

COUNCIL ASSESSMENT REPORT

Panel Reference	2016SYE087
DA Number	DA16/0994
LGA	Sutherland Shire Council
Proposed Development	Demolition of existing structures and extension to existing approved residential aged care facility
Street Address	Lot B, C DP 404838, Lot A DP 406146, Lot 1, 2 DP 408232, Lot 45, 46, 47 DP 6303 – 2, 2A & 4 Locksley Street and 31, 33, 35, 37 & 39 Sturt Road, Cronulla
Applicant/Owner	Pathways Property Group Pty Limited
Date of DA lodgement	2 August 2016
Number of Submissions	30
Recommendation	Refusal
Regional Development Criteria (Schedule 4A of the EP&A Act)	General Development over \$20 million
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004 (Seniors Housing SEPP) • Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015) • Draft Sutherland Shire Development Control Plan 2015 (DSSDCP 2015)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Public Submission summary • ARAP report • Clause 4.6 submissions by the applicant
Report prepared by	Slavco Bujaroski – Environmental Assessment Officer Sutherland Shire Council
Report date	3 November 2016

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes, but 2 more required

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

No

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

No

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY

REASON FOR REPORT

Pursuant to the requirements of Schedule 4A.3 of the Environmental Planning and Assessment Act 1979, this application is referred to the Joint Regional Planning Panel (JRPP) as the development has a capital investment of more than \$20,000,000. The application submitted to Council nominates the value of the project as \$21,266,900.

PROPOSAL

The application is for alterations and additions to an existing residential aged care facility at the above property. The amended proposal includes 98 beds in addition to the existing 87 beds, resulting in a total of 185 beds on the site. The proposal extends the existing building forms to the west so as to sit across the newly acquired lots with the facility having an additional street frontage to Locksley Street. Two additional vehicular access points are proposed off Locksley Street for service vehicles and staff car parking with the existing access and parking facility off Sturt Road now being for visitors only.

THE SITE

The subject site is located on the northern side of Sturt Road approximately 380m east of the intersection of Sturt Road and Woollooware Road and is an amalgamation of 8 lots. The site also has frontage to Locksley Street to the west which also intersects Sturt Road. The overall site has an area of 7,543.5m² and has a fall of approximately 12m from Sturt Road to the northern boundary adjoining the Cronulla Golf Course. The existing residential aged care facility has recently been completed and is currently in operation.

MAJOR ISSUES

The main issues identified are as follows:

- Compatibility with the context
- Building density and landscaped area
- Building height
- View loss
- Traffic and parking

CONCLUSION

Following detailed assessment of the proposed development the current application is not considered worthy of support, and should be refused for the reasons outlined in this report.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. Pursuant to the provisions of Section 80 of the Environmental Planning and Assessment Act, 1979, Development Application No. DA16/0994 for demolition of existing structures and extension to existing approved residential aged care facility at Lot B, C DP 404838, Lot A DP 406146, Lot 1, 2 DP 408232, Lot 45, 46 & 47 DP 6303 – 2, 2A and 4 Locksley Street and 31, 33, 35, 37 and 39 Sturt Road Cronulla be determined by the refusal of development consent for the reasons outlined below.
 - i. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the dwelling and landscaped character of the area will be diminished by the proposal and therefore be contrary to the objectives of Zone 2 contained within Sutherland Shire Local Environmental Plan 2015.
 - ii. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal significantly exceeds the density provisions contained within cl.48(b) of State Environmental Planning Policy (Housing for Seniors or People With a Disability) 2004 and would result in a development that is out of scale with the character of buildings in the locality, that would result in an adverse impact on existing views, adversely impact the amenity of adjoining properties by the placement of external fire stairs and landings and be of a bulk and mass that is not in harmony with its surroundings.
 - iii. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal does not achieve the landscaped area provision contained within cl.48(c) of State Environmental Planning Policy (Housing for Seniors or People With a Disability) 2004 and would result in poor external amenity for residents of the facility, that would result in a loss of opportunities for significant vegetation within the front setback and would not result in a development which provides a reasonable balance between built form and open space in the context of the site.
 - iv. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal exceeds the building height provisions contained within cl.40(4)(a) and (c) and cl.48(a) of State Environmental Planning Policy (Housing for Seniors or People With a Disability) 2004 and would result in a development which is out of scale with the low density residential character of the area, have an adverse impact on views obtained from neighbouring properties and result in poor solar access to communal areas of the facility.

- v. The application is considered unacceptable pursuant to the provisions of s.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal fails to satisfy the design principles relating to neighbourhood amenity and streetscape, visual and acoustic privacy and solar access and design for climate contained within cl.33, cl.34(a) and cl.35(b) respectively of the State Environmental Planning Policy (Housing for Seniors or People With a Disability) 2004.
- vi. The application is considered unacceptable pursuant to the provisions of s.79C(1)(e) of the Environmental Planning and Assessment Act 1979 in that approval of the significant breaches to the development standards relating to building height, density and landscaped area would set an undesirable precedent for similar development and therefore not be in the public interest.

ASSESSMENT OFFICER'S COMMENTARY

DESCRIPTION OF PROPOSAL

The application is for alterations and additions to an existing residential aged care facility at the above property. The proposed development is located over 5 lots in addition to the 3 lots that comprise the existing facility. In terms of capacity, the existing facility comprises 87 beds, 29 of which are part of a dementia wing. The amended proposal increases the overall capacity of the facility by 98 beds to a total of 185 beds with the dementia wing being increased from 29 beds to 55 beds overall.

The proposed additions generally extend the existing 2 / 3 storey building forms across the newly acquired lots to the west, except that, in relation to the building fronting Sturt Road, a new floor level is also proposed over the existing building. The building indicated as the 'Links Building' and the new 'Norfolk Building' adjoin the existing easement for sewer traversing the entire site, being separated by the width of the easement (approximately 6.1m). The building additions occur over all of the existing floor levels and can be described as follows:

Lower Ground Floor Level

- The existing 'Links Building' is extended to the west and includes a semi-basement level comprising an enclosed parking area for 9 cars and space for a rainwater tank. This parking level, shown as the 'lower ground floor' on the plans, has access to Locksley Street.

Ground Floor Level

- The ground floor level is extended to the west and comprises additional area for the kitchen and laundry and includes store rooms, an office, a staff training room, female bathroom, a staff lunch room and mechanical plant space. An enclosed parking area for 6 cars is provided on this level which also includes a loading area and garbage bin storage space. The car park has a 7.4m setback to the Locksley Street boundary.

- The existing 'Links Building', located adjacent to the northern boundary, comprises the dementia wing and is extended to the west, providing 13 additional beds on the ground floor and is located 6.3m from the Locksley Street boundary and 3m from the northern boundary.

First Floor Level

- The first floor level includes an addition to the existing 'Links Building', providing an additional 13 beds.
- The first floor also includes an addition to the west of the existing 'Pines Building' which sits between Sturt Road and the sewer easement. This addition is proposed as the 'Norfolk Building' and comprises an additional 33 beds, a dining space, lounge area and sitting spaces. Access to this new addition is through the existing 'Pines Building'.

Second Floor Level

- The second floor, being at approximately street level, includes an addition to the west of the existing 'Pines Building' and extends to the north. This addition is part of the new 'Norfolk Building' providing an additional 22 beds on this level, including lounge, dining and sitting spaces.

Third Floor Level

- A third floor level is proposed over the existing 'Pines Building' and extends across the Sturt Road frontage. This level comprises an additional 17 beds, a lounge / dining area and sitting spaces.

In addition to the building works, extensive landscaping and internal / external civil works are proposed. Two driveway crossings are proposed off Locksley Street connecting the street to the enclosed car parking and loading areas described above.

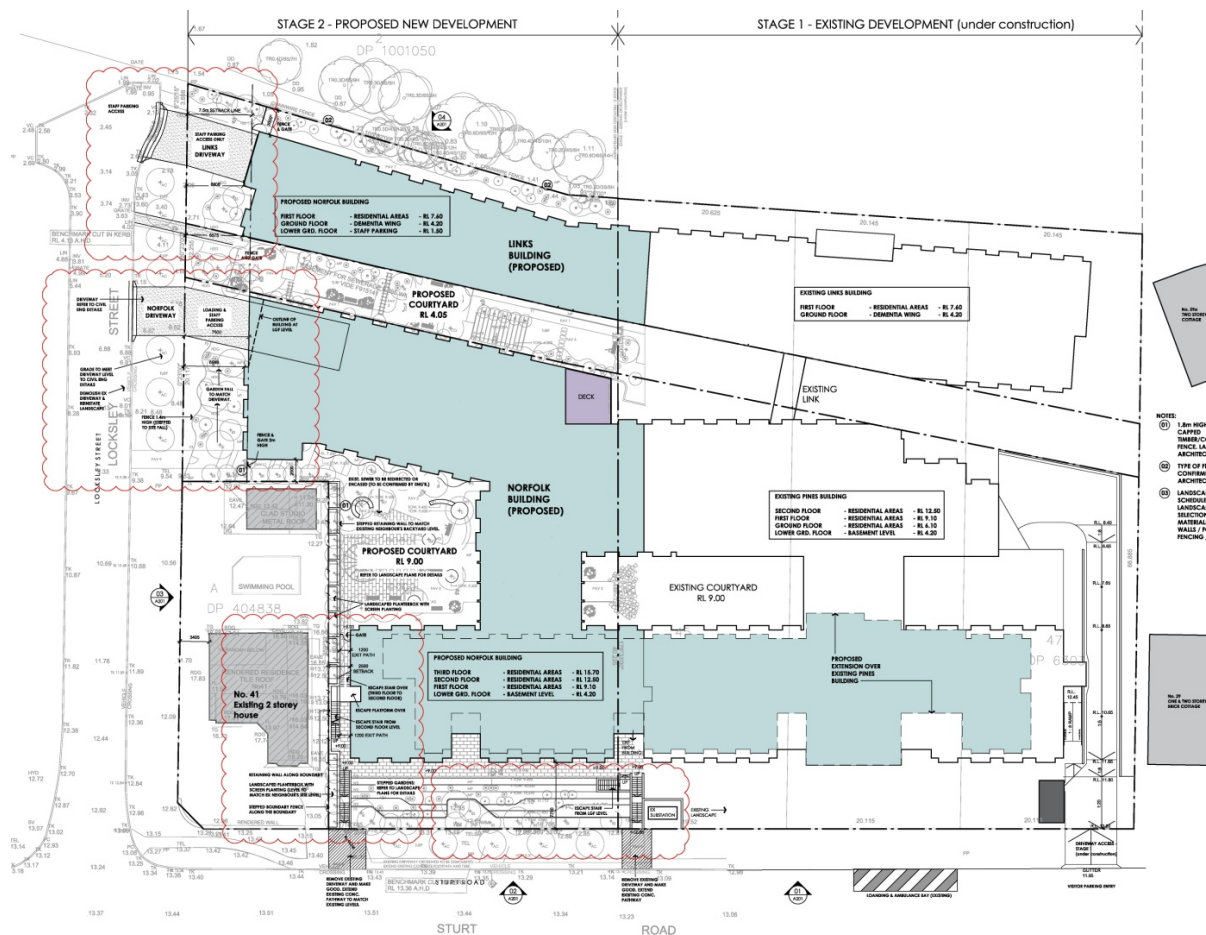


Figure 1: Site Plan

SITE DESCRIPTION AND LOCALITY

The subject site is located off the northern side of Sturt Road approximately 380m east of the intersection of Sturt Road and Woollooware Road. The site is an amalgamation of 8 lots and has frontage to Sturt Road and Locksley Street to the west. The site, while having 2 street frontages, is not a corner lot by virtue of not encompassing No.41 Sturt Road which sits at the corner of Sturt Road and Locksley Street (refer to aerial view below).

The combined site has an area of 7,543.5m² (from the deposited plans) and has a fall of approximately 12m from the Sturt Road boundary to the northern boundary of the site which adjoins the Cronulla Golf Course. There is also a Sydney Water sewer easement traversing the site, extending from the easternmost boundary and meeting the western boundary of the site.

The existing residential aged care facility comprises 2 and 3 storey buildings and has recently been completed and is currently in operation. The existing facility is a high care facility and comprises 87 beds (29 of which are part of a dementia wing) and 20 car parking spaces with access via a vehicular ramp at the south east corner of the site off Sturt Road. The facility is operated by the Pathways Group and is known as 'Cronulla Pines'.

Immediately to the north of the site is the Cronulla Golf Course. Across Locksley Street to the west and across Sturt Road to the south are detached 1 and 2 storey dwellings. The site also adjoins 2 storey dwellings to the east. The site is 1.5km walking distance to the Cronulla Centre.



Figure 2: Aerial view

BACKGROUND

A history of the development proposal is as follows:

- Council approved a 74 bed residential aged care facility over No.s 31, 33 & 35 Sturt Road on 13 November 2009 under DA09/0262.
- Five modification applications subsequent to the original consent have been approved by Council. Each modification application related to relatively minor changes to the approved development.
- A development application to increase the number of beds by 13 beds to a total of 87 beds was approved by Council on 28 March 2014 under DA13/0940.
- The current application was submitted on 2 August 2016.
- The application was placed on exhibition with the last date for public submissions being 7 September 2016. 30 submissions were received from 19 households.
- An Information Session was held on 31 August 2016 and 22 people attended.
- The application was considered by Council's Submissions Review Panel on 27 September 2016.
- The application was considered by Council's Architectural Review and Advisory Panel (ARAP) on 29 September 2016.
- Following a preliminary assessment, Council officers requested that the following additional information be provided by 7 October 2016:

- compatibility of the proposal with the existing character of the locality,
- excessive floor space significantly beyond the 1:1 'cannot refuse provisions',
- building height non compliance resulting in streetscape, view loss and internal amenity concerns,
- landscape area deficiency below the 25m² per bed 'cannot refuse provisions' and poor quality,
- continuation of deeply excavated front setback is a poor outcome resulting in poor internal amenity and no significant tree / vegetation planting in front setback,
- 3m street setback provided to Locksley Street is significantly less than the required setback and the existing pattern of buildings in the street,
- internal residential amenity whereby courtyards are significantly shadowed by proposed new additions to the facility,
- site planning concerns relating to circulation and servicing of the new additions,
- engineering related matters regarding driveway grades, access and egress by semi-rigid vehicles from Locksley Street given its narrow dimensions, detailed frontage design and minor stormwater requirements,
- environmental matters relating to acid sulfate soils
- Amended plans and additional information were lodged on 21 October 2016. A copy of the Applicant's response to 'Request for Information' is contained in **Appendix "A"**.
- The requested additional acid sulfate soils investigation and management plan was lodged on 31 October 2016.

ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has failed to provide adequate information to enable an assessment of this application. While a written request pursuant to cl.4.6 of SSLEP 2015 to vary the building height development standard contained within cl.40(4)(a) and (c) of the State Environmental Planning Policy (Housing for Seniors or People With a Disability) 2004 has been submitted for assessment, a cl.4.6 submission in relation to the proposed breaches to cl.48 have not been submitted. The standards contained within cl.48 are considered development standards and require an assessment against cl.4.6. The applicant has argued that this is not required and, therefore, has not submitted this document. This requirement is discussed in detail in the assessment section below.

In addition, the timing of the applicant's re-submission should also be noted. Council requested additional information on 23 September 2016 and the information was finally lodged on 31 October 2016 (a time lapse of 38 days). The delay in the lodgement of critical information has had a significant impact on the length of the assessment process.

PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Chapter 41 of Draft Sutherland Shire Development Control Plan 2015 (DSSDCP 2015).

53 adjoining or affected owners were notified of the proposal and 30 submissions from 20 households were received as a result. A full list of the locations of those who made submissions, the dates of their letters and the issues raised is contained within **Appendix “B”** of this report. A summary of the main issues raised in these submissions are as follows:

Issue 1: Out of character & inconsistent with zone objectives

Comment: Issues relating to the development not being consistent with existing residential dwelling houses in the adjacent streets and inconsistency with zone objectives are discussed in the assessment section of the report.

Issue 2: Overdevelopment

Comment: This matter is related to how the proposal complies with the relevant standards contained in the Seniors Housing SEPP and is discussed in detail in the assessment section of the report.

Issue 3: Height, bulk and scale:

Comment: This concern is discussed in detail in the assessment section of this report.

Issue 4: Building setbacks

Comment: The proposal has been amended by increasing setbacks to Locksley Street which are now considered acceptable in the context of the street.

Issue 5: View loss

Comment: This matter has been discussed in detail in the assessment section of the report.

Issue 6: Traffic and Parking

Comment: This matter has been discussed in detail in the assessment section of the report.

Issue 7: Noise

Comment: Appropriate conditions of consent are able to be imposed which provide maximum dBA levels relating to construction noise and ongoing noise from plant and equipment.

Issue 8: Light spill

Comment: Appropriate conditions of consent can be imposed to deal with external lighting and ensure it is consistent with relevant standards.

Issue 9: Construction Phase

Comment: Matters relating to potential construction impacts (noise, decrease in air quality due to particle and dust uplift from works and disruption to street parking) are able to be dealt with by the imposition of appropriate conditions relating to site and construction management.

STATUTORY CONSIDERATIONS

The subject land is located within *Zone R2 Low Density Residential* pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a '*seniors housing*' development, is a permissible land use within the zone with development consent from Council.

The following Environmental Planning Instruments (EPI's), Development Control Plans (DCP's), Codes or Policies are relevant to this application:

- State Environmental Planning Policy (Housing for Seniors or People With a Disability) 2004 (Seniors Housing SEPP)
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sutherland Shire Local Environmental Plan 2015 (SSLEP2015)
- Draft Sutherland Shire Development Control Plan 2015 (DSSDCP 2015)

STATEMENT OF COMPLIANCE

The statement of compliance below contains a summary of applicable development standards and controls and a compliance checklist relative to these:

Standard/Control	Required	Proposed	Complies
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 cl.40 - Development Standards – minimum sizes and building height			
cl.40(2) – Site size	1,000m ²	7,543.5m ²	Yes
cl.40(3) – Site frontage	20m min. at building line	93m (Sturt Rd) 46m (Locksley St)	Yes Yes
	(a) Height of all buildings to be 8m max. (measured to ceiling level)	10.2m	No
	(b) Building adjacent to a boundary of the site to be max. 2 storeys in height	2 storeys above existing ground	Yes
	(c) Building located in rear 25% of site must not exceed 1 storey in height	3 storeys	No
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 cl.48 – 'cannot refuse standards'			
cl.48 - Standards that cannot be used to refuse development	(a) Building height – all buildings are 8m in height or less	10.2m	No
	(b) Density & scale – 1:1 or less	1.17:1 (8,868m ²)	No

Standard/Control	Required	Proposed	Complies
consent for residential care facilities (RACF)	(7,543.5m ² or less)		
	(c) Landscaped area – min. 25m ² per bed (185 beds x 25 = 4,625m ²)	3,152m ²	No
	(d) Parking for residents & visitors: (i) 1 parking space for each 10 beds in the RACF (or 1 parking space for each 15 beds if the facility provides care for only persons with dementia), 185 / 10 = 18.5 (19) car spaces, and	20 cars	Yes
	(ii) 1 parking space for each 2 persons employed and on duty at any one time, 30 staff / 2 = 15 car spaces and 1 parking space suitable for an ambulance	15 cars Existing allocation on street	Yes Yes
Sutherland Shire Local Environmental Plan 2015			
cl.4.3 – height of buildings	8.5m	11m	No
cl.4.4 – floor space ratio	0.55:1 (4,149m ²)	1.17:1	No
cl.6.14 – landscaped area	35% (2,640m ²)	25%	No
Draft Sutherland Shire Development Control Plan 2015 (The controls for dwellings in Zone R2 apply to 'Other Uses' in Zone R2)			
Chapter 1.1 – Streetscape and Building Form			
No. of storeys	2 storeys max. above existing ground level and basements not permitted	3 including basement	Yes
Extent of 2 or 3 storey development	Maximum 60% of the depth of the site	95%	No
Chapter 1.2 Building Setbacks			
Street setback	7.5m min. or established street setback	- 4.3m to lower ground floor - 7.7m to Sturt Rd - 6.36m – 8.36m to Locksley St	No Yes No, however, considered acceptable
Side boundary setback - ground floor - first floor	0.9m min. 1.5m min.	2.56m to wall 1.4m to fire exit stair landing	Yes No
Rear boundary setback	6m min.	3m	No
1.5m wide Front Setback Articulation	Max. 33% of the area of the façade	No articulation zone proposed	N/A

Zone			
Wall articulation – first floor wall adjoining a side boundary	15m max.	6.6m	Yes
Chapter 1.3 Landform			
Depth of cut and fill	1m maximum (excavation for a basement can be greater than 1m)	8m	Consistent with existing development
Excavation for basement	Should not extend beyond the building footprint	Beyond building footprint	No
Natural ground level adjoining development to property boundaries	Existing levels to be maintained	Excavated side setback up to 4.1m depth adjoining No.41 Sturt Road	No
Chapter 1.4 Landscaping			
Landscaped area within front setback	50% min.	Sturt Road: Locksley Street:	No Yes
Chapter 1.5 – Building Layout, Private Open Space and Solar Access			
Overshadowing of neighbouring buildings - solar access to 10m ² of adjoining P.O.S and windows to living areas between 9am to 3pm mid winter	3hrs min.	3hrs to No.41 and No.29 / 29A Sturt Road	Yes
Chapter 1.6 Visual and Acoustic Privacy			
Visual and acoustic privacy	Locate, orientate and design new development to ensure visual privacy between buildings and between buildings and adjacent private open space.	Rooms face away from neighbouring properties, however, roof top terrace introduces visual amenity impacts	No
Chapter 35 - Parking			
Carparking requirements for Seniors Housing	To be consistent with Seniors Housing SEPP	35 cars	Yes, consistent with SEPP

SPECIALIST COMMENTS

The application was referred to the following internal and external specialists for assessment and the following comments were received:

Architectural Review Advisory Panel

The proposed development was considered by Council's ARAP on 29 September 2016 and the panel recommended that the following matters be considered further:

- modification to improve the outlook from courtyard rooms would be highly beneficial to residents
- the below grade level is not supported by the Panel for amenity and streetscape reasons. These spaces should be replaced with non-habitable spaces and the front garden provided at street level, or not excavated at all as the project is so far over the FSR.
- Setbacks to Locksley Street should be enforced and common rooms overlooking these landscape setbacks would create a more positive engagement with the street. More should be made of the layout of the common rooms to punctuate the overall mass and form of the project
- The office, kitchen extension, staff training and staff lunch spaces should be provided with access

to air and natural light and are considered by the Panel to be GFA

- As a minimum this proposal should provide a RWT for irrigation and WC flushing, solar/PV cells for domestic hot water and lighting of communal spaces
- The excavation of the lower ground floor creates a landscape void to the street.
- many of the rooms face the wrong way into courtyards, when they could be afforded views form beds to open space if they were to be rotated
- Where possible common rooms overlooking the street instead of bedrooms would create a more positive engagement of the project generally with its context
- The threshold issue relating to excess GFA needs to be resolved as a matter of priority and, if required, built form removed along the Sturt Road, the main frontage, and Locksley Street on the side frontage to reduce the GFA.

Amended plans have been received addressing the setback to Locksley Street and rearrangement of common rooms. The landscape void to the street has been retained by the applicant and the issue of gross floor area also remains.

A copy of this report is included in **Appendix “C”**

Engineering – Assessment Engineer, Traffic Engineer and Asset Management Engineer

Council’s Development Assessment Engineer, Traffic Engineer and Asset Management Engineer have undertaken an assessment of the amended proposal and the majority of concerns raised can be dealt with by the imposition of appropriate conditions including widening the new crossing and relocation of the power pole. In addition, it was recommended that servicing of the facility be undertaken from Locksley Street. The proposed staff vehicle manoeuvring within the northern and southern basement levels will require excessive turns to access the parking spaces and should not be supported given that this is a new facility able to be designed to achieve acceptable manoeuvring.

Landscape Architect

Council’s Landscape Architect has undertaken an assessment of the amended proposal and provided comments that the proposal fails to provide adequate facilities for the use and fails to address the limited opportunities for front setback planting due to the deeply excavated levels. A detailed discussion on landscaped area is undertaken in the assessment section of this report.

Environmental Science

Council’s Environmental Scientist has undertaken an assessment of the amended proposal, including the additional acid sulfate soil report and considered it acceptable subject to appropriate conditions.

Building Surveyor

Council’s Building Surveyor considered the proposal and noted that a fire engineer’s report has been submitted outlining fire engineered solutions to address BCA departures. It was recommended that a

condition be imposed requiring the BCA report and Fire Engineer's report be complied with and form part of the construction certificate documentation.

Engineering - Flood

Council's Stormwater & Waterway Assets Engineer considered the proposal and advised that no significant concerns were raised subject to an appropriate condition being imposed relating to minimising flood impacts.

Health & Regulation Officer

Council's Health Officer considered the proposal and raised a concern regarding the use of the courtyard and its proximity to the rear yard of No.41 Sturt Road and has recommended 'operating' hours for this space from 8am to 8pm daily. The proposed courtyard is the most usable and connected courtyard in the development providing good amenity due to its orientation and low scale northerly buildings. It is not anticipated that the activities within this space by residents, carers or relatives warrants time limited use being imposed and therefore this requirement is not recommended to be imposed. Further to these comments, Council's Health Officer raised no other significant concerns subject to appropriate conditions being imposed.

Economic & Community Development

The application was referred to Council's Safe & Inclusive Places Officer for comment in relation to accessibility, crime prevention and social impact. No significant objection was raised to the proposal subject to requiring an additional CCTV camera be installed at the new carpark and verification from an access consultant being required prior to the Construction Certificate being issued.

ASSESSMENT

Following a detailed assessment of the application having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 and the provisions of relevant environmental planning instruments, development control plans, codes and policies, the following matters are considered important to this application.

Building Height – cl.40(4)

The proposed development fails to comply with the development standard for building height contained within Clause 40(4)(a) and (c) of the Seniors Housing SEPP. The Seniors Housing SEPP stipulates a maximum height of 8m for all buildings on the site and buildings within the rear 25% area of the site are required to be a maximum of 1 storey. These development standards are applicable to land in a residential zone where residential flat buildings are not permitted. Zone R2 does not permit residential flat buildings and therefore the development standards are applicable to the proposal.

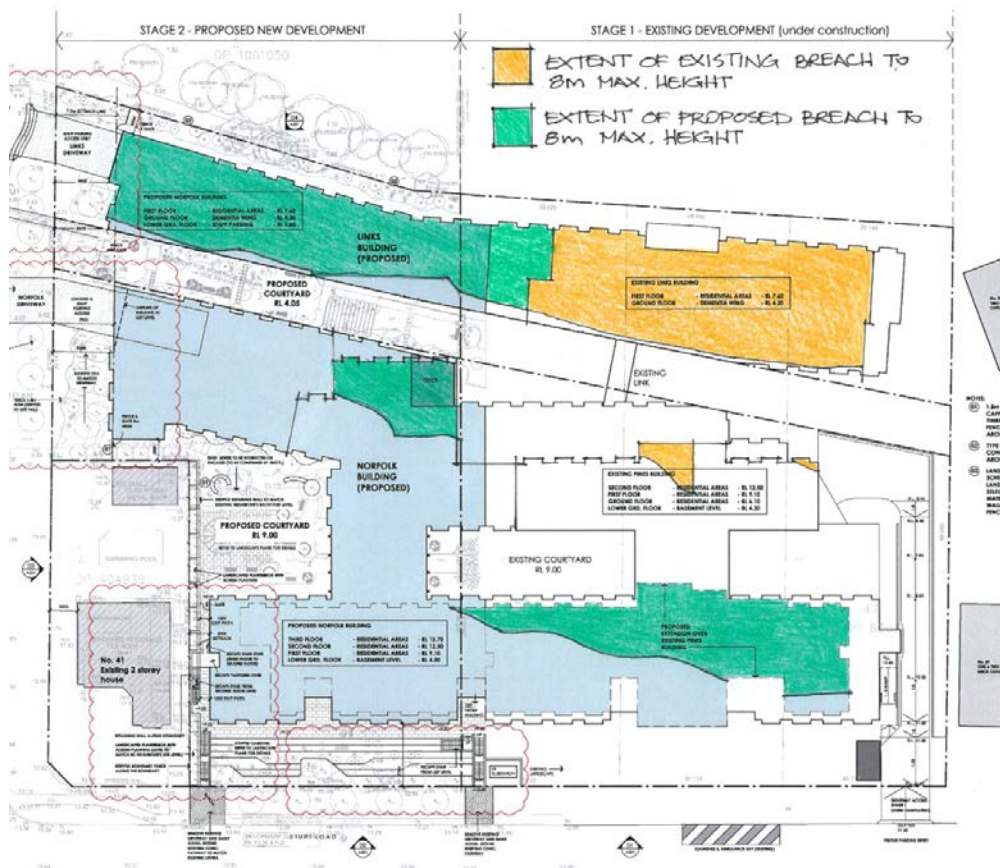
The proposal has a maximum height of 10.2m and the building located within the rear 25% of the site (the addition to the Links Building adjoining the northern boundary) is 3 storeys in height and also breaches the 8m maximum height attaining a height of 9.1m.

The applicant has lodged a written request in accordance with the requirements of clause 4.6 of SSLEP2015 and the reasons for the breach to the 8m building height standard have been explained by the applicant as follows:

- *The subject site has a significant slope downwards away from Sturt Road to the northern boundary, with an approximate fall of 15m. As a consequence of this sloping land, portions of the building exceed the standard to provide a functional and logical building for the occupants and users of the building;*
- *The site contains an existing RACF that is approved and currently under construction on the site, which already breaches the height standard. As the proposal seeks to expand this existing facility, it is necessary to breach the standard to provide a consistent built form that is functional, useable, and efficient.*
- *Some of the floor space has been redistributed on the site, to provide for greater amenity to the existing residential building located at 41 Sturt Road. By redistributing this floor space, a portion of the building breaches the standard;*
- *The development provides for floor to ceiling heights that exceed the minimum requirements to provide for high levels of internal amenity to the residents of the building. This increases the extent of the breach of the standard, however, there are no benefits for minimising these floor to ceiling heights as discussed within this statement. Moreover, reducing these floor to ceiling heights would reduce the amenity for the users of the building, and provide a built form that is discontinuous, and otherwise less compatible, with the approved building to the east of the site.*

The fall of the site is noted as being a consideration in terms of the assessment of building height, although the actual fall of the site is closer to 11-12m as opposed to 15m. Notwithstanding, the existing development has demonstrated that a reasonable and compliant building form (for the most part) can be located on this site and result in a building mass and scale which has a relatively low-key presentation to the public domain and to adjoining properties. It is considered that the existing facility can be expanded by maintaining existing circulation, efficiencies and functional requirements of the facilities provided without necessarily breaching this standard further.

In terms of existing non-compliances to the 8m building height standard, they are generally concentrated to the rear 'Links Building' (refer to diagram below) with new works introducing an additional non-compliance along part of the building fronting Sturt Road.



The applicant has also put forward that the reason for the building height breach is the floor to ceiling heights that exceed the minimum requirements. The minimum requirement for habitable spaces under the Building Code of Australia is 2.4m. The existing facility, and most of the new works, proposes a 2.7m high ceiling with space allowed between the ceiling and the floor structure above for services. Council is not encouraging a reduction from 2.7m to 2.4m in the circumstances as it would compromise the amenity afforded to residents of the facility. A 2.7m ceiling height is almost an accepted 'standard' for residential development and, while not relevant to this proposal, is a requirement for residential flat buildings where bedrooms and living areas are required to achieve this standard. The amended plans, however, indicate that the proposed level 3 addition to the Pines Building will have a 2.4m ceiling level. The cross section submitted also indicates a minimal 'thickness' to the roof form which is not considered adequate to provide areas for servicing of the bedrooms consistent with the standard provided by the existing facility, e.g. air conditioning. In addition, this lack of roof space for services will drive reduced ceiling levels to other areas such as corridors and bathrooms which, once again, would compromise the spaces proposed and would be at odds with the existing and intended standard and amenity proposed for facility.

In addition to the above, the applicant, in their cl.4.6 submission relating to cl.40(4)(c), has provided reasons for the breach to the 1 storey building height standard in the rear 25% of the site as follows:

- *Part of the site contains a new RACF that is currently under construction, which breaches the standard already. The proposed development represents an extension of the existing facility, and adjoins the existing portion of the building that breaches the standard. The breach allows for the practical extension of this part of the facility, which provides a building that will be functional and useable for the occupants of the building and maintains the existing built form.*
- *The site does not have a typical 'rear' boundary as the northern boundary (i.e. the rear boundary for the purpose of this clause 4.6 variation request) adjoins an existing golf course. As such, there are not any residential dwellings located on the adjoining land. Given the use of this adjoining land, and its associated environmental constraints (i.e. high flood prone land), it is unlikely this land will ever be developed for residential purposes; as such, there will be no future amenity impacts to residential properties.*
- *The area of the site that breaches the standard does not adjoin any other residential property (other than the existing RACF) as it is also situated at the end of Locksley Street; thus, does not adjoin the rear of any other residential property.*
- *The portion of the site along the northern boundary is affected by flooding. As such, the habitable floor levels in this area need to be situated above the identified flood planning level.*

As noted above, the existing facility is able to be logically extended without breaching the number of storeys development standard for the Links Building. Further, the lowest habitable floor level of the Links Building at RL4.20 is well above the 1% AEP flood level. The continuation of this floor level across the site satisfies flood requirements but does not necessarily mean that the maximum building height should be breached.

Regarding objectives, the Seniors Housing SEPP does not include any objectives relating to the development standards set out under cl.40(4). While there are no objectives to consider, the purpose of the standards can be seen as a way to control the scale of new development so that it is compatible with adjoining development, to provide consistency in terms of the scale and character of the street and locality and to minimise amenity impacts on adjoining land in terms of loss of views, loss of privacy, overshadowing or visual intrusion.

The continuation of a 3 storey 'wall' type building for the Links Building with little articulation and near the rear boundary is visually bulky and out of scale with the low density residential character of the area. The addition of the third storey along the Sturt Road frontage also has impacts on significant views currently obtained from dwellings along the southern side of Sturt Road. Views currently obtained are of distant water and city views which would largely be removed by the proposal. A view loss assessment has been carried out in detail below which concludes that the extent of view loss is unreasonable.

The proposed development is located within zone R2 Low Density Residential and cl.4.6 requires consideration of these objectives. They are as follows:

- *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 protect and enhance existing vegetation and other natural features and encourage appropriate bushland restoration particularly along ridgelines and in areas of high visual significance.*
- *To allow the subdivision of land only if the size of the resulting lots retains natural features and allows a sufficient area for development.*
- *To ensure the single dwelling character, landscaped character, neighbourhood character and streetscapes of the zone are maintained over time and not diminished by the cumulative impact of multi dwelling housing or seniors housing.*

The proposal does not satisfy the last objective whereby the extent of the additions proposed result in a development which is not considered to be compatible with the dwelling and landscape character of the area. The stepping of the building (in plan) along Sturt Road is noted as a response to the existing subdivision pattern and as a way of breaking up the building mass. While this approach has some merit, the space between the elements is devoid of planting opportunities and is not a space where views from the street and through the building can be achieved. The breadth of the development across the street warrants a break in the building form and more substantial landscaping which is not possible due to the front setback void. Further, the subterranean floor level (level 1 on the plans) would be visible from the street, notwithstanding its deeply excavated level, and contributes to the continuous 3 storey building mass which would dominate the streetscape.

The applicant's written submission does not demonstrate that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case. It also does not demonstrate sufficient environmental planning grounds to justify varying this development standard. The expansion of the existing development can be undertaken in a manner compatible with the function and utility of the existing facility without breaching the building height development standards. The proposed development is not in the public interest as the proposal fails to comply with the character objectives of the zone and fails to satisfy the typically accepted objectives for maintaining a maximum building height. The proposed variation does not raise any matters of State or regional environmental planning significance. In addition, there is a public benefit to maintain the height development standard in the circumstances of this case.

In conclusion, the variation to the height development standard does not satisfy all relevant parts of clause 4.6 and therefore the variation cannot be supported.

The applicant written request in accordance with the requirements of Clause 4.6 of SSLEP2015 is attached as **Appendix "D"**

Building height, density and landscaped area

Clause 48 of the Seniors Housing SEPP includes standards that cannot be used by a consent authority to refuse a development if the development complies with those standards. The standards relate to building height, density and scale, landscaped area and parking for residents and visitors.

The applicant has argued that the standards within cl.48 are not 'development standards' but standards that cannot be used to refuse consent if the proposal complies with those provisions, i.e. that they are not maximums (or minimums, in the case of cl.48(c) and (d)). The parties agree that the proposal does not meet the provisions under cl.48(a), (b) and (c), however, it does not agree that a cl.4.6 variation statement is not required to vary these standards. There is also a differing opinion in the degree of non-compliance, specifically regarding cl.48(b) which relates to density and this is discussed in further detail below.

In terms of the assessment of any breach to cl.48, and to cl.48(b) specifically, the applicant argues that the 'standard' should not be seen as a maximum but rather it requires a *'merit based assessment of the suitability of the development with regard given to its relative impacts as a consequence of the additional floor space'*. Council agrees with this position, that a merit based assessment for any departures proposed should be undertaken, however, it is not agreed that a cl.4.6 variation is not required. While cl.48 is titled *'Standards that cannot be used to refuse development consent for residential care facilities'*, the clause sits under Part 7 of the SEPP which is titled *'Development standards that cannot be used as grounds to refuse consent'*. Council concludes that the provisions under cl.48(a), (b), (c) and (d) are development standards by their position within Part 7 of the Seniors Housing SEPP and, therefore, require a written request to vary them under cl.4.6 of SSLEP 2015. This has been requested from the applicant but has not been submitted.

Notwithstanding the above, the provisions under cl.48 are particularly generous relative to the development standards that apply to development generally within the R2 low density residential zone. An almost doubling of allowable floor space from 0.55:1 (under SSLEP 2015) to 1:1 (under the Seniors Housing SEPP) provides reasonable opportunities to both encourage 'seniors housing' development within the zone as well as to provide a degree of flexibility in terms of how this form of development can be designed to minimise external impacts and achieve a level of compatibility within its context. Despite the lack of a cl.4.6 submission, an assessment of the proposed breaches is as follows:

Clause 48(a) – Building height

In terms of cl.48(a), there are parts of the amended proposal which exceed the 8m maximum building height. This has been discussed under the heading 'Building Height' above which is an assessment relative to cl.40(4). The applicant has submitted a cl.4.6 variation statement for consideration, and, while the submitted cl.4.6 variation statement specifically relates to the development standards under cl.40(4)(a) and 40(4)(c), Council has also considered the arguments put forward against the requirements of cl.48(a) and does not agree that there are sufficient grounds to support the breach.

Clause 48(b) – Density and scale

Regarding building density, it was noted above that there is a difference in opinion between the applicant's and Council's floor space calculations and the degree of non-compliance with cl.48(b). The floor space proposed in addition to the existing facility is 4,248m² according to the applicant and 4,573m² according to Council. In terms of overall floor space, the applicant proposes that the facility will be 961m² over the 1:1 floor space ratio standard and Council considers the proposal will be 1,286m² over, a difference of 325m². The difference between calculations is attributable to the lower ground floor level where part (f) of the 'gross floor area' definition is relevant. It is noted that the definition applicable to this development is not the standard instruments definition but a definition contained in the Seniors Housing SEPP specific to seniors housing. Part (f) of the definition reads:

- (f) in the case of a residential care facility—excluding any floor space below ground level that is used for service activities provided by the facility.*

The level of the lower ground floor is located '*below ground level*' and is calculated having regard to this definition, and, specifically, with regard to part (f) which excludes floor space for '*service activities provided by the facility*'. Council, to an extent, agrees with the applicant's allowance of floor space within the lower ground and ground floor, however, it disagrees regarding excluding the floor area of the Office, Staff Training Room, Staff Lunch Room, Female WC and part of the associated corridors as Council does not consider these spaces to be '*service activities by the facility*'. While the difference in calculations is 325m², the excess floor space beyond 1:1 is significant in either case.

Turning back to the matter of the reasonableness of such a large breach to the 1:1 building density development standard, whether it is 961m² over as the applicant contends or 1,286m² over from the point of view of Council, the breach is of a scale that results in streetscape, bulk and amenity impacts. The additional floor space proposed over the Pines Building extends across most of the 93m Sturt Road frontage resulting in a dominant building mass which is not in harmony with its surroundings. The existing facility and its relationship to the site and adjoining properties can be used for comparison as it is considered a reasonable built form outcome which also complies with the 1:1 density standard. In this regard, an extension of the existing building form across the newly acquired lots along Sturt Road would retain the low-key presentation of the existing facility to the street and be a more successful 'fit' in the streetscape than that proposed.

The positioning of an additional floor level along the Sturt Road frontage also results in impacts relating to loss of views from dwellings along the southern side of Sturt Road and is located in a section of the site where it also breaches the maximum building height of 8m. It is noted that the existing Pines Building does not breach the 8m maximum height in this location. The amended plans submitted by the applicant lower the height of the third level in response to these concerns, however, the principles of view sharing are not considered satisfied (refer to the 'View Loss' assessment below). In addition, the lowering of the height of the third level has compromised the quality and amenity of the spaces proposed by giving bare minimum ceiling heights to resident bedroom / living spaces and common areas. A discussion in this regard is also carried out above in Council's assessment of the breaches to the building height development standard.

The third storey along Sturt Road also necessitates ancillary building elements required for the development, e.g. fire egress paths across a roof top connecting to elevated stairs and landings. These elements are highly visible from the street and from the neighbouring property at No.41 Sturt Road and would ordinarily be required to be integrated into the building form. In terms of the western egress, it is significantly elevated above existing ground, is in close proximity to the side boundary and would be visually imposing when viewed from the adjoining property. These elements are visually intrusive and detract from the quality of the streetscape.

While a proportion of the excess floor area can be attributed to the subterranean parts of the building, a large part of it is expressed externally where its location results in poor amenity for residents (Links Building) and in issues relating to the streetscape (Norfolk / Pines Building), for e.g. visual impact on the street, unnecessary front setback excavation and the resulting poorly located and oriented rooms, enclosure of courtyards, loss of views and overshadowing of outdoor areas located between buildings internally to the development. The excess floor space proposed is significant and not supported in the circumstances.

Clause 48(c) – Landscaped Area

The required landscaped area is 25m^2 for each bed proposed where Council cannot refuse the development if this figure is achieved. The amended plans now include a total of 185 beds which results in a requirement of $4,625\text{m}^2$ over the whole site. The original development consent over No.s 31 to 35 Sturt Road approved $1,883\text{m}^2$ of landscaped area which was a compliant 25m^2 per bed allowance for the original 74 beds proposed. The facility was subsequently increased to 87 beds while retaining the $1,883\text{m}^2$ of landscaped area and, therefore, lowered the ratio to 21.6m^2 per bed.

Calculations of the amended proposal indicates that a total of $1,385\text{m}^2$ has been provided over the additional lots, with approximately 116m^2 being removed as a result of the connection between the existing and new work. The applicant has stated that $3,152\text{m}^2$ of landscaped area has been provided over the whole site which equates to a 17m^2 per bed allowance for the overall facility and is a shortfall of $1,473\text{m}^2$. The requirement of landscaped area for development is to provide opportunities for planting of appropriate vegetation to complement the scale of the development proposed as well as to provide a balance between built form and open space and to provide usable open space for residents of the facility.

In terms of the amended proposal, a series of decorative communal open spaces have been proposed at ground level across the site, however, these communal spaces currently lack the facilities / affordances to be usable and sociable places that are fit for purpose for both elderly and dementia patients. Incorporation of the following has not been considered:

- All weather covering in the form of verandas or free standing structures to allow for residents to sit outside in a variety of climates.
- Tables and benches for groups of people to utilise and interact together such as families or friends visiting with lunch or residents who wish to play cards in outdoor environment.
- Communal raised vegetable/garden beds where residents have the opportunity to foster interactions with other residents; be active; maintain a sense of ownership; improve wellbeing etc.
- Provision of sheltered thresholds over all external doors entering/exiting communal areas as transitional points.
- Provision of elements within the garden to stimulate senses through uses of colour, scent, textures, sound, taste and seasonal change.

The majority of the open spaces are also located where they would receive poor or no solar access for most of the cooler months of the year. The courtyard proposed to the west of the Norfolk Building is considered acceptable and the most usable given its proportions and the location of low scale building forms to the north of it. However, the primary communal open space area between the Links and Norfolk building that services the dementia residents will have exceptionally poor solar access due to the layout out of the buildings being dictated by the easement.

The applicant has argued that an additional 424m² is provided on elevated terraces throughout the facility to offset some of the loss of landscaped area at ground level. This area is not consistent with the landscaped area definition of the SEPP. The elevated terraces, while providing additional open space and having good solar access, will be a harsh environment in full sun and unusable on rainy days. Specifically, in terms of the elevated terrace to the existing Pines Building on level 2, the amended plans show the terrace area extending across existing Beds 19 to 21 which have no direct access to it and the terrace is located such that it now imposes on the amenity of No.29 Sturt Road. It is noted that this terrace has been significantly increased in size from the original submission where the majority of this space was previously a roof.

Another area on the site where there is a poor landscape treatment is the Sturt Road front setback where the existing 3.5 – 4m terraced drop in level is extended across the new lots. The amended proposal reduces the excavation in the front setback and relocates the front fence, however, the subterranean environment is retained limiting opportunities to support substantial sized trees and vegetation which would otherwise contribute to the streetscape and site amenity and improve environmental outcomes. The poor amenity afforded to the new subterranean bedrooms is a side effect of this front setback treatment. In conclusion, the significant shortfall in landscaped area is not supported.

View loss

The issue of view loss has been raised by land owners along the southern side of Sturt Road and is directly related to the placement of excess floor space. Specifically, No.s 10, 12, 14, 16, 18, 20, 26 have raised an issue of potential view loss as a result of the proposed development, and, in particular, in relation to the additional level proposed along the Sturt Road frontage.

The following is an assessment of view loss in accordance with the planning principle established by Senior Commissioner Roseth in *Tenacity Consulting v Waringah* [2004] NSWLEC 140.

Step 1 - *The first step is the assessment of views to be affected*

The views are over the proposed development to the north and are water views of Woolloomare Bay and distant Sydney CBD views. The foreground views of Cronulla Golf Course are largely obscured by vegetation and existing buildings.

Step 2 - *The second step is to consider from what part of the property the views are obtained*

The views currently enjoyed are by the owners of No.10, 12, 14, 18 and No.20. The photos shown below are from No.12, 14 and 20 Sturt Road and are representative of views obtained over the proposed development. The photos are taken from a standing position at a height of 1.65m above the level of each deck. Each of the properties in question obtains views from north facing decks located on the first level which are connected to internal living areas. The views are also obtained from both a

standing and sitting position.



Figure 4: View from No.12 Sturt Road from a standing position looking north



Figure 5: View from No.14 Sturt Road from a standing position looking north



Figure 6: View from No.20 Sturt Road from a standing position looking north.

Step 3 - The third step is to assess the extent of the impact

No.20 Sturt Road is most affected due to its deck level being the lowest among the dwellings with views of Woollooware Bay removed entirely from both a standing and sitting position. Sydney CBD views would be partially retained from a standing position however removed from a sitting position. The degree of view loss is considered moderate.

In terms of No.12 and No.14 Sturt Road, the lowered roof level would retain partial views of Woollooware Bay with Sydney CBD views being unaffected from a standing position. Views of Woollooware Bay from a sitting position would be partially removed. The degree of view loss is considered moderate.

Step 4 - The fourth step is to assess the reasonableness of the proposal that is causing the impact

The portion of the proposed building which causes the loss of views is the roof along the southern wall plane of the third floor level. The third level of the amended proposal complies with the maximum 8m building height development standard along the Sturt Road frontage, however, breaches it at the rear of the third floor where the land falls away from the street. The diagram under 'Building height' above indicates the area of the breach.

The amended proposal reduces the height of the additional floor level along Sturt Road by 0.65m. The originally submitted proposal had an eaves level of RL19.20 along the street and the amended proposal now lowers this eaves level to RL18.55. The consequences of this for internal amenity have been discussed above and conclude that it would have an adverse impact on the amenity of the facility. In addition, it has been highlighted that the proposal is significantly over the 1:1 density for the land and the location of this excess floor space is considered to have a direct impact on the views lost by neighbours.

Overall, it is concluded that the degree of view loss is unreasonable given the extent and location of built form proposed on the site that is contrary to the scale of development anticipated in the zone. A complying proposal with regard to floor space would assist in achieving a more balanced outcome in terms of views.

Seniors Housing SEPP – Design Principles

Clause 32 of the Seniors Housing SEPP prevents the consent authority from issuing consent unless it is satisfied that the proposal demonstrates that adequate regard has been given to design principles relating to neighbourhood amenity and streetscape, visual and acoustic privacy, solar access and design for climate, stormwater, crime prevention, accessibility and waste management.

The area surrounding the site is predominantly residential in character, with 1 and 2 storey detached dwellings located on medium to large size blocks. To the north is the golf course. A 3 storey building with a high subfloor situated in the rear of the site will present as a dominant element in terms of the built form when viewed from the north and from the west. Similarly, the breadth and scale of the new building along Sturt Road would not be in harmony with the streetscape. The scale of the development is larger than dwellings within the locality and is of a significantly greater density than permissible under the Seniors Housing SEPP and SSLEP 2015. Council considers that Clause 33 relating to neighbourhood amenity and streetscape is not satisfied.

Window orientation and proposed side boundary setbacks generally assist in retention of visual and acoustic privacy for neighbours. The amended proposal, however, includes a significant extension of roof top terracing on second floor which would contribute to significant adverse impacts on the adjoining properties to the east. The proposal has not appropriately addressed Cl.34(a)

Shadow diagrams indicate that reasonable daylight and sunlight is retained for neighbouring properties at No.41 and No.s 29, 29A Sturt Road. The windows of the proposed additional rooms face either north or south. The amended plans indicate that 32 out of the 98 additional proposed beds are oriented south and will receive no sun in mid winter. Combined with the existing facility, 67 beds out of a total of 185 beds (36.2%) will receive no sun in mid winter. A reduction in the south only bedrooms of this proposal would assist in achieving a better overall outcome with regard to solar access and therefore satisfy Cl.35(b).

SECTION 94 CONTRIBUTIONS

Due to its nature, the proposed development is exempt from the provisions of Council's Section 94 plans and therefore does not generate any Section 94 contributions.

DECLARATION OF AFFILIATION

Section 147 of the Environmental Planning and Assessment Act, 1979 requires the declaration of donations / gifts in excess of \$1,000. In addition, Council's development application form requires a general declaration of affiliation. In relation to this development application, a declaration has been made that there is no affiliation.

CONCLUSION

The proposed development is for additions to an existing residential aged care facility at 2, 2A and 4 Locksley Street and 31, 33, 35, 37 and 39 Sturt Road, Cronulla.

The subject land is located within Zone R2 Low Density Residential pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being 'seniors housing', is a permissible land use within the zone with development consent.

The application was placed on public exhibition and in response to public exhibition, 30 submissions were received from 20 households. The matters raised in these submissions have been discussed in this report and include character and context, overdevelopment, height, bulk and scale, building setbacks, view loss, traffic and parking, noise, light spill and construction management.

The proposal includes significant variations to building height, density, and landscaped area which have been discussed in this report and are considered unacceptable in the circumstances. The resulting building form is unacceptable as it would be of a mass and scale which is not considered to be compatible with its surroundings, it would result in an adverse impact on the amenity of adjoining properties by way of loss of views and would adversely impact the quality and amenity of the internal environment. A continuation of the existing building form along Sturt Road, removal of the landscape 'void' in the front setback and a reduction to 2 storeys for the Links Building would go some way to integrating the development more successfully with its surroundings and resolve some of the external and internal impacts.

The application has been assessed having regard to the Heads of Consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979 and the provisions of Sutherland Shire Local Environmental Plan and all relevant Council DCPs, Codes and Policies. Following detailed assessment, it is considered that Development Application No. DA16/0994 not be supported for the reasons outlined in this report.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is the Manager – Major Development Assessment (SBU).