as current buildings, and ensuring the areas of new "infill" elements are set no closer to Sherbrooke Road, as demonstrated in the following image:



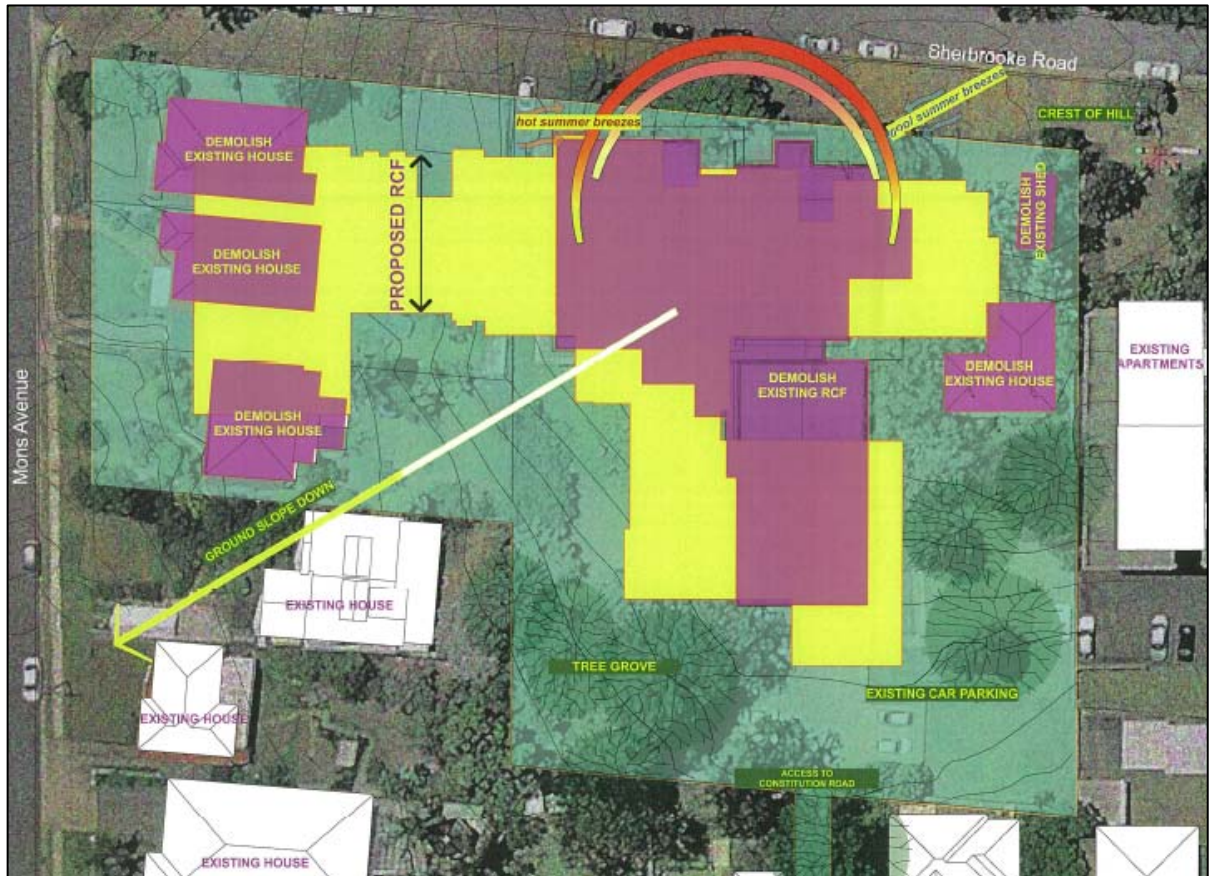


Figure 5: Site analysis plan: Existing buildings in purple - proposed building footprint in lime green

The adequacy of the Sherbrooke Road setback has been evaluated relative to the matters for consideration in clause 33 of the Seniors SEPP, which address neighbourhood amenity and streetscape.

It is acknowledged those provisions provide that new development is set back in sympathy with, but not necessarily the same as, the existing building line. Nevertheless, the setbacks to Sherbrooke Road are not acceptable for the following reasons:

- The setbacks do recognise the desirable elements of the current character of the locality. Further, the area is not undergoing transition and will remain a low density residential precinct. Relying upon the general alignment of the existing building is not acceptable as the new building, with a primary floorplate of 83m is not comparable in scale to the present facility;
- The length of the new building will so dominate and overwhelm the streetscape that it will not positively contribute to the quality and identity of the area – indeed it will become the identity of the area;
- The limited setbacks provided, in conjunction with inadequate articulation and landscape treatment, are not sufficient to manage the scale of the proposal to enable it to fit comfortably into the streetscape; and
- The design seeks to manage building bulk through substantial excavation to maintain a 2 storey domestic scale to Sherbrooke Road.

### Scale and mass

The adequacy of these aspects of the proposal has also been evaluated relative to the matters for consideration in clause 33 of the Seniors SEPP. The following concerns are identified:

- The building's form does not relate to the sites land form. Significant excavation is relied upon to manage building volume, however the design treatment still does not result in an outcome suitable for the sites setting and context. The floorplate is exceptionally large which, in combination with reduced setbacks to Sherbrooke Road and insufficient articulation of the northern elevation, fails to achieve an outcome that which adequately references the domestic scale of the locality.
- The building does not adopt heights at the Mons Avenue street frontage that are compatible in scale with adjacent development, and the wider streetscape. Although this element of the scheme has been revised, the building still presents as three storeys. The ceiling of the uppermost level is 2.3m-3.3m high than the roof ridges of the current dwellings to be demolished (Nos. 78-82 Mons Ave) while the proposed roof element is 4.8m-5.8m higher.
- Site planning to Sherbrooke Road prevents a landscape outcome that is in sympathy with, the streetscape. The setbacks generally provide no opportunity for effective landscaping given the incursions from terraces, retaining walls and the entry facility which occupy almost that entire frontage.

### Overall height

The application acknowledges the design breaches the 8m height control in the Seniors SEPP however fails to nominate the maximum height, and therefore the extent of the breach. Instead the application as lodged is supported by a 3D image illustrating, but not quantifying, those parts of the building which exceed the control. That 3D image is provided below, noting the building as depicted is not consistent with the amended plans.

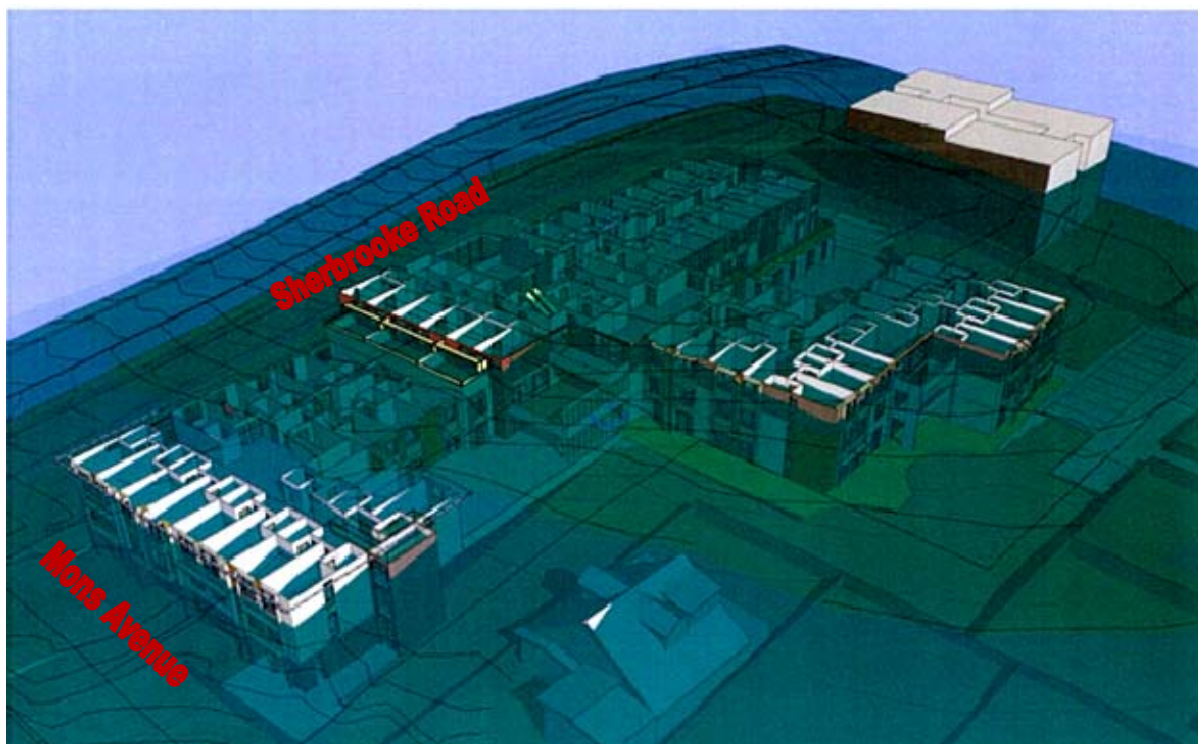


Figure 6: The above figure demonstrates the extent of the development which extends above the 8m height control

On the information available the proposal has the following maximum heights:

- 9.74m at the south west corner of level 3, adjacent to Mons Avenue; and
- 8.8m at the south west corner of level 3, behind No, 84 Mons.

#### Height to rear boundary

As noted the Seniors SEPP provides that any building within the rear 25% of the site is to be single storey. The proposal breaches this development standard with the rear 3 storey element encroaching in that 25% area by 2m.

#### Height in storeys

The building is predominantly three storeys, the central portion of which is set over a basement. The western part of the building steps down to 2 storeys, however for that part of the building ground levels are such that the basement presents as an undercroft which reads as a full storey to Mons Avenue.

#### Evaluation of breaches of height and storey controls

In support of the variations to the height and storeys development standards in the Seniors SEPP the application is supported by a request, via clause 4.6 of Ryde LEP 2014, to vary those provisions to enable the proposal to be considered on its merits.

That request has been evaluated against the same considerations as set out at section 8.5.1 above. In summary, the following conclusions are reached:

- A variation to the overall height of 8m cannot be supported because:
  - The application does not identify the maximum height and extent of the breach;
  - The maximum breach of the building height, which occurs relative to Mons Avenue, will result in unacceptable streetscape outcomes.
- A variation to the building exceeding 2 storeys at the boundary to Mons Avenue cannot be supported given:
  - The design does not achieve the underlying objective of the standard, being to avoid an abrupt change in scale in the streetscape; and
  - The breach does result in an outcome that is contrary to the zone objectives under RLEP 2014.
- A variation to the 3 storey element encroaching into the rear 25% of the site can be supported given:
  - The extent of the breach is minor;
  - The underlying objectives of the standard is not set out in the SEPP, but are assumed to relate to the protection of the amenity for adjacent sites. No adverse amenity impacts have been identified; and
  - The breach does not result in any outcome that is contrary to the zone objectives under RLEP 2014.

**(f) Tree removal and landscaping**

Tree removal

The application proposes to:

- Remove 30 trees from the site;
- Save and transplant 4 trees; and
- Retain and protect 24 trees.

This outcome is an improvement upon the application as lodged, as the amended design now allows for the retention of:

- A Cook Pine tree located towards the western boundary (Tree No. 9);
- A Jacaranda tree and a Strawberry tree (Tree Nos. 34 and 35) adjacent to the Mons Avenue Sherbrook Road intersection; and
- A Golden Cypress tree (Tree No.47) as requested by No 84 Mons Avenue.

For the trees being retained, an arborist report has been provided which nominates measures to ensure the protection of those trees during construction.

Council's Landscape Officer has assessed the application and accepts the extent of tree removal as proposed, and has provided conditions for tree protection measures during construction.

### Landscape treatment

The application is supported by a detailed landscape plan which identifies the landscape treatment for the site. Council's Landscape Officer has assessed these plans as satisfactory, subject to minor amendments including the relocation of retaining walls to minimise impacts to vegetation along the common boundary with No. 84 Mons Avenue.

### **(g) Relationship with adjacent sites**

#### Overshadowing

Consideration of shadowing is limited only to impacts for the dwelling at No. 84 Mons Avenue having regard to the subdivision pattern and the juxtaposition of the proposal relative to neighbouring buildings.

The applicant was requested to provide hourly shadow diagrams to enable those impacts to be evaluated. Those diagrams demonstrate the proposed building would not cast any shadow on the eastern or northern elevations of No. 84 Mons Avenue between 11.00am and 2.00pm at midwinter.

Such an outcome is acceptable particularly when measured against Ryde DCP 2014, which, for new dwellings or dual occupancies, requires windows to north-facing living areas of neighbouring dwellings receive at least 3 hours of sunlight between 9 am and 3 pm on 21 June over a portion of their surface, where this can be reasonably maintained given the orientation topography of the subject and neighbouring sites.

#### Overlooking

Relative to the residential flat building at Nos. 4-6 Sherbrook Road an adequate level of visual privacy is maintained between the two sites given:

- Where a setback of 8.2m from the eastern boundary is achieved, the proposed building is generally located forward of the building at No 4-6. Windows in the eastern elevation of that part of the building are limited. Although large windows are provided to the sitting rooms, the sitting rooms themselves are small, essentially being the termination of a corridor. Any perceptions of overlooking from those windows can be readily addressed through improvements to the proposed landscape treatment;
- For the rear portion of the eastern elevation, which is setback 18m from the eastern boundary, there are multiple rooms on the middle and upper levels of the building which directly oppose the west facing apartments at Nos. 4-6. Privacy outcomes however are acceptable noting:
  - A separation distance of 23m is achieved between the two buildings. By way of comparison, the Apartment Design Guide only requires 12m between habitable

- rooms of adjoining 4 storey apartment buildings, and 24m for buildings of 9 or more storeys;
- The floor levels of the two buildings are significantly offset. By way of example the ground floor of the proposal is 1m lower than the lowest part of the ground floor garages at Nos. 4-6, and the topmost floor of the proposal is 0.7m below the middle floor level of the apartments at the rear of Nos 4-6; and
- Site planning allows for the retention of Trees 9, 10 and 11 which have heights of 21m, 19m and 9m respectively. That vegetation will provide a suitable level of screening, and will be embellished by the intended landscape treatment.

Relative to properties adjoining the rear of the site (Nos. 105-111 Constitution Road and No. 86 Mons Avenue) an adequate level of visual privacy is maintained given:

- Boundary setbacks of 12m- 24m are achieved;
- Site planning allows for the retention of Trees 1, 4 and 5-8 which have heights of 23m, 14m, 15m, 14m, 15m and 7m respectively. That vegetation will provide a suitable level of screening, and will be embellished by the intended landscape treatment.

The landscape plan also notes the provision of a 2.1m high timber lapped and capped fence along the common boundary with No 84 Mons Avenue to assist with achieving privacy. Any consent granted to this application would include a condition for such fencing to the whole of the southern and eastern site boundaries (excluding areas forward of the building line).

The potential for the most significant privacy impacts relate to the dwelling at No. 84 Mons Avenue. The western portion of the building extends from Mons Avenue east for the length of the common boundary with No. 84 where it meets the central portion of the building that then extends south, adjacent to the rear boundary of No. 84.

Relative to the western portion of the proposed building to Mons Avenue it is noted:

- Levels 1 and 2 of the new building are setback much further from the common boundary than the present dwelling at No. 82 (existing = 2.3m proposed = 8.6m)
- Level 1 of the proposal (car park level) is set 2.2m lower than the floor level of the present dwelling at No. 82. The ceiling of level 2 of the proposal is only 300mm high than the roof ridge of the current dwelling at No. 82. The roof then slopes away to the north where it meets Level 3 of the building, which is setback 12.5m from the common boundary.
- Limited, secondary windows are provided in the southern elevation, and those are screened;
- The Level 2 southern courtyard is located 10m-12m from the common boundary and is elevated 2m-2.5m relative to ground level at that boundary. The southern edge of the terrace is provided with a 1.m high solid balustrade;
- Tree 47 on the subject site is retained; and



- The landscape treatment includes 5 evergreen trees between No 84 and that terrace. The landscape plan notes those trees would be 4.5m high at planting, with a mature height of 7m-8m. Further, boundary hedging and a new 2.1m boundary fence is also proposed.

Those aspects of the proposal are therefore satisfactory, however the following design components are of concern:

- The terrace to the Level 1 (ground level) staff lounge is large and elevated. A reduction in the size of the terrace is warranted, and could be readily achieved;
- That change would then allow for the adjacent pathway to be positioned further away from the common boundary with No. 84 allowing for more screen planting; and
- The communal terrace at level 3 creates the perception, if not the opportunity, for overlooking. The fixed screen treatment to the southern edge of that terrace should be extended for at least half, if not all of, the western edge to address this issue;
- The height of the terrace balustrade should be increased to 1.5m to limit views towards No 84; and
- As a further safeguard, and consent granted to the application include a condition that all common terraces are only to be used between 8.00am and 5.00pm.

Relative to the central portion of the proposed building, at the rear of No. 84, it is noted:

- All levels of the new building are closer to the common boundary than the present facility (24m = existing; 12m = proposed)
- Level 2 of the proposal is set generally only 0.5m above current ground level;
- The ceiling of level 3, which approximates the gutter line, is 1.6m higher than the roof of the current rear wing of the existing building;
- At levels 2 and 3 primary windows which face No. 84 are treated with fixed screens;
- Trees existing trees 5-8 on the site are retained. Trees 7 and 8 in particular will provide screening ; and
- The landscape treatment includes 3 evergreen trees between the rear boundary of No 84 and the building. Again those trees would be 4.5m high at planting, with a mature height of 7m-8m;
- Further, boundary hedging and a new 2.1m boundary fence are also proposed.

Those aspects of the proposal are therefore satisfactory, however the following design components are of concern:

- The western ground floor terraces are 3.5m wide. A reduction in width to 2m would allow would still be function, and could be readily achieved;
- That change would then allow for the adjacent pathway to be positioned further away from the common boundary with No. 84 allowing for more screen planting.

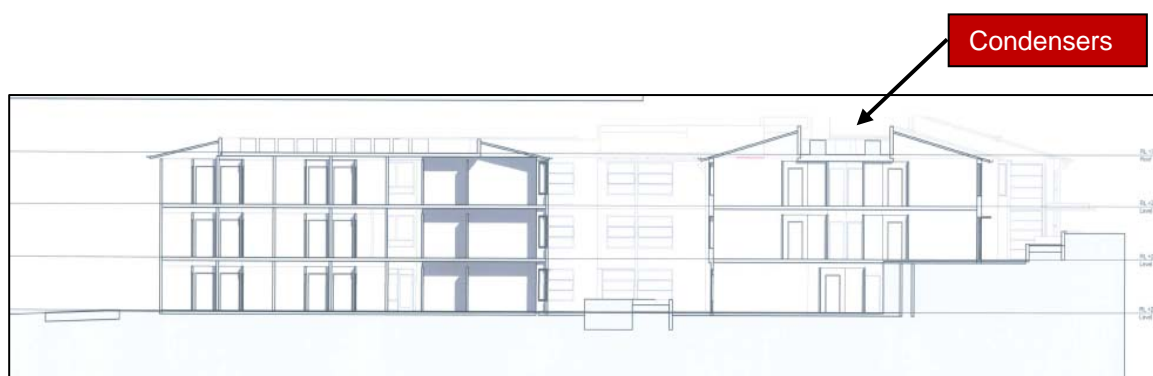


### Lighting

Any consent granted to this application would require the preparation of a lighting strategy to ensure illumination across the site is necessary for safe operation, but provided in a manner to avoid nuisance for adjacent sites.

### Acoustics - mechanical plant

The plans nominate the installation 146 roof top air conditioning condenser units. The roof design would screen but not enclose the plant, as demonstrated by the following section drawing:



**Figure 7: Roof design and location of AC condensers**

In response to concerns regarding the intention to provide multiple condensers instead of a universal heating and cooling system the applicant has advised:

- This approach has proven to be more energy efficient; and
- It avoids large, continually operating systems which are complex and wasteful.

In terms of operational noise impacts, the application as lodged was supported by an acoustic report which identified noise emission requirements to be satisfied relative to residential receivers, for day, evening and night time periods. However no assessment was undertaken to confirm that criteria would be met, either with or without mitigation measures.

A further report was therefore requested and provided with the amended plans. It similarly fails to provide any analysis of the operating noise levels of the condensers, but does nominate limited mitigation measures necessary to meet noise requirements.

The acoustic report has been assessed and accepted as satisfactory by Council's Environment Health Officer, who also provided conditions for inclusion in any consent granted to this application. Those conditions:

- Require implementation of the mitigation measures; and
- Tie the operation of the facility to the noise emission requirements nominated in the acoustic report.

- Acoustics - servicing

This application provides for all servicing to occur wholly within the basement, between the hours of 10am and 2pm. This approach will assist to minimise noise impacts for adjoining residential areas.

#### **(h) Parking supply**

The Seniors SEPP nominates calculations to establish the minimum required parking supply. Where that minimum supply is achieved the parking supply cannot be used as grounds for refusal of the application. The relevant calculation is shown below:

Table 6: Parking calculations

Aged care beds	1 space per 10 beds	116 beds proposed
Dementia beds	1 space per 15 beds	25 beds proposed
Staff parking	1 space per 2 employees on duty at any one time	Maximum 36 on duty

Application of the controls therefore requires 31 spaces for staff and visitors/residents which is satisfied by the proposed 41 onsite parking spaces.

Although not a strict consideration for the purposes of the SEPP, the peak for employees on site (but not on duty) occurs at 2.30pm at the first change over between the day and afternoon shifts, when an additional 12 staff arrive. At that point, and using the SEPP calculations, an additional 6 staff spaces would be required, bringing the total to 37 spaces.

It is noted the amended traffic report accompanying the application identifies a total of 54 staff on duty. That figure does not accord with the staffing levels detailed in the applicant's Statement of Environmental Effects. Nevertheless even using that higher staffing figure, the supply of 41 spaces is satisfactory for the application of the SEPP (not including any consideration of shift change over).

#### **(i) Parking location and access**

The onsite spaces are located as follows:

- 28 spaces in the basement to be shared by staff and visitors; and
- 13 at grade spaces located at the southeast corner of the site, accessed from the existing driveway from Constitution Road. These spaces are for staff only.

Council's Development Engineer has confirmed the design of the basement driveway and the basement itself is satisfactory.

Council's Traffic Engineer requires the installation of a traffic control system to regulate the safe movement of vehicles along the existing, narrow driveway from Constitution Road which serves the at grade staff car park.

## **(j) Traffic**

### Construction traffic

Any consent granted to the application would include conditions requiring the preparation and implementation of a Construction Traffic Management Plan which will address, amongst other matters:

- Nomination of truck routes and rates
- Storage of all plant, equipment and materials on site
- A Traffic Control Plan for the management of vehicle and pedestrian traffic, prepared by an accredited RMS traffic controller

### Traffic associated with the operation of the facility

The application is supported by a Traffic and Parking report which evaluated traffic impacts using the following methodology:

- Traffic surveys were undertaken at peak network periods to establish the current level of service of the key intersection of the local road network (Mons Avenue and Constitution Road);
- Traffic levels for the proposed development were then calculated using RMS guidelines and technical directions;
- Modelling of the additional traffic attributed to the development relative to the operational performance of the key intersection was then undertaken. A 'worst case' approach was adopted, with no reductions for current traffic volumes associated with existing care facility.

The conclusion from those investigations is that the Mons Avenue/ Constitution Road intersection would continue to operate with a "Level of Service" of A - being the highest possible classification based upon an intersections physical and operational capacity to cater for the traffic using it.

That report was evaluated by both Council's Public Works (Traffic) team and Council's Development Engineer, whose comments are provided below:

### Public Works (Traffic)

*"The traffic report prepared by TTW has indicated there will be negligible traffic impacts on the nearby existing public roads system. Traffic modelling of the nearby intersection of Mons Avenue and Constitution Road have indicated that post development, the*

intersection would function at the same level of service "A" as per existing level of service."

Development Engineer

*"The applicants submitted traffic report has presented anticipated traffic generation levels based on the recent (2013) traffic generation data from the RMS. The technical direction issued by the RMS does not go into detail regarding the type of development under this category however the surveyed facilities accommodate a high proportion of resident parking, which is more applicable for independent living units and therefore not entirely appropriate for the development.*

*An estimate based on first principles can be produced given that broadly there are two components of the proposal that will affect traffic generation from the site. These are reviewed as follows:*

- Staff traffic will have periods of high turnover during shift turnover periods. During such times traffic levels could have a maximum peak of up to 24 vehicle trips per hour (vtph) with respect to the staff parking area (12 vehicles in, 12 vehicles out)*
- In regards to resident generated traffic, traffic data obtained from similar applications presents that typical traffic generation rates from residential aged care facilities are 0.17vtph (AM peak) and 0.22vtph (PM peak), per bed (Source- Institute of Transport Engineers publication). Based on this, the 142 bed facility produces an AM peak generation of 25 vtph and a PM peak of 32 vtph.*

*Given the traffic generation from the two elements are unlikely to coincide, the resulting peak level of traffic generation is in the order of some 40vtph based mostly on the resident generated traffic and some staff/service movements. Accordingly the applicants presented 54vtph is conservatively high. The report has presented that the level of traffic generation is not expected to impact on the operation of the surrounding intersections and this is accepted, given the net traffic from the proposal is moderate in comparison to daily fluctuations in traffic volumes experienced on local roads."*

#### **(k) Servicing, deliveries and waste management**

The design has been amended to enable all service vehicles to access a dedicated loading bay located wholly within the basement. Council's Development Engineer has confirmed the geometry of the driveway and basement design will accommodate manoeuvring associated with the largest truck required to attend the site. This outcome is a significant improvement upon the application as lodged.

In terms of the frequency of service vehicles attending the site, the applicant has provided the following summary:

Table 7: Service schedule

Purpose	Vehicle Type	Frequency	Delivery Time
Garbage	8.0 m SITA Rear loaded	3 times a week	10.00am - 2.00 pm
Fresh Food	6.5 m Small Rigid Truck	4 times a week	10.00am - 2.00 pm
Couriers	Vans/Cars/Motorcycles	Everyday	10.00am to 2.00pm

Any consent would include conditions requiring operation of the facility to adhere to those arrangements.

## **(l) Heritage**

The site is not listed heritage item or within a heritage conservation area, and nor is it close vicinity of any heritage item. Notwithstanding, as the site includes the dwelling "Fernleigh", erected in 1890, the application is accompanied by a Heritage Impact Statement (HIS) which provides:

- A summary of the historical development locality generally and this site specifically;
- A detailed description of existing development of all buildings on the site; and
- A discussion of the aesthetic, social, technical and scientific significance of the site, and its rarity.

Resulting from that process the HIS presents the following Statement of Significance for the site:

*"Fernleigh at 8-14 Sherbrooke Road is an example of a late Victorian Georgian Revival/Filigree style house built c. 1890 by the then owner of the land, Edward Atkins Junior who was associated with the New South Wales Nursery and Orchard Company Limited and who built (and possibly designed) the house for himself in 1890.*

*The house has been very heavily modified and the original estate truncated by later subdivisions and modern additions to the house. The site contains some early plantings and the remains of entrance gate at Constitution Road.*

*The house is of moderate significance at a Local level."*

The HIS then provides an evaluation of the impacts of this development application and presents the following conclusion:

*"Overall we consider that there are no heritage issues that would preclude the development from proceeding. The loss of the remains of Fernleigh is not ideal but the significance of the remaining elements has been compromised to a degree that their retention could not be insisted upon. The retention of the remains and their integration into the new development is not justified by the level of significance of the place. The place has been used for aged care for nearly half of its life and the development will continue this use.*

*The works will retain some of the original and early plantings on the site and the remains of the entrance gate to Constitution Road that will signal the location of the place.*

*The development will have no impact on the two heritage items in the vicinity In heritage terms, we consider that the current proposals should be approved."*

Council's Heritage Advisor reviewed the HIS and has provided the following conclusions:

- In relation to "Fernleigh":

*"The extent of changes that have occurred to 'Fernleigh' are considered so substantial that the dwelling cannot be considered a good example of a late Victorian period house and the retention of extant fabric could not be insisted upon.*

*While extant fabric of the dwelling could be incorporated into new development, such retention of fabric would provide little heritage value and cannot be justified. Subsequently, demolition is supported."*

- In relation the dwellings at 78-82 Mons Avenue:

*"...the dwellings at 78-82 Mons Avenue have been assessed as not having any heritage significance or values and do not contribute to the setting of 'Fernleigh'.*

- In terms of proximity to other heritage items:

*"In terms of the impacts on the heritage items within the vicinity of the site, the relationship is derived from the physical proximity only and no significant visual relationships exist. The proposed redevelopment, including the bulk, scale and architectural appearance of the proposed building, will not result in any adverse visual impacts on the setting, nor material affectation to physical fabric of the heritage items in the vicinity."*

The Heritage Advisor has therefore concluded this development is considered to have an acceptable heritage impact, and can be supported. Conditions have been provided regarding:

- Archaeology;
- Photographic Archival Recording;
- Salvage of materials and building elements; and
- On site Interpretation.

#### **(m) Accessibility**

The application is supported by an Accessibility report which considers legislation, planning instruments and standards pertaining to access and facilities for people with disabilities for an aged care facility.

That report concludes the development is capable of meeting requirements under the Disability Discrimination Act, Building Code of Australia and all relevant Australian Standards.

Any consent granted to the application would include a condition requiring compliance with the recommendations of that report.

**(n) Stormwater**

The application is supported by plans detailing arrangements for the collection and disposal of stormwater from rooves and hard stand areas. In summary that water will be directed to OSD tanks, one of which is located beneath the at grade parking at the rear of the site, and the other being located adjacent to the Mons Avenue driveway. Water will then be discharged at a controlled rate to Council's infrastructure in Constitution Road or Mons Avenue.

Council's Development Engineer is satisfied with the details provided and has nominated conditions for inclusion in any consent granted to the application.

**(o) Construction Management**

It is acknowledged that construction activities would impact upon the amenity of the locality. Any consent granted on this application would therefore include multiple conditions addressing the following matters:

- Dilapidation reports;
- Demolition and removal of hazardous materials;
- Sediment and erosion control and water quality during construction;
- Construction traffic management plan;
- Hours of works;
- Construction noise and vibration;
- Material delivery and storage;
- Safety fencing;
- Traffic and pedestrian safety; and
- Dust control.

**(p) Building Code of Australia (BCA)**

The application is supported by a Preliminary BCA Assessment report which confirms the proposal is capable of readily achieving compliance with BCA2014.

Council's Executive Building Surveyor has reviewed and accepted that report, and has provided conditions for inclusion on any consent granted to the application.

**(q) Social and economic impacts**

Social

The provision of additional 69 residential care facility beds is consistent with Metropolitan and subregional strategies which promote the supply of a significant majority of the region's housing demand in established areas.

The expansion of residential care facilities is also consistent with Council' Older People's Needs Paper Social Plan 2005, which notes:

- In 2001 there were 21,707 people aged 55–100+ years living in Ryde. This group comprised 22.7% of the total population; and
- The total population of people aged 55-100+ years living in Ryde is projected to rise to 32, 400 in 2016, which represents an increase of around 30%.

That Needs Paper also includes the following recommendation:

- *To encourage and support local residential aged care facilities to secure additional places for residents in Ryde LGA.*

This project is also consistent with Council's People with a Disability Needs Paper Social Plan 2005 which includes the following recommendations relative to the issue of accommodation and housing:

- *To increase the application of adaptable housing principles and the supply of adaptable housing stock in Ryde LGA.*
- *To take a more proactive approach at a local level to make affordable housing available in the LGA*
- *To expand the supported accommodation options available to people with a disability in Ryde LGA.*

### Economic

No adverse economic impacts have been identified.

### Crime prevention through environmental design (CPTED)

CPTED is a recognised model which provides that if development is appropriately designed it is anticipated to assist in minimising the incidence of crime and contribute to perceptions of increased public safety.

The application has adequately documented design and operational measures to address the CPTED principles of:

- Surveillance;
- Access control;
- Territorial reinforcement; and



- Space management.

## **10. SUITABILITY OF THE SITE FOR THE DEVELOPMENT**

It is acknowledged the site has been used for the purposes of an aged care facility since 1966. However this application seeks to demolish that facility, such that the current use is of no weight the assessment of this proposal. Noting that, the site is not considered to be suitable for the development given:

- The proposal is not considered to 'fit' the locality as demonstrated at section 9 above; and
- The site attributes are not conducive to the development, specifically the proposal is not able to meet the requirement of clause 26 of the Seniors SEPP in relation to location and access to facilities. That circumstance is a prohibition, such that consent could not be granted to the application.

## **11. THE PUBLIC INTEREST**

The application is not considered to be in the public interest given:

- It is a prohibited use by virtue of the application of clause 26 of the Seniors SEPP;
- It is not satisfactory for the purposes of clause 33 of the Seniors SEPP; and
- Variations to the building height controls in clause 40 of the Seniors SEPP are not well founded.

## **12. REFERRALS**

The following table provides a summary of internal and external referrals undertaken for this application:

Table 8: Referrals

<b>Internal</b>	
Building Surveyor	No objections - conditions provided
Landscape Architect	No objections - conditions provided
Environmental Health	No objections - conditions provided
Development Engineer	No objections - conditions provided
Public Works (Drainage)	No objections - conditions provided
Public Works (Traffic)	No objections - conditions provided
Public Works (Public domain)	No objections - conditions provided
Public Works (Waste)	No objections

### **13. PUBLIC NOTIFICATION AND SUBMISSIONS**

The application as lodged was notified and advertised in accordance with Development Control Plan 2010 - Part 2.1, Notification of Development Applications. The exhibition period was from 20 October 2014 until 12 November 2014. A total of 43 submission were received, all raising concerns or objections.

The amended plans were similarly notified, with 35 submission were received, all raising concerns or objections. The matters raised are grouped, summarised and addressed below:

#### **Issue 1     Planning controls**

- The size and scale of development is inconsistent with area which is low density residential. It does not meet the objectives for the R2 Low Density Residential zone.
- The size and height of the development needs to be reduced to fit with the zone objectives.
- The building height exceeds the controls in the Seniors SEPP.
- The proposal does not comply with Seniors SEPP requirements to be within 400m of access to facilities and services. The gradients and distances should be verified.
- The applicants assertion that clause 26 of the Seniors SEPP is a development standard is inconsistent with the current position of the Land and Environment Court, which is to view a planning instrument as a whole to interpret if a provision is a prohibition or not. The applicant's clause 4.6 submission to vary clause 26 goes to the heart of the SEPP, and if approved, would undermine the integrity of the SEPP itself.
- The building does not meet clause 33 of the Seniors SEPP (neighbourhood amenity and streetscape).
- The building exceeds the height and FSR controls in Ryde LEP 2014.
- The applicant has "cherry picked" the SEPP and LEP controls to suit the development.

#### **Response**

Addressed at sections 8.5.1 and 9(e).

#### **Issue 2     Community consultation**

- Inadequate consultation undertaken by applicant. They did not try hard enough to contact neighbours.
- Claims in newsletter the applicant is consulting with the community are not correct.
- As a directly adjoining neighbour, shocked and disappointed that the applicant has not contacted us.
- No contact from the applicant despite documents lodged with council outlining community consultation.

## **Response**

Noted, but this is not a consideration in the assessment of the application.

### Issue 3     Parking

- Lack of street parking in Mons Avenue at weekends due to sporting events at nearby ovals and more generally due to staff/visitors attending existing nursing home
- Lack of street parking during the week because of commuters and TAFE students
- Parking is very inadequate for such a large development and is provided only to satisfy minimum standards. A more practical review should be undertaken of similar developments to ensure parking is adequate

## **Response**

Addressed at section 9(h) and 9(i).

### Issue 4     Traffic, access, pedestrian and vehicle safety

- No capacity in road network for extra traffic. Sherbrooke Road is narrow and already choked with traffic and lacks parking due to the existing nursing home.
- Main entry in Sherbrooke Road is located in a dangerous position due to poor sight lines for traffic and should be relocated to Mons Avenue. Otherwise Council should widen Sherbrooke Road.
- Mons Avenue is narrow, more so because of street parking, and the basement entry is located in a dangerous position, and line of sight are poor due to the crest. Mons Avenue is a corridor between Victoria Road and Constitution Road.
- The design shifts traffic volumes from Sherbrooke Road to Mons Avenue. Residents will have to endure 24 hour traffic attending the site.
- Traffic calming measures are required.
- The driveway location in Mons Avenue is dangerous and it should remain in Sherbrooke Road.
- Do not accept that trucks will be able to access the basement.
- Safety fears for children and parents using Mons Avenue to walk to local schools
- Poor visibility in Sherbrooke Road warrants the pedestrian entry being moved to Mons Avenue.
- Vehicles standing in Mons Avenue waiting to access the driveway are at risk from being hit from behind due to the blind crest in Mons Avenue.

## **Response**

The application has been assessed by Council's Traffic section and Development Engineer and no issues of concern were identified relative to issues of traffic safety.

### Issue 5     Built form

- Inappropriate size and scale in a residential area. Uninterrupted monolith of three storeys. Building height of three storeys at rear will have unacceptable impacts on

adjoining properties. This is contrary to RLEP 2014 whose provisions include the principle of reducing heights at the rear of a site where intensive development is proposed.

- The development will visually dominate the streetscape and the wider area. Its visual dominance is exacerbated by the elevated nature of the site, particularly to Mons Avenue.
- Excessive bulk, scale and height remains unaltered despite amended plans. Adverse visual impacts particularly relative to homes in Mons Avenue.
- Entirely out of character with locality - not suitable for a low density locality. Should be single storey. The locality consists of standalone houses, villas and units.
- Visual dominance and inappropriate scale to Mons Ave. The development is a commercial sized facility in a residential area.
- The building is not properly represented on montages
- Setbacks to adjoining Mons Avenue properties not adequate to manage built form and amenity impacts.
- If all trucks accessed the site from Constitution Road then the height of the basement could be lowered, to allow for the overall building height be lowered
- The building is so large there is no adequate assembly area on site for the safe evacuation of residents.
- There should be a separate pedestrian entry from Mons Avenue.
- The basement design locates kitchen facilities next to waste storage areas which is contrary to NSW Health guidelines.

## **Response**

Addressed at section 9(e).

### Issue 6     Amenity and other impacts

- Height and built form will result in overlooking of adjoining sites, particularly to Mons Avenue, and impact upon neighbours privacy. No screening to ground level terraces
- Impacts from lighting, outdoor areas/terraces and staff room. Lighting should be to a residential standard not a commercial standard.
- Noise generally will increase.
- Noise particularly from dementia patients, will increase. No assessment provided in acoustic report.
- The acoustic report does not appear to have measured existing evening and night time noise levels.
- No acoustic assessment of noise impacts from large number of air condition condensers and other mechanical equipment.
- Noise from garbage trucks.
- Noise from constant use of roller shutter and intercom associated with basement parking area.
- Building height will cast large shadows on surrounding properties.
- Property values of neighbouring houses will be reduced.
- Air conditioning and other equipment should not be visible.

- Increase the number of trees being retained, including Tree No. 9, and plant more trees along boundaries to provide privacy.
- Further details required regarding fencing solutions to adjacent properties.
- House at No 8 Sherbrooke road has been neglected for many years. Prior to demolition it should be treated kill vermin.
- The building will block views from balconies at 6 Sherbrooke Road.
- Any approval should include conditions to limit the use of common terraces to daytime hours only to address noise and lighting impacts.

### **Response**

Addressed at section 9(g).

### Issue 7 Construction impacts

- Residents will be affected by construction impacts for between 18 months - 2 years.
- Construction and all deliveries should be limited to 9am-5pm weekdays for benefit of residents, and 9am-12noon Saturdays. Drilling and excavating should not occur in the early morning or evenings, and weekends
- Any damage to neighbours properties and public areas must be rectified by the applicant.
- Construction vehicles will park in the street, and local roads are not suitable for taking heavy machinery.
- All workers/contractors should not be allowed to park in the street.
- Need a management plan to address dust from excavation.
- Want assurances that excavation will not affect structural integrity of neighbouring buildings.
- No construction plan has been requested or provided.
- Delivery times during the construction phase should avoid school drop off and pick up times.

### **Response**

Addressed at section 9(c), 9(j) and 9(o).

### Issue 8 Hazardous materials

- There is asbestos in the building. Residents need to be notified before demolition
- Demolition should be supervised by an independent specialist and undertaken by qualified tradesmen to safeguard accidental release of asbestos materials

### **Response**

Addressed at section 9(o).

### Issue 9 Truck movements

- Garbage removal will be by contractors so the applicant will have no control over the size of trucks to be used.

- The applicant cannot control the arrival times of delivery vehicles. If two arrive at the same time the driveway will be blocked, creating problems in an emergency.
- Waste collection from within the building is good but the basement design may not be adequate. It seems a truck is not able to reverse into the loading dock.
- All trucks should be required to load/unload within the building and not on the street.
- Trucks blocking the footpath in Mons Avenue will create a hazard for pedestrians and motorists
- Based on existing situation, have no confidence the applicant will stick to any requirement to limit delivery times for trucks as proposed.
- Delivery times should avoid school drop off and pick up times.

#### **Response**

Addressed a section 9(k). It is noted that the use of contractors for waste collection and deliveries will allow for the operator to limit the size, frequency and timing of vehicles attending the site.

#### **Issue 10 Trees**

- The removal of so many trees goes against the Ryde LEP and will have environmental effects

#### **Response**

Addressed at section 9(f).

#### **Issue 11 Heritage**

- Has consideration been given to inclusion/relocation of heritage building.
- The sandstone chimneys are a local landmark

#### **Response**

Addressed at section 9(l).

### **14. CONCLUSION**

This report considers a development application to demolish existing structures at Nos. 8-14 Sherbrooke Road and 78-82 Mons Avenue, West Ryde in order to construct and operate a 141 bed residential aged care facility.

The application has been assessed relative to all matters for consideration under section 79C of the Environmental Planning and Assessment Act, and has been found to be unsatisfactory. It is recommended that the application be refused for the reasons set out in the recommendation.

## **15. RECOMMENDATION**

Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979, the following is recommended:

- A. That the Sydney East Region Joint Regional Planning Panel refuse the applicant's requests, under clause 4.6 of Ryde Local Environmental Plan 2014, to vary the following provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004:
  - (i) Clause 26 - Location and access to facilities; and
  - (ii) Clause 40(4)(a) and (b) - Height in zones where residential flat buildings are not permitted
- B That the Sydney East Region Joint Regional Planning Panel refuse to grant consent to development application LDA2014/0418 for the demolition of all existing buildings and structures and construction of a 141 bed residential aged care facility at Nos. 8-14 Sherbrooke Road and 78-82 Mons Avenue, West Ryde for the reasons at Attachment 1 of this report; and
- C. That those persons making a submission be advised of the decision.

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