

JOINT REGIONAL PLANNING PANEL
(Hunter and Central Coast Region)

JRPP No.	2016HCC012 DA
DA No.	DA 2016/00130
Local Government Area	Newcastle
Proposal	Demolition of an existing single storey commercial building (previously used as a gym and indoor swimming pool) and associated car park; Construction of a three level residential care facility comprising 121 high care units and associated hard and soft supporting infrastructure); and Two lot subdivision (boundary adjustment).
Property	142 and 156 Cardiff Road, Elmore Vale, NSW 2287 (Lot 39, DP 711005 and Part Lot 402, DP 814439).
Applicant	RPS Australia
Owner(s)	R & K. L. Roughley Regis Aged Care Pty Ltd
Number of Submissions	Three (3)
Report by	Newcastle City Council
Recommendation	Approval

EXECUTIVE SUMMARY:

- Development application consent is sought for three elements, being:
 - a) Demolition of an existing single storey commercial building (previously used as a gym and indoor swimming pool) and associated car park;
 - b) Construction of a three (3) level residential care facility comprising 121 high care units and associated hard and soft supporting infrastructure); and
 - c) Two lot subdivision (boundary adjustment).
- The detailed development application plans are attached as **Appendix A** to this report.
- The subject site is zoned *R2 Low Density Residential* and the proposal is permissible in accordance with the provisions of Newcastle Local Environmental Plan 2012 (as amended) and achieves a satisfactory level of compliance with the provisions of Newcastle Development Control Plan 2012 (as amended).
 - The proposal is referred to the Joint Regional Planning Panel as the development has a capital investment value of more than \$20million (nominated as \$22.1M).
 - The proposal is classified as '*integrated development*' and requires approval from the following Government Agencies:
 - a) NSW Rural Fire Service (requires approval under *Section 100(b), Rural Fires Act 1997*); and
 - b) Mine Subsidence Board (requires approval under *Section 15, Mine Subsidence Compensation Act 1961*).
 - The proposal has been reviewed by a number of internal business units, as well as several relevant State Government agencies. No objections have been raised, subject to the imposition of a number of conditions of consent.
 - The proposal was notified to adjoining owners during a 14-day public exhibition period. Three (3) submissions were received.
 - This report addresses issues relevant to the proposed development that is made under the provisions of the *Environmental Planning & Assessment Act 1979* (as amended). The report considers the statutory context within which the proposal is to be assessed; potential environmental, social and economic impacts, as well as proposed mitigation measures to ameliorate any potential adverse effects.

RECOMMENDATION:

1. **THAT the Hunter & Central Coast Joint Regional Planning Panel note and support the clause 4.6 variation to clause 4.3 (Height of building) to enable the proposed development to be approved in its current form; and**
2. **THAT the Hunter & Central Coast Joint Regional Planning Panel approve DA 2016/00130 (Ref: 2016HCC012) for the demolition of the existing building and ancillary car park and the subsequent erection of an Residential Care Facility and Two (2) Lot Boundary Adjustment on Lot 402, DP 814439 and Lot 39, DP 711005, subject to the imposition of the nominated draft conditions of consent as detailed in Appendix B.**

1. BACKGROUND

The subject site comprises two separate parcels of land under different ownership.

Lot 402, DP 814439 is owned by I. R & K. L. Roughley and is a battle-axe shaped parcel of land with an overall area of approximately 9,339m². Known as 142 Cardiff Road, the site encompasses a large dwelling house, garages, swimming pool and well-established landscaped gardens.

Lot 39, DP 711005 is owned by Regis Aged Care Pty Ltd and is also an irregular shaped parcel of land but enjoys dual street frontages to Cardiff Road to the east and Nerigai Close to the west. The site address is 156 Cardiff Road and it has an overall area of approximately 14,109m². (Refer figure 1 below)

The application has been made by RPS group Australia on behalf of both owners.

In April 2013, a Planning Proposal was submitted to Newcastle City Council with a request to rezone a portion of the subject site from *RE2 Private Recreation* to *R2 Low Density Residential* in order to enable the land to be redeveloped from a gymnasium and indoor swimming centre to low density residential use.

The amendment was gazetted on the 14 March 2014 (Amendment No. 4) and the area of land rezoned is shown on figure 2 below:



Figure 1: The Subject Land and existing lot layout

Area of Lot 402 being excised and consolidated with Lot 39

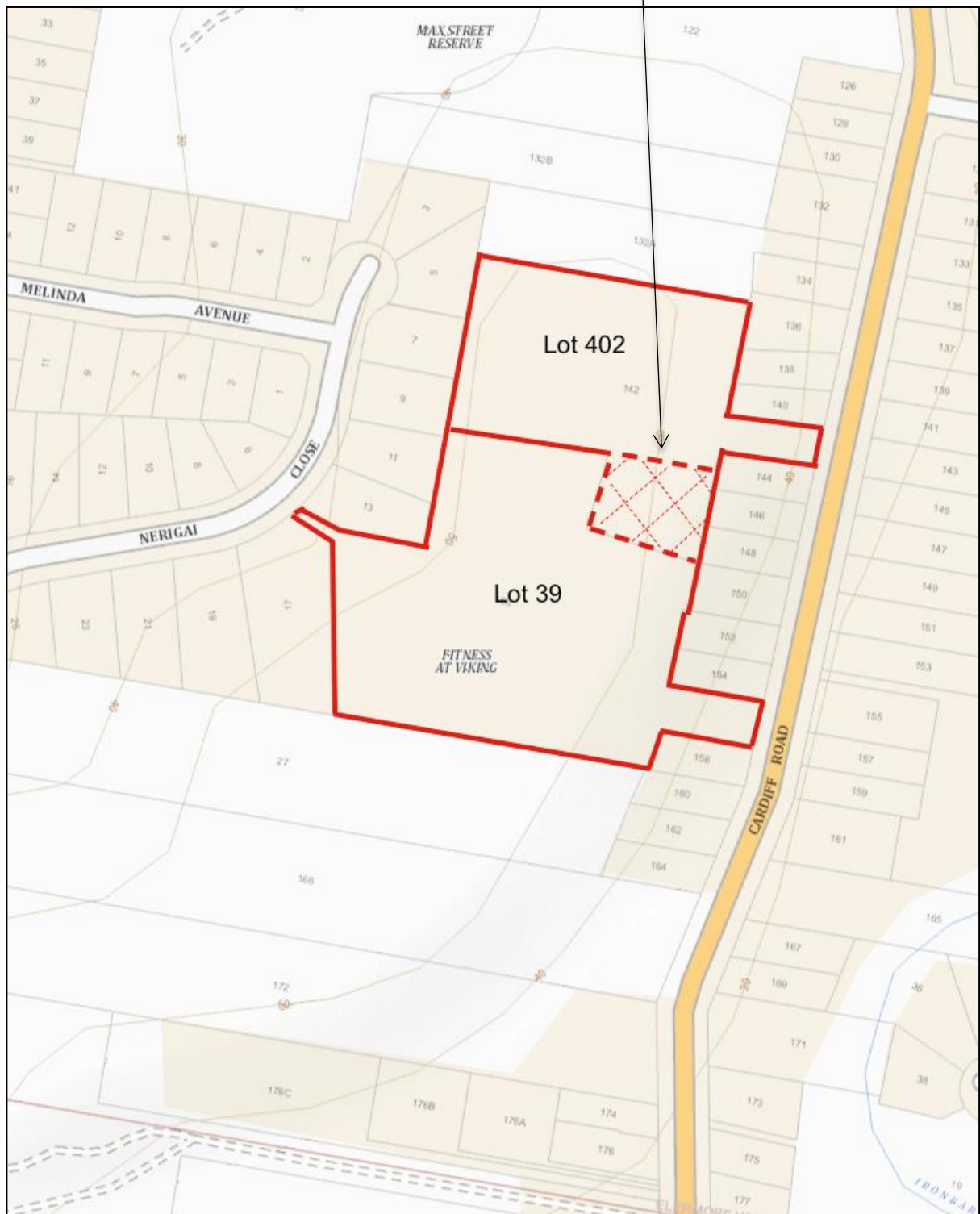


Figure 2: The area of land comprising the boundary adjustment

2. SITE DESCRIPTION

The subject site is located on the southern end of Cardiff Road, Elmore Vale, approximately 3.5 kilometres north of the Cardiff Town Centre, and approximately 13 kilometres west of the Newcastle CBD.

In total, development site represents an irregular shaped parcel with an overall area of approximately 17,200m². It will have a primary road frontage to Cardiff Road of 18.32m wide, as well as a secondary (emergency only) access to Nerigai Close.

Adjoining development to the north, east and west generally comprises established low density residential dwelling houses constructed largely between the 1960's and 1970's on parcels of land ranging between 500m² - 1000m² in area. Whilst this housing stock is generally in good condition, there is a noticeable increase in construction activity in the immediate area and the suburb is experiencing redevelopment pressure.

The land directly to the south of the subject site comprises a very large parcel (approximately 1.176ha) of residentially zoned land encompassing a single dwelling house. This land is heavily vegetated and is accessed off Nerigai Close to the west

The site sits atop a small ridge that runs in a north-south transect. The highest point on the land is approximately mid-block, with surface levels then falling away steadily to the east and west towards the boundaries, where it abuts the adjoining residential development. The boundary areas along the eastern, northern and western alignments contain pockets of semi mature regrowth vegetation that assists in maintaining visual and aural privacy.

The larger part of the middle of the site is cleared and contains the existing single storey commercially designed brick building and a bitumen car park.

The portion of land of Lot 402 that is the subject of the boundary adjustment is approximately 1551m² in area and currently comprises landscaped gardens. Its topography falls from west to east and number of trees on this land will require removal to facilitate the proposed development.

3. PROPOSAL

The proponent is seeking development application consent for three distinct elements, being:

- a) Demolition of an existing single storey commercial building (previously used as a gym and indoor swimming pool) and associated car park;
- b) Construction of a three level residential care facility comprising 121 high care units and associated hard and soft supporting infrastructure); and
- c) Two lot subdivision (boundary adjustment).

The first element is the demolition of the 3,000sqm building that was formerly used by *Fitness at Viking Health Club* as a gymnasium and indoor swimming centre. This facility was developed in the 1980's and subsequently ceased operation in December 2015. The building is currently vacant.

The second element of the proposed development seeks consent to develop and operate a residential care facility under the provisions of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

The proposed residential care facility will provide a combination of high care aged accommodation and high care dementia specific accommodation. It will include the following components:

- Construction of a large 2 storey residential care facility containing 120 single bedrooms and associated bathrooms, and a basement service level;
- Main administration, reception area, office, nurse station and commercial kitchen;

- Ground and first floor activity, dining and lounge areas;
- 49 car parking spaces with paved pedestrian path and entry, and emergency vehicle access;
- On-site amenities including secure courtyards, garden terraces and a hairdressing salon; and
- Extensive landscaping including compensatory planting of at least 60 semi-mature trees.

The proposed development consists of one large detached building comprising three levels. The basement level contains a staff room and associated facilities, commercial kitchen, laundry, waste refuse, storage areas and a mechanical plant. The basement level will be excavated and will sit almost wholly below the existing natural surface levels of the land.

The ground floor and first floor contain 60 units each (total 120 beds). Two lifts are to be installed to allow access between floors. A staircase between the basement, ground and first floors is also provided.

The principal access point for the development will be off Cardiff Road, with a secondary emergency access only route through to the west connecting with Nerigai Close. Use of this secondary access will be managed through security protocols.

The last element of the proposed development comprises a subdivision (boundary adjustment). The following table details the existing and proposed spatial arrangement of the lots:

Table 2: Existing and Proposed allotment format

Existing Layout		Proposed Layout	
Lot 402	9,339m ²	Lot 11	7,788m ²
Lot 39	14,109m ²	Lot 10	15,660m ²
Total	23,488m²	Total	23,448m²

The full development plans are provided as an attachment to this report in **Appendix A**.

4. PLANNING ASSESSMENT

The following planning assessment has been undertaken in accordance with the requirements of Section 79C of the *Environmental Planning and Assessment Act 1979* (the Act). The relevant matters for consideration are reproduced below:

79C Evaluation

(1) Matters for consideration — general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

- (i) any environmental planning instrument, and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*

- (iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
- (v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

4.1 Regional Environmental Plans

There is no Regional Environmental Plans (REP's) applicable in the assessment of this application.

4.2 State Environmental Planning Policies

Consistent with the requirements of the Environmental Planning and Assessment Act 1979 (the Act), the proposal has been assessed against the following State Environmental Planning Policies (SEPP's), which were identified as relevant to the proposed development:

- SEPP (Major Development) 2005
- SEPP (Infrastructure) 2007
- SEPP No 55 Remediation of land
- SEPP (Housing for Senior or people with a Disability) 2004

SEPP (Major Development) 2005

The aims of this Policy are to:

- (c) *to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the orderly use, development or conservation of those State significant sites for the benefit of the State,*
- (d) *to facilitate service delivery outcomes for a range of public services and to provide for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes.*

Pursuant to the requirements of this SEPP, the application is referred to the Hunter & central Coast Joint Regional Planning Panel as the development has a capital investment value of more than \$20million. The application submitted to Council nominates the capital investment value of the project at \$22.1 million.

SEPP (Infrastructure) 2007

The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by:

- (a) *improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and*
- (b) *providing greater flexibility in the location of infrastructure and service facilities, and*
- (c) *allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*

- (d) *identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and*
- (e) *identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
- (f) *providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.*

In line with these aims the application was referred to the NSW Roads and Maritime Service (RMS) for general advice and guidance.

The RMS subsequently advised on the 20 March 2016 that they raise no objections to the proposal subject to the imposition of a number of conditions of consent. The recommended conditions are aimed at ensuring that the proposed residential care facility has minimal impact on the surrounding local road network.

A copy of the RMS response is attached, as **Appendix C** and all the recommendations are included in the draft conditions of consent.

SEPP No 55 Remediation of land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Under the provisions of Clause 7 of SEPP 55, consent must not be granted to the carrying out of any development on land unless it has considered whether the land is contaminated. If the land is found to be contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state or can be remediated to be made suitable for the purpose for which the development is proposed to be carried out.

A phase one assessment of the subject land has been undertaken and the results indicate that the site is not identified as being contaminated from any current and/or past activities or land uses, and is suitable for the proposed development.

SEPP (Housing for Seniors or People with a Disability) 2004

The aims of this Policy are to:

- (a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) *make efficient use of existing infrastructure and services, and*
- (c) *be of good design.*

To achieve these aims, the Policy specifies both development standards and objective criteria that must be met. The following provides a summary of the current proposal against the relevant provisions of the SEPP:

Table 3: SEPP (Housing for Seniors or People with a Disability) Consideration

Provision	Comment	Compliance
<i>Clause 4 - Land to which Policy applies</i>	SEPP Seniors applies to land where the zoning allows <i>dwelling</i> s or <i>residential flat buildings</i> to be permissible. The subject site is zoned <i>R2 Low Density Residential</i> under the provisions of NLEP 2012 and both the required land uses are permissible, hence the SEPP Seniors applies to the subject land.	YES
<i>Clause 10 -</i>	The proposal is for residential care accommodation that is	YES

Provision	Comment	Compliance
<i>Seniors housing</i>	intended to be used permanently for seniors.	
<i>Clause 11 - Residential Care Facilities</i>	The application has been assessed and is considered to meet the requirements of the following ' <i>residential care facility</i> ' definition: <i>'residential care facility is residential accommodation for seniors or people with a disability that includes:</i> <ul style="list-style-type: none"> <i>(a) meals and cleaning services, and</i> <i>(b) personal care or nursing care, or both, and</i> <i>(c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, not being a dwelling, hostel, hospital or psychiatric facility.'</i> 	YES
<i>Clause 16 - Development consent</i>	The application currently before the JRPP is seeking the required consent so as to comply with this requirement.	YES
<i>Clause 17 - Adjoining Urban Zoned Land</i>	All land surrounding the subject site is zoned R2 Low Density Residential	YES
<i>Clause 18 - Restrictions on occupation of seniors housing allowed under this Chapter</i>	A condition must be imposed (i.e. statutory requirement of SEPP Seniors limiting the future resident groups of the development to only those allowable under the provisions of SEPP Seniors (e.g. aged or people with a disability) and this requirement is also to be registered as a restriction on the use of the land under the provisions of the <i>Conveyancing Act 1919</i> . The draft conditions in Appendix B include requirements to meet this provision.	YES
<i>Clause 21 - Subdivision</i>	The application currently before the JRPP is seeking the required consent so as to comply with this requirement.	YES
<i>Clause 22 - Fire Sprinkler</i>	The development will need to comply with the provisions of the BCA that stipulates the installation of fire safety services including a sprinkler system.	YES
<i>Clause 24 - Site Suitability Certificate</i>	The proposed development does not trigger the need to obtain a site compatibility certificate.	YES
<i>Clause 26 – Location & Access to facilities</i>	The applicant has provided the following statement in terms of this clause: <i>'The site is not within a 400m distance to the Cardiff Town Centre or Elernmore Vale Shopping Centre. The majority of the residents within the residential care facility are unlikely to be able to walk 400m without care assistance.</i> <i>As a suitable alternative, and given that the facility is for less-mobile elderly residents, the development proposes an 11 seat minibus which will provide transportation to and from local services as required.</i> <i>The provision of a safe, reliable mode of transport directly from the facility to the services is considered more appropriate and in the best interest of the residents rather than promoting residents to walk unaided and unassisted'.</i> The application further outlines a number of services that will be provided on the site including medical services, a hairdresser, library, café, art room, various leisure/amenity rooms & facilities. It is considered that the design provides for the required access within the subject site. It is considered that the requirements of this clause have been met.	YES
<i>Clause 27 - Bushfire Prone Land</i>	The NSW Rural Fire Service under the Integrated Development provisions of the Environmental Planning and Assessment Act 1979 has assessed the application. The NSW Rural Fire Service considered the proposal to be acceptable and have issued their <i>General Terms of Approval</i> that	YES

Provision	Comment	Compliance
	<p>have been incorporated within the recommended conditions of consent appended as Appendix B. A copy of the RFS response is attached, as Appendix E and all the recommendations are included in the draft conditions of consent.</p> <p>It is considered that the proposal is acceptable in terms of bushfire prone lands.</p>	
<i>Clause 28 - Water and sewer</i>	The site has access sewer and water services. A condition requiring the submission of a Section 50 Certificate from Hunter Water Corporation prior to the release any Construction Certificate is included within the draft conditions as recommended.	YES
<i>Clause 29 Site Compatibility</i>	<p>As noted above, clause 24 does not apply to this development and such, this clause is applicable. In this respect, it is noted that the subject land is zoned residential and the proposed use is considered to be compatible with the surrounding natural environment (including known significant environmental values, resources or hazards) as well as the existing uses and approved uses of land in the vicinity of the proposed development.</p> <p>It is also considered that adequate services and infrastructure will be available to meet the demands arising from the proposed development. Specifically the proposed accessibility arrangement to access retail, community, medical and transport services and any proposed financial arrangements for infrastructure provision, It is further considered that the likely impact of the development in terms of its bulk, scale, built form and character will not have an undue adverse impact on the surrounding existing uses, approved uses and future uses of land in the vicinity of the development,</p>	YES
<i>Clause 30 - Site Analysis</i>	A site analysis was submitted with the application that met the requirements of this clause. The analysis is included in the documentation attached as Appendix A .	YES
<i>Clause 32 - Design Principals</i>	The proposed development has been designed in accordance with the principles as set out in Division 2 of this SEPP. The design has been prepared by Jackson Teece Architects who have extensive experience and are recognised as suitably qualified to undertake the design. These principles are expanded upon further in the following sections of this table.	YES
<i>Clause 33 Neighbourhood Amenity and Streetscape</i>	<p>The design and location of the development is considered to have an acceptable impact on the amenity of the immediate neighbourhood and on the Cardiff Road streetscape. The site is large (15,660m² in area) and it is considered that the proposal's height, bulk and scale are consistent with the constraints and opportunities of the land</p> <p>It is assessed that the development a high quality architectural design and is aesthetically compatible with the established character of the area. The design provides for articulation and interest via the combination of clever design, complimentary materials, varied external finishes and good fenestration. The design of the building is considered to be appropriate for the needs of its intended future occupants and will sit comfortably within the existing natural and built environment.</p>	YES
<i>Clause 34 – Visual and Acoustic Privacy</i>	<p>The proposal has been specifically designed incorporating generous setbacks to ensure adequate separation from neighbouring development to the north, east and west. As such, it is assessed that the proposal poses no adverse privacy impact issues.</p> <p>The southern setback is variable but is 13.9m at its closest. The proposal is considered to have minimal privacy impacts towards the south due to the building layout, in combination with the slope</p>	YES

Provision	Comment	Compliance
	of land and the existing and proposed landscaping. The applicant has submitted an acoustic report which demonstrates that the proposal will meet the acoustic criteria under SEPP requirements.	
<i>Clause 35 – Solar Access and Design for Climate</i>	It is considered that the layout of the proposed building achieves good solar access, particularly for its residents during the cooler months. There are generous north and east facing windows, and minimal unprotected openings in the western & southern facades. The applicants have submitted shadow diagrams for the proposal which demonstrates that the shadowing impact on the neighbouring properties is minimal.	YES
<i>Clause 36 Stormwater</i>	A comprehensive stormwater management plan (SMP) has been submitted with the application and the methods proposed are assessed as achievable and sustainable. Despite the topography of the land and the substantial amount of hard surfacing that will result from the development, the proposed SMP should ensure that there would be minimal adverse impact from stormwater upon adjoining landholders.	YES
<i>Clause 37 – Crime Prevention</i>	The application has been assessed having regard to 'Crime Prevention Through Environmental Design' principles and is considered to be acceptable.	YES
<i>Clause 38 – Accessibility</i>	The proposal has been specifically designed with the needs and requirements of its intended future residents in mind. In this respect universal accessibility has been the central theme in terms of spatial layout; the juxtaposition of facilities and services; the size and dimension of rooms; the provision of facilities and fixtures; and connectivity. The design provides for large indoor and outdoor areas that are level and accessible via lifts, including site specific elements (i.e. secure dementia areas).	YES
<i>Clause 39 – Waste Management</i>	The proposal is designed to achieve waste collection via a private commercial contractor that is operationally acceptable in this instance.	YES
<i>Clause 40 – Development Standards</i>	<p>This clause specifies a number of important development standards that a proposal must comply with. These include:</p> <ul style="list-style-type: none"> • 40(2) – Minimum 1000m² site area. The proposed site area is 17,200m² and therefore complies. • 40(3) – Minimum 20m frontage. The proposal does not comply with this requirement as the frontage proposed measures 18.32m. <p>In support of this non-compliance, the applicants have submitted a SEPP 1 Objection which is discussed below:</p> <p><u>SEPP 1 Objection</u></p> <p>The applicants have argued in their Objection that:</p> <ol style="list-style-type: none"> a) Compliance with the development standard is unnecessary in the circumstances of the case, and b) There are sufficient environmental planning grounds to justify contravening the development standard. <p>In considering the Objection, it is noted firstly that the development standard is contained within the SEPP and secondly, that there is no specific objective(s) within this Environmental Planning Instrument (EPI) underpinning it. This presents some complexities in understanding the foundation of why this particular distance has been determined as being the most appropriate or necessary for these types of developments. It is assumed that the minimum frontage dimension is to ensure:</p> <ol style="list-style-type: none"> 1. Adequate safe access can be gained when entering and 	YES

Provision	Comment	Compliance
	<p>exiting the site (vehicles and pedestrians);</p> <ol style="list-style-type: none"> Such developments are able to have visual presence and a profile in the streetscape; Ability to facilitate sufficient area for the provision of services and utility infrastructure; and The lots created are of a width that can facilitate good design outcomes in terms of the principles as set-out in Division 2 of the SEPP. <p>The request to vary the development standard is based on the following justification from the applicant: <i>Objection to Clause 40 (3) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 to justify a proposed frontage of 18.32 meters:</i></p> <ul style="list-style-type: none"> <i>The proposed street frontage of 18.32 meters is only moderately under the allowable width of 20 meters (a difference of only 1.68 meters) which represents a minimal reduction of 8.5%;</i> <i>The development site, and the access point, is constrained by existing residential lots therefore the street frontage cannot be increased;</i> <i>The street frontage represents the only access point to the development site due to the presence of surrounding residential dwellings. It was also the access point for the previous use at the site;</i> <i>The existing street frontage was considered suitable for the previous development at the site;</i> <i>The proposed residential care facility has considered the aims of the policy and achieves the objectives through good design and by providing a development that meets the needs of the local population that offers a facility for local residents that would like to remain in the area when they require assistance; and</i> <i>The development encourages the provision of housing that meets the needs of seniors or people with a disability.</i> <p>An assessment of the request has been undertaken and it is considered that:</p> <ol style="list-style-type: none"> It adequately addresses the matters required to be demonstrated by SEPP1; and The proposed development will be in the public interest because it is consistent with the overall objectives for development within the zone in which the development is proposed to be carried out. <p>The proposed variation is of a minor nature and is considered acceptable under these circumstances.</p> <ul style="list-style-type: none"> 40(4)(a) – The 8m height limit under this clause is not applicable as it only applies where residential flat buildings are prohibited within the zone. Under the provision of the R2 zone, 'Residential Accommodation' (which includes a residential flat building) is permissible. 	
<i>Clause 44 - Staging</i>	The development does not include a proposal for staging. All facilities and services will be available when the facility first commences operation.	YES
<i>Clause 46 - Interrelationship</i>	It is considered that in the design and layout of the proposed development has had due regard for principals as set-out in Division 2.	YES
<i>Clause 47 - Heritage</i>	This clause is not applicable to this development application, as the subject land and all the adjoining lands are not listed for their	YES

Provision	Comment	Compliance
	<p>cultural heritage values, and the lands are not within a designated conservation area. The site also does not contain any known archaeological relics.</p> <p>A search of AHIMS has revealed that there are no places or items of indigenous heritage and/or archaeology on the subject site or on adjoining lands.</p>	
<p><i>48 - Standards that cannot be used to refuse development consent for residential care facilities</i></p>	<p>The consent authority, in this instance the H&CC JRPP must not refuse consent to a development application for a residential care facility where it meets the following requirements:</p> <p>(a) <i>Building height: 8 metres or less.</i></p> <p>The proposal exceeds this height by approximately 700mm. The area of non-compliance is situated towards the middle of the building and essentially comprises architectural design elements and services infrastructure. The elements themselves have negligible environmental impact (i.e. view impact, overshadowing, etc.) but they do contribute positively to the overall design and external appearance of the building. It is also noted that non-compliance with this standard does not preclude the consent authority from approving the proposal. Non-compliance simply prevents the consent authority refusing the proposal based on this control.</p> <p>(b) <i>Density and scale: 1:1 or less.</i></p> <p>The proposal complies with this subclause having a FSR of approximately 0.4:1.</p> <p>(c) <i>Landscaped area: Minimum of 25m²/bed.</i></p> <p>The proposal complies with this subclause having well in excess of 25m² per bed.</p> <p>(d) <i>Parking for residents and visitors: if at least the following is provided:</i></p> <p>(i) <i>One parking space for each 10 beds in the residential care facility (or one parking space for each 15 beds if the facility provides care only for persons with dementia), and</i></p> <p>(ii) <i>One parking space for each two persons to be employed in connection with the development and on duty at any one time, and</i></p> <p>(iii) <i>One parking space suitable for an ambulance.</i></p> <p>The proposal provides for 49 parking spaces (i.e. inclusive of two accessible parking spaces). The proposal also includes a designated ambulance bay.</p>	YES
<p>Clause 55 - Fire Sprinkler Systems</p>	<p>The proposed development is to have installed a full fire sprinkler systems in accordance with the provisions of this SEPP and the BCA.</p>	YES

There are no other SEPP's relevant to the consideration of this development proposal.

4.3 Local Environmental Plan 2012

The subject site is zoned *R2 Low Density Residential* pursuant to Newcastle Local Environmental Plan (NLEP) 2012. The objectives of the R2 zone area to:

- *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 accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.*

The proposal is defined as a '*residential care facility*' meaning:

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,

but does not include a dwelling, hostel, hospital or psychiatric facility.

The proposed use is permissible in accordance with the land use tables for the zone with development consent and the proposal is considered to be consistent with the zone objectives.

The proposed development is also assessed as being compatible with the future character and amenity aspirations for the general area.

The following table summarises an assessment of the proposed development against the aforementioned objectives and all other relevant provisions of NLEP 2012:

Table 4: Newcastle LEP Consideration

Provision	Comment	Compliance
<i>Cl.1.2 - Aims of Plan</i>	The proposed development application is consistent with the overall aims of the NLEP 2012.	YES
<i>Cl.1.3 – Land to which the plan applies</i>	The DA seeks consent for demolition, a residential care facility and subdivision in the Newcastle LGA which is under the jurisdiction of the NLEP 2012	YES
<i>Cl.1.4 - Definitions</i>	The existing and proposed uses of the land conform with the definitions as contained within the dictionary to NLEP 2012 and are permissible in the zone.	YES
<i>Cl.1.6 – Consent Authority</i>	Hunter & Central Coast Joint Regional Planning Panel is the responsible authority for determining this development application.	YES
<i>Cl.1.8A – Saving Provisions</i>	This clause is not applicable to this development application as there are no savings provisions within the NLEP 2012 relevant to the consideration of this proposal.	N/A
<i>Cl.1.9A – Suspension of covenants, agreements and instruments.</i>	This clause is not applicable to this development application as there are no encumbrances on the development site likely to be affected by the three elements encompassing this proposal.	N/A
<i>Cl.2.2 - Zoning of land to which Plan applies</i>	The land is located within the R2 – Low Density Residential Zone.	YES
<i>Cl.2.3 - Zone objectives and land use table</i>	The proposed development application is entirely consistent with the objectives of the zone and is permissible under the land use table.	YES
<i>Cl.2.4 – Unzoned Land</i>	This clause is not applicable to this development application as there is no part of the site that is not zoned.	N/A
<i>Cl.2.5 – Additional permitted uses for particular land</i>	This clause is not applicable to this development application, as the land is not identified in Schedule 1.	N/A
<i>Cl.2.6 - Subdivision</i>	Consent is being sought for a 2-Lot subdivision (Boundary Adjustment).	YES
<i>Cl.2.7 – Demolition</i>	Consent is being sought for the demolition of the existing commercial building and ancillary structures.	YES
<i>Cl.2.8 -</i>	This clause is not applicable to this development application	N/A

Provision	Comment	Compliance
<i>Temporary Use of the Land</i>	as a temporary use is not proposed.	
<i>Cl.3.1 – Exempt Development</i>	This clause is not applicable to this development application as there is no known exempt development components associated with the proposal.	N/A
<i>Cl.3.2 – Complying Development</i>	This clause is not applicable to this development application as there is no known complying development components associated with the proposal.	N/A
<i>Cl.3.3 – Environmentally Sensitive Areas</i>	This clause is not applicable to this development application as the proposal does encompass land identified on the Sensitive Land Map.	N/A
<i>Cl.4.1 - Minimum subdivision Lot size</i>	The minimum allotment size applicable to the subject land is 450m ² . As noted above, both proposed Lots 10 & 11 exceed this minimum.	YES
<i>Cl.4.1AA – Community Titles Subdivision</i>	This clause is not applicable to this development application as the proposal seeks consent for a Torrens Title subdivision.	N/A
<i>Cl.4.1A – Exceptions to minimum lot size</i>	This clause is applicable to this development application, as the lots to be created do not necessitate exemptions.	N/A
<i>Cl.4.3 – Height of Buildings</i>	<p>This clause is applicable to this development application, and specifies a maximum 8.5m height limit. The proposed development has an overall height of 8.6 meters.</p> <p>The objectives of clause 4.3 of NLEP 2012 are:</p> <p>(a) <i>to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,</i></p> <p>(b) <i>to allow reasonable daylight access to all developments and the public domain.</i></p> <p>Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:</p> <ol style="list-style-type: none"> 1. Clause 4.3 is not expressly excluded from the operation of this clause; and 2. The applicant has prepared a written request seeking support to vary the development standard and demonstrating that: <ol style="list-style-type: none"> a) compliance with the development standard is unnecessary in the circumstances of the case, and b) there are sufficient environmental planning grounds to justify contravening the development standard. <p>The applicants submit that the height development standard is unnecessary in this instance due to the following reasons:</p> <ul style="list-style-type: none"> • <i>The design of the development has considered the established built form in the area and although there are very few examples of three storey buildings (two storey building with excavated basement) in the vicinity the design and building setbacks result in a positive outcome for an underutilised site;</i> • <i>Shadow diagrams provided within the DA demonstrate that the proposed development will not have a negative impact on the adjoining properties to the north, east and west. The majority of the proposed development is</i> 	YES

Provision	Comment	Compliance
	<p><i>generally within the 8m nominated height and also the 8.5 meters height control for surrounding properties. Although some parts of the building exceed 8.5 meters, these areas are reflective of the pitched roof form and are not necessarily eave heights (refer to enclosed building height figures);</i></p> <ul style="list-style-type: none"> <i>• It is considered that the overall design and location of the proposed development responds in a positive way to the topography and vegetation on site and will not create adverse privacy or overshadowing issues for surrounding residential properties;</i> <i>• The high section of the skillion architectural roof feature provides space for small windows on the western aspect of the development. These windows play an important design role in providing passive lighting and cooling of the living and dining area located on the second floor of the development. The development does not obstruct the daylight to any surrounding properties or the public domain; and</i> <i>• Appropriate setbacks of buildings have reduced overshadowing even with some parts of the buildings exceeding 8.5 meters.</i> <p>An assessment of the request has been undertaken and it is considered that the variation to the height standard is reasonable in this instance having regard to the criteria under Clause 4.6; the zone objectives; the objectives of Clause 4.3 and as assessment of the likely impacts of the proposal.</p> <p>It is noted with the design that the third subfloor level is partially created via excavation of the existing ground levels and does not increase the height of the overall proposal as defined under the NLEP 2012, which is based on natural ground levels.</p> <p>It is considered that the applicants have adequately addressed the objectives of Clause 4.6. The development, as a residential care facility has proposed a relatively large floor plate along the axis of the contours of the site to minimise the extent of impact and cut/fill.</p> <p>Strict compliance with the height limit would likely require the overall development to either be smaller, undertake more significant earthworks to cut into the site and/or spread out further down the slope on multiple levels which would be considered problematic for a <i>residential care facility</i> and its future residents (i.e. as opposed to multi-unit housing generally).</p> <p>A merit assessment of the proposed development confirms, that the likely resultant impacts in terms of privacy, overshadowing, streetscape, character of the locality, bulk scale and context are acceptable.</p> <p>Lastly, whilst it was not argued in the applicant's submission, it is apparent that areas of non-compliance largely relate to element as identified in clause 5.6 (Architectural roof features) of the LEP. These are architectural design elements that are considered to "contribute to the building design". Whilst all the area of non-compliance cannot be categorised</p>	

Provision	Comment	Compliance
	<p>as an 'architectural feature', there is a substantial portion that could fall within this definition. Particularly the area above the central entrance and main reception.</p> <p>It is considered that the proposed variation to the height development standard is acceptable in this instance as it:</p> <ul style="list-style-type: none"> • It adequately addresses the matters required to be demonstrated by clause 4.6(3); and • The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the overarching objectives for development within the zone in which the development is proposed to be carried out. 	
<i>Cl.4.4 – Floor Space Ratio</i>	This clause is applicable to this development application. The maximum FSR for the site under the LEP is 0.6:1. The residential care facility has a proposed FSR of 0.40:1.	YES
<i>Cl.4.6 – Exceptions to Development Standards</i>	<p>As noted above, the applicants are seeking to vary clause 4.3 and it is considered that the proposed variation to the height development standard is acceptable in this instance as it:</p> <ul style="list-style-type: none"> • It adequately addresses the matters required to be demonstrated by clause 4.6(3); and • The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the overarching objectives for development within the zone in which the development is proposed to be carried out. 	YES
<i>Cl.5.1 – Acquisition Authority</i>	This clause is not applicable to this development application, as there is no reservations or acquisition requirements affecting the subject lands.	N/A
<i>Cl.5.2 – Classification and Reclassification</i>	This clause is not applicable to this development application as the land is in private ownership.	N/A
<i>Cl.5.3 – Zone Boundary</i>	This clause is not applicable to this development application, as the subject site is not located on, or adjacent to a zone boundary.	N/A
<i>Cl.5.4 – Miscellaneous Permissible Uses</i>	This clause is not applicable to this development application, as the proposed land use is not listed in the clause.	N/A
<i>Cl.5.5 – Coastal Zone</i>	This clause is not applicable to this development application, as the existing land is not located within an area designated as a coastal zone.	N/A
<i>Cl.5.6 – Architectural Roof Features</i>	This clause is applicable to this development application there are elements in the design that constitute architectural roof features that breach the 8.5m height limit. These have been discussed previously in this report under clause 4.3.	YES
<i>Cl.5.7 – Mean High Water Mark</i>	This clause is not applicable to this development application, as the proposed building will not be below the mean high water mark.	N/A
<i>Cl.5.8 – Fire Alarms</i>	This clause is not applicable to this development application, as technically the works do not comprise a 'conversation'. However, due to the nature, size and type of building, a fully integrated fire and smoke alarm system will be installed in accordance with the requirements of the BCA.	N/A
<i>Cl.5.9 – Preservation of Trees & Vegetation</i>	<p>This clause is applicable to this development, as the proposal will necessitate the removal of number existing trees from the site. These trees include a mix of native and exotic species of varying age and condition.</p> <p>An Arborist Report has been submitted with the application</p>	YES

Provision	Comment	Compliance
	<p>that has assessed all 37 trees in terms of their type, location and health, as well as their environmental and visual values. It is noted that twenty-eight (28) of the thirty-seven (37) trees assessed will require removal in order for the development to proceed in its current form. Of these, four trees have been assessed as requiring immediate removal regardless of how the project proceeds due to their present condition. Additionally, a further three trees have been recommended for removal due to their species (i.e. camphor laurel). The removal of the trees will have a noticeable visual impact on the site; however this is unavoidable having regard to the size, design and nature of the proposal.</p> <p>Concerns were raised with the applicant during the initial discussions regarding the amount of trees to be removed, given the number of trees identified as being of high retention value. In acknowledgment, the applicant submitted an amended landscape plan that increased the number of trees to be retained. The landscape plan has also identified areas available on the site for compensatory planting to mitigate the loss of habitat, and provide conditions conducive for the protection of native species of flora and fauna.</p> <p>Whilst the overall tree loss arising from this proposed development is notable, it is likely any substantive development on the land will have a similar impact. Careful planning can assist, and will support in retaining a number of significant trees on the site and when combined with the compensatory plantings as proposed, the resultant landscape is considered to be balanced outcome.</p> <p>A copy of the Landscape Concept Plan, including the tree retention plan and compensatory planting, has been included in Appendix A.</p>	
<i>Cl.5.9AA – Preservation of Trees & Vegetation not Prescribed</i>	This clause is applicable to this development application, and the proposal is deemed acceptable in relation to the NDCP guidelines on tree management.	YES
<i>Cl.5.10 – Heritage</i>	<p>This clause is not applicable to this development application, as the subject land and all the adjoining lands are not listed for their cultural heritage values and the lands are not within a designated conservation area.</p> <p>The site also does not contain any known archeological sites or relics.</p>	N/A
<i>Cl.5.11 – Bushfire</i>	<p>This clause is applicable to this development application, as the subject lands have been assessed as being bushfire prone due to a combination of vegetation cover, aspect, orientation and the prevailing climatic conditions.</p> <p>As such, the proposed development is classified as integrated development under Section 91 of the Environmental Planning and Assessment Act 1979, requiring the issuing of a bushfire safety authority under Section 100B of the Rural Fire Act 1997.</p> <p>The application is supported by a bushfire report which was referred to the NSW Rural Fire Service (RFS) for review and assessment. The RFS subsequently advised on the 18 May 2016 that they raise no objections to the proposed development and have issued a bushfire safety authority with conditions. Based on the above, it is considered that the future development of the residential care facility can be achieved without posing an undue risk to person and</p>	YES

Provision	Comment	Compliance
	property. A copy of the response from the RFS is attached as Appendix E.	
<i>Cl.6.1 – Acid Sulfate Soils</i>	This clause is applicable to this development application, as the land is identified as Class 5 with potential to be affected by acid sulfate soils (ASS). It is noted that any works within 500m of an adjacent class of ASS, encompassing works to a depth below 5m AHD requires an ASS Management Plan. Whilst it is noted that the proposed development is not within 500m of Class 3 ASS, as the subject site contains potential ASS, a management should form part of the Construction Environmental Management Plan for the site.	YES
<i>Cl.6.2 – Earthworks</i>	This clause is applicable to this development application, as the proposal will entail substantial earthworks and changes to the existing topographic features of the site. An assessment of the proposed earthworks has found that they will not unduly effect existing drainage patterns or soil stability in the area. The excavations will not detrimentally affect adjoining and adjacent land owners in terms of amenity in the long-term, although there will be some short-term impacts when there construction works are being undertaken. There are no existing or potential relics identified on the site, and the site does not adjoin a waterway, watercourse or water catchment area. A number of conditions of consent are recommended to address erosion and sedimentation issues and these are set-out the draft conditions in Appendix B	YES

Overall, the proposal achieves a satisfactory level of compliance with both the numerical standards and objective criteria as contained within Newcastle Local Environmental Plan 2012. The proposed variation to clause 4.3 (height of buildings) is considered to be well founded and in conformity with the requirements of clause 4.6 (Exceptions to development standards). The variation is recommended for support.

The proposed development, including the subdivision layout is of a size and format that is compatible with the surrounding natural and built environment; the existing subdivision pattern of the locality; and will meet the operational needs and requirements of the residential care facility. Approval of the proposal on the large battle-axe allotment will not unduly detract from the established character of the area.

It is also considered that the proposal will not generate any additional adverse impacts upon the adjoining owners and residents that would diminish their current amenity levels.

4.4 Draft Environmental Planning Policies

There are no Draft Environmental Planning Policies relevant in the consideration of this proposed amended subdivision layout.

4.5 Development Control Plans

The predominant purpose of the Newcastle Development Control Plan (NDCP) 2012 is to outline both the administrative procedures and built form controls to guide development in the Newcastle local government area. It compliments and is subservient to the requirements of NLEP 2012.

Section 79C of the Environmental Planning & Assessment (EPAA) 1979, requires the consent authority to take into consideration the relevant provisions of any applicable DCP in the assessment and determination of a development application.

The five (5) main sections of NDCP 2012 relevant to the consideration of this proposal include:

- Section 3 - Landuse Provisions
- Section 4 - Risk Provisions
- Section 5 - Environmental Protection
- Section 7 - Development Provisions
- Section 8 - Public Participation

The following table summarises the consideration of the proposed development against the relevant provisions of NDCP 2012:

Table 5: Newcastle DCP Considerations

Section	Comment	Compliance
<i>3.01 - Subdivisions</i>	The proposal comprises a subdivision (minor boundary adjustment) encompassing both Lot 39, DP 711005 and Part Lot 402, DP 814439. An area of land 1,551m ² in size is to be excised from Lot 402 DP 814439 and then consolidated with Lot 39 DP 711005. A plan of proposed subdivision is contained in Appendix A . The proposed subdivision component of the development complies fully with the DCP requirements.	YES
<i>3.08 - Seniors Housing</i>	This section of the DCP requires that the proposed development must conform to the provisions and guidelines outlined in SEPP (Housing for Seniors or People with a Disability) 2004. Refer to section 4.2 of this report above.	YES
<i>4.01 - Flood Management</i>	As noted in section 4.3 of this report, the subject land is not flood prone.	YES
<i>4.02 - Bushfire Protection</i>	As noted in section 4.3 above, the proposed development is classified as 'integrated development' under Section 91 of the Environmental Planning and Assessment Act 1979, requiring the issuing of a bushfire safety authority under Section 100B of the Rural Fire Act 1997. The application was supported by a bushfire report which was referred to the NSW Rural Fire Service (RFS). The RFS has issued the bushfire safety authority with conditions.	YES
<i>4.03 - Mine Subsidence</i>	The site is within a Proclaimed Mine Subsidence District. The Mine Subsidence Board has assessed the proposal and has issued their General Terms of Approval subject to the imposition of a number of conditions of consent. The recommended conditions are contained in the draft conditions as attached as Appendix B	YES
<i>4.04 - Safety & Security</i>	The proposed development provides for passive surveillance of the internal circulation areas and communal spaces. The spatial layout of the buildings ensures that windows overlook communal spaces including gardens and courtyards providing casual surveillance. Lighting is to be provided around entrances and footpaths, and there is a lit pathway from the car park to the building. The internal driveway design should ensure low speed traffic movements to facilitate pedestrian safety. As such, the proposed development is considered acceptable in relation to safety and security.	YES

Section	Comment	Compliance
<i>4.05 - Social Impact</i>	It is considered that the proposal will have a net positive social and economic benefit to the community. This includes in the short-term the creation of a number of construction jobs. In the longer term, permanent employment opportunities will arise for skilled and unskilled workers at the facility. However, more importantly the facility will provide much needed beds for aged and/or disability care in the immediate area. Particularly those members of the local community who prefer to remain in the local area. The proposed development will also encourage social interactions for seniors within a managed and structured residential community.	YES
<i>5.01 - Soil Management</i>	The design ensures that minimal retaining walls are required to the site boundaries. The required erosion and sediment control details have been provided and appropriate conditions of consent have been recommended to manage potential erosion and sediment control issues.	YES
<i>5.02 - Land Contamination</i>	There is no history of the site being used for contaminating activities and there is no evidence to suggest that there are any likely residue materials on the site of a contaminating nature. Notwithstanding, an Environmental Management Plan will be required for the demolition phase of the development to ensure the safe handling and disposing of potentially contaminated materials that may be uncovered during the demolition process.	YES
<i>5.03 - Tree Management</i>	Refer to section 4.3 of this report above for a detailed consideration of this matter.	YES
<i>5.04 - Aboriginal Heritage</i>	A search of the Aboriginal Heritage Information Management System (AHIMS) - NSW Department of Environment and Heritage, was carried out and no Aboriginal sites or places were identified. There was no physical evidence on site, such as rocky outcrops or the like, to suggest Aboriginal relics. The proposed development is considered acceptable in relation to the relevant provisions of the Newcastle DCP 2012.	YES
<i>5.05 - Archeological Management</i>	There are no recorded items of historical significance located on the subject site or within the immediate vicinity of the site.	YES
<i>7.01 - Building Design Criteria</i>	Refer to section 4.2 of this report above for a detailed consideration of this matter. The provisions of the SEPP replace the majority of criteria under this Section of the DCP effectively. The proposed development is considered acceptable in relation to the NDCP guidelines on building design and form. The development is of a scale appropriate for the residential precinct. The proposal achieves appropriate building depth and bulk and also provides for quality landscaping, external materials and finishes.	YES
<i>7.02 - Landscape, Open Space & Visual Amenity</i>	As required under this section, the application has been supported by a comprehensive Landscape Concept Plan and design report prepared by a landscape architect. The landscape concept plan demonstrates that the site will be suitably landscaped to compensate for the loss of tree canopy cover. The planting schedule provides for additional planting on site. The landscaping plan is consistent with the above section. A copy of the Landscape Concept Plan has been included in Appendix A.	YES

Section	Comment	Compliance
<i>7.03 - Traffic, parking & Access</i>	The traffic and access aspects have been assessed by Council's Senior Development Engineer and the Roads and Maritime Service (RMS) and are considered to be acceptable having regard to the terms of the NDCP 2012. The proposal complies with the parking requirements of SEPP Seniors, which prevail over the NDCP provisions. In summary, the access and parking areas are well integrated into the development and connectivity to the streetscape and are considered acceptable in relation to the NDCP guidelines.	YES
<i>7.04 - Movement Networks</i>	The proposed residential care facility provides accessible connectivity through the provision of internal paths, walkways and roads. The movement networks are universally accessible, achievable and logical in layout.	YES
<i>7.05 - Energy Efficiency</i>	The proposed residential care facility has been designed to maximise energy efficiency in design with good use of orientation, aspect and fenestration. The facility will need to use an air-conditioning system, due to the high-risk occupants who will be living there. However, there are also opportunities to maximize natural ventilation. Generous window sizes and favorable position of openings, as well as the internal layout of the building will enable adequate light to penetrate the interior of the building, minimizing electricity usage.	YES
<i>7.06 - Stormwater</i>	Council's Senior Stormwater Engineer has provided the following comments in terms of water management: 'The designers have proposed a number of roof water collection tanks with onsite reuse for toilet flushing, laundry usage and external irrigation. Overflow from the tanks and surface drainage will be collected and directed into gravel retention trenches located in the landscaped areas' The proposed site stormwater system has been designed to comply with the requirements of the water management Section of Council's current DCP'. Conditions are recommended to ensure that the submitted Concept Drainage Plan is implemented as part of the site development works.	YES
<i>7.07 - Water Efficiency</i>	The whole development will need to be fitted with water saving devices and fixtures in accordance with BCA requirements. This is feasible and achievable for this type of development, and is industry best practice.	YES
<i>7.08 - Waste Management</i>	As required under this section, a Waste Management Plan has been provided with the application. The proposal provides for a large storage area located near the main entry. The applicant has demonstrated that a heavy rigid vehicle (HRV) can access the site and leave in a forward direction. Waste on site will be disposed of through bulk skip bin system consisting of general bin and a recycling collected weekly, located in the service yard on the north side of the development. Each room has a small general waste bin collected on a regular basis. Based on the submitted information, the proposal is considered to be acceptable.	YES
<i>8.00 - Public Participation</i>	The application was notified in accordance with the above section and three (3) public submissions were received in response. The issues raised have been addressed below:	YES

Overall, it is considered that the three elements encompassing the total development individually and collectively comply fully with the requirements of Council DCP.

There are no other matters as prescribed by the Regulations applicable to the consideration and assessment of this proposal.

5. LIKELY IMPACT OF THE DEVELOPMENT

The following information considers the existing environment encompassing the development site; the potential impact of the development; and any proposed mitigation measures to minimise the impact of the development of the site and locality that have not been considered elsewhere in this assessment report.

5.1 Noise

The applicant has submitted an Acoustic Assessment prepared by Spectrum Acoustics which assesses the potential noise impacts on adjoining properties. Council's Regulatory Services Unit has reviewed the assessment and concurs with the recommendation to include acoustic attenuation measures to minimise potential noise impacts.

Council's Environmental Protection Officer has advised as follows:

'A theoretical noise assessment was carried out by Spectrum Acoustics dated December 2015 to support the proposed development. The noise assessment demonstrated that the typical operation of the aged care facility would be unlikely to significantly adversely affect surrounding receivers provided the recommendations of the assessment are applied. These recommendations will be addressed by appropriate conditions of consent.'

The likely resultant acoustic impacts of the proposal both during the initial construction, and later during the every-day operations of the facility are considered to be satisfactory subject to recommended conditions of consent in **Appendix B**.

5.2 Ecology

The applicant has submitted an Ecological Assessment prepared by RPS Australia. The report concluded that the proposed development *'is not considered to have a significant impact on any threatened flora or fauna in the local area'*. Council's Regulatory Services Unit has reviewed the assessment and concurs with this recommendation.

Council's Environmental Protection Officer has provided a detailed assessment as follows:

'The Ecological Assessment prepared by RPS Australia East Pty Ltd dated April 2015 has undertaken flora and fauna surveying within the proposed development site and was conducted in accordance with the Lower Hunter Central Coast Regional Environment Management Strategy 'Flora and Fauna Survey Guidelines'. Surveying identified one species listed under the Threatened Species Conservation Act 1995 within the proposed development site, the Little Bentwing-bat (Miniopterus australis). The Ecological Assessment prepared by RPS Australia East Pty Ltd dated April 2015 has also undertaken seven-part tests for species listed under the Threatened Species Conservation Act 1995 that may potentially inhabit the proposed development site. The Ecological Assessment prepared by RPS Australia East Pty Ltd dated April 2015 has concluded the proposed development will not result in a significant impact upon these species due to the highly modified nature of the vegetation at the proposed development site providing low quality habitat.'

Based on the evidence provided and an understanding of the site and surrounding natural environment, it is concurred that the proposed development will not unduly pose a significant threat to native flora and fauna.

6. THE SUITABILITY OF THE SITE FOR DEVELOPMENT

The site is within a proclaimed mine subsidence district and conditional approval for the proposed development has been granted by the Mine Subsidence Board.

The site is affected by bushfire threat and requires approval from the NSW Rural Fire Service. Approval (bushfire safety authority) has been issued by the NSW Rural Fire Service with a number of recommended conditions.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

7. SUBMISSIONS

The proposal was advertised in the media and to adjoining and adjacent property owners for a 28-day period in accordance with the Act. During the public exhibition period three (3) submissions were received. The issues raised in the submissions are outlined and addressed as follows:

Issue 1: *Application for possessory title of part of Lot 402 DP 814439.*

One of the submissions advises that no objections are raised to the development itself, however they object to the delineation of the property boundary between Lot 402, DP 814439 and Lot 421 DP 558517.

Comment:

The proposed subdivision layout and format comply fully with council's requirements. The resultant lots will be of a size, dimension and arrangement compatible with their intended landuse, and reflect the established subdivision pattern of the area.

Issue 2: *Stormwater concerns and potential effects on 9 to 13 and 17 Nerigai Close, Elmore Vale.*

Comment:

The submission raised concerns regarding the adequacy of the proposed stormwater drainage system for the future development. This is a valid issue and in response the applicants have prepared a detailed Stormwater Management Plan. The plan addresses both construction and post construction aspects of the development. The plan has been prepared in accordance with recognised standards and industry best practice. Provided the measures outlined in the plan are implemented, the likely stormwater impacts arising from the development will be minimal.

Issue 3: *Bulk and scale*

The submission argues that the bulk and scale of the proposed development is too large.

Comment:

It is agreed that the proposed residential care facility will be a substantial development. However, the proposed development is permissible in accordance with the land's zoning of 'R2 Low Density Residential' under *Newcastle Local Environmental Plan 2012*. It is also encouraged by the provisions of *State Environmental Planning Policy (Housing for Seniors or People with Disabilities) 2004*.

These important environmental planning instruments provide direction and guidance in the design of such facilities, as well as mandating specific development controls. These controls assist in ensuring that such developments are generally compatible with the adjoining locality and have minimal adverse effects.

The plans as submitted with the application reveal that the developer of the residential care facility has considered the aims of both the SEPP and NLEP, and specifically their objectives through good design and by providing a development that meets the needs of the local population. The facility will offer local residents the opportunity to remain in the area so as to maintain relationships and community networks. The design of the development has considered the established built form in the area and although there are very few examples of three storey buildings in the vicinity, the design and building setbacks result in a positive outcome for a large and currently underutilised site.

The proposed design incorporates appropriate setbacks for the buildings to minimise potential overshadowing of neighbouring properties, and the proposal provides building heights and street frontages which are compatible with the surrounding built environment.

The proposed development has considered the visual and acoustic privacy of surrounding properties and residents through the design in terms of the siting of balconies and windows; the incorporation of landscaping and locating bedrooms at appropriate distances from driveways and car parks.

The maximum building height for the subject site is 8.7m. Shadow diagrams provided within the DA demonstrate that the proposed development is unlikely to have a negative impact on the adjoining properties to the north, east and west. The majority of the proposed development is generally within the 8m nominated height and also the 8.5m height control for surrounding properties. Although some parts of the building exceed 8.5m (by approximately 200mm), these areas are reflective of the pitched roof form and are not necessarily eave heights.

The high section of the skillion architectural roof feature provides space for small windows on the western aspect of the development. These windows play an important design role in providing passive lighting and cooling of the living and dining area located on the second floor of the development. The development does not obstruct the daylight to any surrounding properties or the public domain.

The maximum Floor Space Ratio (FSR) for the subject site is 0.6:1. The overall FSR of the proposed development is 0.40:1 based on the total floor area of the building equalling 6,839m². This being the case, the proposed development satisfies the maximum FSR for the surrounding area under the *Newcastle Local Environmental Plan 2012*. Accordingly the bulk and scale of the proposed development is considered appropriate for the site.

Issue 4: *Ongoing noise issues of the proposed development*

Two of the submissions raise the concern that noise from the operation of the residential care facility will affect overall amenity in the area with one submission suggesting that noises generated by the testing and maintenance of back-up generators and the electrical sub-station will effect properties.

Comment:

A Noise Impact Assessment was prepared and submitted with the application. The assessment examined matters including traffic noise, car park noise, garbage collection and mechanical plant noise. The assessment concludes that there will be no significant adverse impacts on or from the proposal and that the facility can operate in compliance with noise limits as may be set by Council. Such noise limits will be based on procedures and criteria detailed in the *NSW Industrial Noise Policy*.

Issue 5: *Noise and dust issues during construction*

One of the submissions raises the issue of exposure to low levels of asbestos dust during demolition of the existing building.

Comment:

This is a valid issue and as such, it is recommended that appropriate conditions of consent be attached to any approval ensuring that the demolition works are undertaken appropriately. This will require that all asbestos waste on site will be removed and disposed in accordance with the regulations and guidelines and best practice for the removal of asbestos. With regard to the construction program, the relevant legislation; including the statutory provisions under the *Protection of the Environment Operations Act 1997*, will govern the level of noise and dust generated during the construction program.

Issue 6: *Light exposure during operation*

One of the submissions raises the issue of operational lighting of the proposed development including external lighting of the car park and possible overspill onto adjoining properties.

Comment:

A review of the development plans indicates that safety and security issues have been paramount in the design of the facility. Accordingly, external lighting will be provided to ensure all areas of the facility are lit commensurate with their intended after hours use. There is adequate lighting provided around entrances and footpaths, and there is a lit pathway from the car park to the building. Lighting of the car park is also provided.

It is noted that the car park is located in the south-west corner of the site. At its nearest point, the car park is approximately 15 metres from the property boundary of the nearest residential property being No.17 Nerigai Close. Existing vegetation between the car park and No.17 Nerigai Close is to be retained and protected. Likewise existing vegetation between the proposed buildings and other properties along Nerigai Close is to be retained and protected. With a combination of the setbacks and boundary vegetative screening, it is therefore considered that the future lighting arrangements for the external areas of the development site will not adversely affect the amenity of existing residents.

Issue 7: *Privacy and overshadowing issues on the western side of the site*

One submission suggests that the height of the development, its location with respect to property boundaries to the west and the removal of existing vegetation will create unacceptable privacy and overshadowing issues.

Comment:

The maximum building height at the facades closest to the adjoining property boundaries is less than 8.5m. Shadow diagrams provided within the DA demonstrate that the development will not have a negative impact on the adjoining properties to the north, east and west. The majority of the proposed development is within the 8.5m height control for the site and surrounding properties.

Existing vegetation between the edge of the proposed development and the western boundary of the site will be retained and protected. The width between the proposed development and the western boundary varies with an approximate minimum of 15 metres in some locations.

It is considered that the overall design and location of the proposed development responds in a positive way to the topography and vegetation on site, and the building will not create adverse privacy or overshadowing issues for surrounding residential properties.

Issue 8: *Visual impact of the western embankment*

One submission advises that the western embankment is currently littered with building debris and general waste.

Comment:

As part of the development works, it is expected that a general site clean-up will occur and all residue rubbish will be removed.

Issue 9: *Impact of current flora*

One submission advises that the subject site is currently festooned with Camphor Laurel trees which overshadow No. 17 Nerigai Close.

Comment:

The arborist report submitted with the application identified the removal of three *Cinnamomum camphora* (Camphor Laurel) trees along with 25 other trees. Accordingly removal of the three Camphor Laurel trees will be a positive outcome for the site.

Issue 10: *Car park adequacy and use of western easement for pedestrian access*

One submission contends that the number of car parking spaces provided is inadequate. The submission also contends that the western easement that ends at Nerigai Close will be used by employees, visitors and construction workers, thus using Nerigai Close as a car park.

Comment:

In responding to this issue, the applicant points out that the provision of car parking spaces, as documented within the Statement of Environmental Effects is based upon the provisions within *State Environmental Planning Policy (Housing for Seniors or People with Disabilities) 2004*. The minimum requirement for car parking is 27 spaces and 1 ambulance bay. The proposal exceeds this, offering 49 spaces, 4 of which are universally accessible spaces, and 1 ambulance bay. The number of car parking space as proposed is therefore considered to be adequate.

In relation to potential use of the western easement by pedestrians, it is noted that the only pedestrian and vehicle access to the site will be via the formal entry and access way from Cardiff Road. The proposed development does not include formal or informal pedestrian access via Nerigai Close.

The developer has also advised that there are "no visible signs of informal use of the western easement during the operation of the previous use, possible due to its steep terrain. Therefore it is considered very unlikely that the western easement will be used informally by pedestrians and such use will be actively discouraged by the operator of the residential care facility".

Based on the scale and design of the development, it is considered that the traffic and parking aspects of the proposed development are satisfactory. Further, it is considered that the likely traffic generation from the development will not exceed the design and construction standard of the surrounding road network.

This report has addressed the various concerns raised in the submissions received in response to the public notification and referral procedures under the Act and Regulation, and appropriate conditions have been recommended to address valid planning issues.

8. PUBLIC INTEREST

The proposed development does not raise any other significant general public interest issues beyond matters already addressed in this report.

9. CONCLUSION

Subject to a number of relevant conditions as recommended in the attached draft condition schedule, the proposal is considered to be acceptable against the relevant heads of considerations under section 79C of the Environmental Planning and Assessment Act 1979.

10. RECOMMENDATION

- A. That the Hunter & Central Coast Joint Regional Planning Panel note and support the clause 4.6 variation to clause 4.3 (Height of building) to enable the proposed development to be approved in its current form; and**
- B. That the Hunter & Central Coast Joint Regional Planning Panel approve DA 2016/00130 (Ref: 2016HCC012) for the demolition of the existing building and ancillary car park and the subsequent erection of an Aged Care Facility and Two (2) Lot Boundary Adjustment on Lot 402, DP 814439 and Lot 39, DP 711005, subject to the imposition of the nominated draft conditions of consent as detailed in Appendix B.**

APPENDIX A - Proposed Plans

APPENDIX B - Draft Conditions

APPENDIX C - RMS Comments

APPENDIX D - Mine Subsidence Comments

APPENDIX E - RFS Comments

APPENDIX F - Public Submissions

Comments from External Agencies

Agency	Comments
Transport Roads and Maritime Services (RMS)	
Rural Fire Service (RFS)	
Mine Subsidence Board (MSB)	
Department of Primary Industries Water	

Comments from Internal Departments

Department	Comments
Council's Environmental Officer	
Council's Traffic and Stormwater Officer	