

COUNCIL ASSESSMENT REPORT

Panel Reference	2017HCC019
DA Number	DA/1132/2017
LGA	Lake Macquarie City Council
Proposed Development	Residential Care Facility
Street Address	87 Toronto Road, Booragul
Applicant/Owner	DeWitt Consulting – Anglican Care
Date of DA lodgement	30 June 2017
Number of Submissions	Nil
Recommendation	Approve subject to conditions
Regional Development Criteria (Schedule 4A of the EP&A Act)	General Development that has a capital investment value of more than \$20 million.
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> SEPP Seniors Housing and People with a Disability SEPP 1 – Development Standards Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014) Lake Macquarie Development Control Plan 2014 (LMDCP 2014) <p>External Referrals</p> <ul style="list-style-type: none"> SEPP Infrastructure – Sydney Trains/Ausgrid Mine Subsidence Compensation Act – Mine Subsidence Advisory Rural Fires Act – NSW RFS
List all documents submitted with this report for the Panel's consideration	<p>Attachment A: Proposed Conditions of Consent</p> <p>Attachment B: Plans of Development</p> <p>Attachment C: Agency Submissions</p> <p>Attachment D: Written request for variation under SEPP 1</p>
Report prepared by	Carlos Ferguson
Report date	9 November 2017

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/SEPP 1 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**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**
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? **Yes**
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

Key Dates	DA Lodged: 30 June 2017 JRPP Briefing: 31 August 2017 Additional information requested: 15 September 2017 Additional information submitted: 5 October 2017
Submission Period	6 July 2017 – 24 July 2017
Zoning	R2 Low Density Residential (LMLEP 2014)
Approval Bodies	NSW Rural Fire Service NSW Mine Subsidence Advisory
Concurrence Bodies	Nil
Referral Agencies	NSW Sydney Trains Ausgrid NSW Police
CIV	\$32,498,000

RELEVANT SECTION 79C MATTERS

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment (EPA) Act 1979 have been considered within the assessment report.

The proposal has been assessed against all relevant State Environmental Planning Policies, Council's Local Environmental Plan 2014 and Development Control Plan 2014.

The following key issues relating to the development have been identified and assessed within the assessment report, and conditions have been recommended where necessary for inclusion in any consent granted by the Panel to ensure desired outcomes are achieved and potential impacts are minimized:

- Variation to development standards for height under Seniors Housing SEPP
- Landscaping and visual impact

LEGISLATIVE CLAUSES

The following legislative clauses are relevant to the proposal and require the consent authority to be satisfied in regards to a particular matter:

State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004

Clause 18 Requires the consent authority to impose a condition for development under this Chapter/Policy restricting occupancy of accommodation to people specified in Clause 18(1), being seniors, people with a disability, people living

with seniors or a person with disability or staff assisting in the provision of services.

- Clause 26 Requires the consent authority to not issue consent unless it is satisfied that residents of development under this Chapter/Policy have access to services identified in Clause 26(1).
- Clause 27 Requires the consent authority to not issue consent unless it is satisfied that the development complies with Planning for Bushfire Protection, and has taken into account the matters identified in Clause 27(2).
- Clause 28 Requires the consent authority to not issue consent unless it is satisfied that reticulated water and sewer are available.
- Clause 29 Requires the consent authority to take into consideration the criteria referred to in Clause 25(5)(b)(i), (iii) and (v).
- Clause 31 Specifies the consent authority must take into consideration the Seniors Living Policy: Urban Design Guidelines for Infill Development.
- Clause 32 Requires the consent authority to not issue consent unless it is satisfied the development demonstrates that adequate regard has been given to the Design Principles in Division 2.
- Clause 40 Requires the consent authority to not issue consent unless the development complies with the standards specified in this Clause.
- Clause 48 Specifies that the consent authority must not refuse consent to a development on any of the grounds identified in Clause 48, if it satisfies the standards specified in the clause.
- Comment The proposal is considered to be consistent with the requirements of the SEPP, with the exception of the height standards. The applicant has submitted an objection to the development standard for height under SEPP 1, which is discussed later in this report.

State Environmental Planning Policy 1 – Development Standards

- Clause 7 States that the consent authority may grant consent to a development supported by a written objection to compliance with a development standard made under Clause 6, where it is satisfied that the application is consistent with the aims of this Policy (and concurrence of the Director).
- Comment The applicant has submitted a written objection to the development standards for height in SEPP Seniors Housing under the provisions of this Policy, supported by a Visual Impact Assessment and perspectives. Following assessment of the proposal against the requirements of SEPP 1 and the five-part test established by the Land & Environment Court, it is considered the applicant's objection is well founded and should be supported in this instance.

State Environmental Planning Policy 64 – Advertising and Signage

- Clause 8 Requires the consent authority to be satisfied that signage is consistent with the SEPP objectives and the criteria in Schedule 1.
- Comment The development proposes three free standing signs as part of this application. The proposed signage has been assessed against the criteria in Schedule 1 and the requirements of LMDCP 2014, and is considered to satisfy these requirements subject to recommended conditions.

Lake Macquarie Local Environmental Plan 2014

- Clause 2.3 Requires the consent authority to have regard to the zone objectives and Land Use Table when determining a development application.
- Clause 4.6 For development that seeks an exemption to a development standard, Clause 4.6(4) requires the consent authority to be satisfied as to the matters listed in Clause 4.6(4)(a), requiring a written request and consideration of the public interest, and zone objectives.
- Clause 7.2 For development involving earthworks, Clause 7.2(3) requires the consent authority to consider the specified matters for consideration.
- Clause 7.21 Requires the consent authority to be satisfied that essential services (water, sewer, electricity and stormwater management) are available to the proposal.
- Comment The proposed development is consistent with the zone objectives, and the variation to the height standards have been addressed under the provisions of SEPP Seniors Housing and SEPP 1.

Following assessment of the application, it is considered the proposal satisfies the requirements of Clauses 7.2 and 7.21, as essential services are available and the minor earthworks are consistent with the matters for consideration in Clause 7.2

State Environmental Planning Policy (Infrastructure) 2007

- Clause 45 Clause 45(2) requires the consent authority to give written notice to the electricity supply authority for any development likely to affect an electricity transmission or distribution network, and take into consideration any response received.
- Comment The application was referred to Ausgrid under this clause, who did not object to the development. A condition has been included regarding their requirements.
- Clause 85 For development (described in Clause 85(1)) immediately adjacent to rail corridors, Clause 85(2) requires the consent authority to give written notice to the rail authority and take into consideration any response received.
- Comment The application was referred to Sydney Trains under this clause, who provided comments recommending conditions for noise/vibration, electrolysis, drainage, environmental and construction requirements.

HISTORY

The Hunter and Central Coast Joint Regional Planning Panel previously approved 2016HCC003 (DA/2125/2015) for redevelopment of the existing Aged Care Facility, which consists of the C A Brown and Fred Lean facilities.

The approved development was to increase the total bed numbers from 120 to 125, and improve the level of service provided by the facilities and bring it into compliance with current fire safety standards. That proposal had a Capital Investment Value of \$20,200,000.

The key issue for the application was reliance on existing use rights over 89 Toronto Road (since rezoned and consolidated into the site).

Following determination of that application, the proponent has discussed amending the project with Council, including a pre-lodgement meeting on 24 November 2017 (PL/191/2016), which has resulted in the current design proposed by this application. It was noted during those discussions the proposal was not considered “substantially the same” as the previously approved development, and should be submitted as a new application.

PROJECT OVERVIEW

The application seeks consent for construction of a Residential Aged Care Facility, containing 126 beds. The development will be predominantly two storey, with a basement car park under the south-east corner. The proposal (shown in figures 1 & 2 below) includes:

- Demolition of the existing C A Brown and Fred Lean facilities
- Construction of a basement level car park with 20 parking spaces
- Construction of an external driveway access
- Landscaping, retaining walls and associated works

The development will consist of two floors above the basement car park. Each level will contain 30 single bed rooms, 6 premium rooms and 18 bed dementia wards. The ground floor will also include administration, day therapy centre, gymnasium, kitchen, laundry and staff amenities.

The applicant advises that the objective of the redevelopment is to improve the aged care services provided on the site. The design will allow for greater efficiency in the management and provision of services, improvement in residential amenity and compliance with current fire safety standards. This application will not involve any works or alterations to the remaining development on site, which consists primarily of Independent Living Units (ILUs).

The key difference between the current proposal and the approved development was that the approved DA involved redevelopment of the existing C A Brown and Fred Lean Aged Care facilities, while the current proposal involves complete demolition of those existing facilities, and will have significantly reduce the development footprint.

The applicant advises it is their intention to relocate residents during construction to Anglican Care's Toronto Aged Care facility, located 4km south of the subject site and construction has been completed.

The development is Integrated Development, requiring General Terms of Approval from NSW Rural Fire Service and Subsidence Advisory NSW. The application has also been referred to Sydney Trains due to the proximity to the rail corridor.

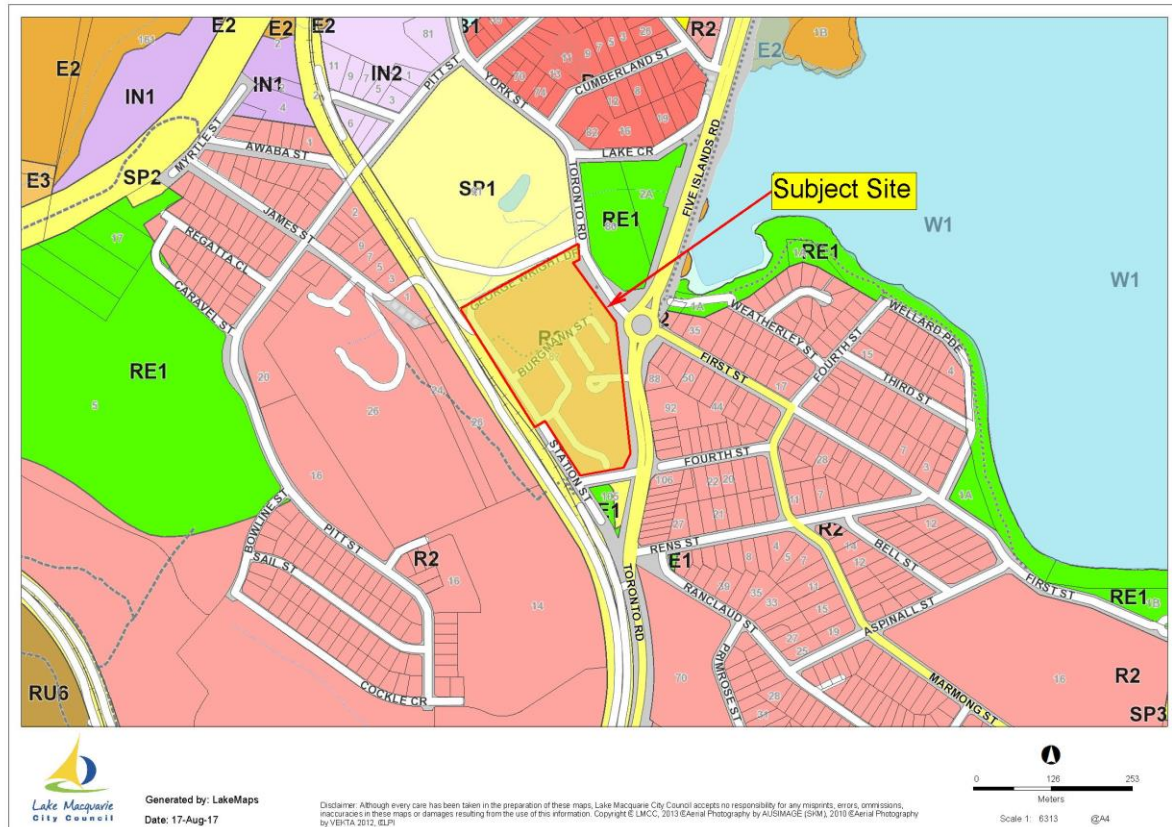
Figure 1: Rendered Perspective from York Street



Figure 2: Development footprint and Landscape Master Plan



Figure 5: Zoning Map



SITE CONSTRAINTS

The site is identified as being subject to the following constraints:

- Within the Teralba Heritage Precinct (LMDCP 2014)
- Adjacent to rail corridor
- Existing drainage path and associated topography
- Bushfire prone land
- Within a Mine Subsidence District
- Geotechnical Zone T3
- Acid Sulphate Soils Class 5

These constraints have been addressed within Council's Section 79C Assessment.

ASSESSMENT

SECTION 79C: POTENTIAL MATTERS FOR CONSIDERATION

Section 79C(1)(a)(i) the provisions of any Environmental Planning Instrument (EPI)

State Environmental Planning Policies (SEPP)

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

The applicant specified the proposal has been submitted under the provisions of the Seniors Housing SEPP.

Following review of the application, it is considered that the proposal is consistent with the aims of this policy, and the relevant controls, except for the height limit requirement in Clause 40(4). The applicant has submitted a written request under the provisions of SEPP 1 to address this variation, consideration of which is included below.

The application's compliance with the relevant controls in the Seniors Housing SEPP are detailed below:

Site Related Requirements

Clause 26 Location and access to facilities

The development will provide residents with access to the services listed in Clause 26(1). The site is subject to Clause 26(2)(C) as the site is not located within the Sydney Statistical Division. The residents will have access to transport services located not more than 400m from the site, which include:

- Two bus stops along York Street, located within 10m and 30m of the site, respectively. These bus stops are along Routes 270 and 271, which provide regular services to Teralba (750m from site), Woodrising Shopping Centre (1.8km) and Glendale Shopping Centre (5.5km) between Monday and Friday.
- Booragul Train Station, located within 20m of the site, which services centres such as Cardiff, Broadmeadow, Wyong and Gosford. Trains service the station approximately every hour between Monday and Friday.
- The applicant has undertaken an assessment of the pathways to the bus stops, which comply with the grade requirements of Clause 26(3). It is noted Booragul train station provides stair access to the platform. No accessible path of travel is provided.

Clause 27 Bush fire prone land

The site is mapped as bushfire prone land. The application has been referred to the NSW RFS as integrated development. The RFS issued General Terms of Approval which are included in the draft conditions attached to Council's report. The proposal complies with this clause, as it is consistent with Planning for Bushfire Protection 2006 and the matters for consideration listed in Clause 27(2).

Clause 28 Water and Sewer

The site is currently serviced by reticulated water and sewerage services which will be connected to the proposed development. The proposal is not likely to create a significant increase in demand on the existing infrastructure. The plans have been endorsed by Hunter Water prior to lodgement of the DA.

Clause 29 Consent authority to consider certain site compatibility criteria for development applications to which Clause 24 does not apply

Clause 29 applies to the application, because Clause 24 does not apply. A site compatibility certificate is not required as the site is zoned primarily for urban purposes (R2 Low Density Residential) and the development is permissible under both SEPP Seniors Housing and LMLEP 2014.

Clause 29 requires the consent authority to take into consideration criteria listed in 25(5)(b)(i), (iii) and (v). Council staff assessment comments in this regard are listed below.

Natural Environment and Existing/Approved uses - The proposal is not likely to have a significant impact on the natural environment or existing uses in the vicinity of the site. In particular, the existing industrial activities on 91 York Street, Teralba (north of the site) maintain a suitable separation distance to the existing Aged Care Facility. The proposal will maintain and increase the existing separation distance between the existing uses.

Services and Infrastructure – The site is connected to suitable infrastructure for roads and essential services (water, sewer, electricity etc), and site is in close proximity to bus stops and Booragul Train Station. The available services and infrastructure are considered suitable for the development.

Bulk, Scale, Built Form and Character – The existing aged care facility on the site is predominantly single storey (with two storey in the south east wing), with a footprint of approximately 5840m². It is noted that the footprint of the additions approved by DA/2125/2015 would increase the footprint area to 7879m².

The overall development on the site consists of a mix of single and two storey development. The character of the surrounding area is not clearly defined, as existing development around the site consists of large industrial buildings to the north, smaller site office buildings to the west and low density residential development 150m north west of the site.

The built form of the proposal will be predominantly two storey development, but will have a reduced footprint area of approximately 4250m², which would be 73% of the existing footprint, or 54% of the approved development.

The design of the building is considered suitable for the location, and the reduced footprint provides the opportunity for significant landscaping, including trees proportional to the development, to improve the visual amenity. The proposal will positively contribute to the streetscape along York Street, and will not impact the character of the surrounding area or existing and future use of land on adjoining properties.

Design Requirements

Clause 32 Design of Residential development

The proposal is considered consistent with the Principles set out in Division 2, as detailed below.

Clause 33 Neighbourhood Amenity and Streetscape

The existing character is predominantly influenced by the Seniors Housing on the site, and there is no clearly defined street setback pattern along the relevant section of York Street.

The proposed development is considered to be compatible, both in terms of scale and design, with the character of development in the broader area and the Teralba Heritage precinct.

The development will improve the residential amenity and character by providing a contemporary built form with appropriate setbacks, height and additional landscaping, which will maintain a suitable street setback to York Street.

The development will provide additional planting along York Street, and an improved internal entry to the facility. The proposed planting schedule is considered by Council's Landscape Architect to be suitable for the location, subject to recommended conditions.

Clause 34 Visual and acoustic privacy

The design provides suitable residential amenity and separation distance between the separate wings within the development and to the nearby independent living units.

The design will provide acceptable internal noise levels and separation from the nearby rail line, George Wright Drive and car parking areas. An acoustic report was provided to determine the potential impact from rail noise, and measures necessary to achieve suitable internal noise levels, which has been reviewed by Council staff and is considered acceptable.

Clause 35 Solar access and design for climate

The proposal will not reduce solar access to adjoining properties.

The design will provide improved solar access within the development, particularly to common courtyards and garden areas. The majority of private courtyards and garden walks are on the northern façade of the development.

Clause 36 Stormwater

The proposed stormwater management plan makes suitable provision for the collection and disposal of stormwater from the development to the existing drainage channel, which will be improved as part of the development. The proposed stormwater management provisions have been reviewed by Council's Development Engineer, and are considered to comply with the stormwater controls in LMDCP 2014, and are suitable in this instance.

Clause 37 Crime Prevention

The proposal will provide improved access control and security for residents, and discourage crime risk, by having a new combined entry. The entry will have suitable surveillance and territorial control, as it is close to the car parking area and will be visible from the reception and café area. The development also provides improved territorial reinforcement through clear separation of the entry and the service areas to the rear of the development (accessed via George Wright Drive).

Clause 38 Accessibility

An access audit was provided with the application, which was considered suitable by Council's Disability Access officer. The proposal will maintain the existing pedestrian link to the bus stops along York Street, and provide improved surveillance of the York Street frontage.

Clause 39 Waste Management

The development will provide a suitable garbage storage and bin collection area in the service area at the rear of the development, off George Wright Drive.

Development standards to be complied with

Clause 40 Development Standards

Site size - The subject land exceeds 1000m² and complies with the SEPP minimum site size requirement.

Site frontage - The site has a frontage greater than 20m and complies with the SEPP minimum site frontage requirement.

Height – As discussed, the development exceeds the 8m height limit in this Clause (measured from ground level to the ceiling) and the two storey maximum. The applicant has submitted an objection under SEPP 1, which is discussed later in this report.

It is noted the development does not have any built area within the rear 25% of the site (approx. 46.75m from rail corridor) and complies with the requirement that buildings within that area be a maximum of one storey.

Standards that cannot be used to refuse development consent residential care facilities

Clause 48(a) Height

See above comments and SEPP 1 assessment.

Clause 48(b) FSR

The total site (50,338m²) includes a number of separately defined land uses under the SEPP, notably the subject Residential Care Facility, self-contained dwellings (referred to on the plan as Independent Living Units) and Hostel (McIntosh).

The proposal affects an area of approximately 18,700m², and will increase the floor space area of aged care provided within the site from 6,050m² to 8,146m². This equates to an FSR of 0.44:1 for the affected area, which complies with the 1:1 FSR standard under Clause 48(b).

It is also noted the total Gross Floor Area across the whole site post development will be 15,106m², with a FSR of 0.30:1, which also complies with the SEPP FSR.

Clause 48(c) Landscaped Area

Under Clause 48(c), the development requires 3150m² (25sqm per bed) of landscaped area for 126 beds in the proposed Residential Care Facility. The development will provide greater than 5000m² of landscaped area in and around the proposed Residential Care Facility. It is considered that the proposal satisfies the landscaped area standard in the SEPP.

Clause 48(d) Parking

The applicant conducted an assessment of existing parking on the site, which consists of 179 parking spaces, three ambulance bays and one bus space. A Traffic Impact Assessment was submitted with the application, determining that 31 spaces (plus an ambulance space) is required for the proposed Aged Care Facility under the provisions of this Clause, based on 35 staff on duty at any one time.

The development will provide 20 spaces in the under-ground car park, with two spaces and an ambulance space near the entry. Existing parking around the aged care facility will ensure compliance with the SEPP.

In considering the site as a whole, it is noted that post development the parking requirements under SEPP Housing for Seniors and People with a Disability and LMDCP 2014 are 119 spaces and two ambulance bays. Post development, the site will provide 164 spaces, two ambulance bays and two mini bus bays, which exceeds the relevant parking requirements.

SEPP 1 – Development Standards

The proposal does not comply with the standards for building height in Clause 40(4) of the Seniors Housing SEPP, which specifies the height must be 8m or less, measured from the ceiling to the ground level, and not more than two storeys in height.

Under Clause 7, the consent authority may grant consent where it is satisfied the applicants objection is well founded and the proposal is consistent with the aims of the Policy in Clause 3. The applicant has submitted a written objection to the development standard for building height under the provisions this Policy.

The height of the development will vary from 8.7m to a maximum height of 10.7m when measured from natural ground to ceiling, which represents a variation of 2.7m or 34%. The development is part three storey where the basement car park is located underneath the two storey aged care building, which affects approximately 20% of the building footprint.

In considering the proposal, Council has had regard to the five-part test established by the Land and Environment Court for dealing with variations to development standards, and referenced by Department of Planning circulars, which is detailed below.

Five-part test

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

The Seniors Housing SEPP does not provide any specific objectives for the height standards in Clause 40(4) of that Policy.

It is noted that the objective of Chapter 3 Development for seniors housing, is *“to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.”*

It is considered the objectives for the height controls in Clause 4.3 of the standard LEP instrument (and in LMLEP 2014) provides some guidance in the absence of any relevant objectives for the height standards in the SEPP, which state:

“Clause 4.3 Height of Buildings

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

- (a) To ensure the height of buildings are appropriate for their location*
- (b) To permit building heights that encourage high quality urban form.”*

The applicant's objection identifies that the development will provide a purpose built aged care facility, and that the new design will allow for significant improvement to the quality of the facility and the efficiency of services provided in comparison to both the existing and recently approved facilities.

Council notes the design is consistent with a recent development by Anglican Care, located in Mount Hutton, which had similar service improvement objectives. Council agrees that the proposal is consistent with the objectives of Chapter 3 in the Seniors Housing SEPP.

With regard to the height objectives in the LEP, the applicants objection notes the design of the building and height variation is a result of ensuring the development provides an efficient, high level of care and amenity for residents while maintaining capacity (going from 120 to 126 beds) and responding to these constraints of the site.

It is agreed the site constraints, particularly topography and existing drainage paths, have strongly impacted the design and height of the development.

The basement car park is located in an existing depression and drainage channel. The design will allow for redevelopment of the site to improve the aged care services, while maintain the existing stormwater flow regime and ensuring it does not result in any adverse impacts on the rail corridor, Council drainage infrastructure or existing ILUs on the site.

Additionally, requiring the development to comply with the height limit, and step the building down the site with the topography would not be desirable or improve the built outcome, as it would prevent level pedestrian access through the development, which is critical for the

residents of the Aged Care facility. It is considered the design appropriately responds to the constraints of the site and intended use.

Council's assessment has also considered whether the building is appropriate for its location with regard to visual impacts, which is in a highly visible location at the Toronto Road/York Street intersection and within the boundary of the Teralba Heritage Precinct.

It is noted the site is isolated and York Street does not have a defined streetscape beyond the influence of the existing Seniors Housing development, until the residential component starts at Lake Crescent, some 140m from the site.

The proposed built form will have an appropriate street setback and variation in the York Street façade, and is predominantly two storey, which is consistent with the intent of the LEP and SEPP height controls. The perspectives provided with the application indicate that the development will add visual interest to the York Street/Toronto Road intersection while still fitting into the natural backdrop and ridgelines to the west.

It is noted the proposed development will have a ridgeline of RL 16.95m, which is 2.73m greater than that of the development approved by DA/2125/2015, which had a ridgeline of RL 14.22m. The alteration in design provides a greater level of visual interest as a result of the varying street setback and greater opportunity for landscaping, and it is considered that the additional in height does not result in any significant or unreasonable visual impacts on the streetscape.

Council's assessment has involved internal referrals to Council's Landscape/Urban Design Architect and Heritage Officer, who did not object to the building appearance, subject to recommendations that additional landscaping be provided to improve the visual appearance of both the building and entry driveway on the streetscape and public domain.

The applicant has provided amended details providing shrub (species with mature height 3-4m) and tree (species with mature height of 5-10m) to screen the entry driveway, basement car park proportional to the proposed building. It is considered these measures are an appropriate complement to the design to ensure the development provides a high quality built outcome.

The proposed design is considered to be appropriate both with regard to the site constraints and context, and that it is consistent with the objectives of the height controls in the standard LEP, and the intent of the SEPP development standards.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Following assessment of the proposal and site context, it is considered the objective and purpose of the SEPP height controls is relevant to the proposal, particularly due to it being located in a highly visible location at the entry to the Teralba Heritage Precinct.

The applicant's SEPP 1 does not specifically object to the relevance of the height standard.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

As discussed above, the design and resulting height variation is largely influenced by the site constraints (drainage) and topography. Requiring strict compliance with the SEPP development standards for height would not necessarily result in a better built outcome. The building would either need to step down the site, which would impact accessible paths of travel within the building, or reduce the number of available beds within the Aged Care facility below that currently provided, when the objective of the SEPP is to create opportunities where appropriate for Seniors Housing, which is of increasing demand by the community.

Given the building is considered appropriate for the location with respect to the visual impact on the streetscape and public domain and character of the area, it is considered strict compliance with the development standard for height in the SEPP is unnecessary and unreasonable in this instance.

4. *the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

It is not considered Council actions or approvals in the surrounding area have undermined the purpose of the development standard.

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

The site has been used for the purposes of aged care since 1975, with the mix of single and two storey buildings across the site, which is consistent with the R2 Low Density Residential zoning under LMLEP 2014 and existing low-density residential development north in Teralba and south east in Booragul.

It is noted the site is in close proximity to public transport, including a train station and bus stops, and a higher level of development may have some merit, however Council has not received any application or enquiries regarding reviewing the current zoning, beyond the recent rezoning of the SP1 land previously. It is considered the parcel of land is appropriately zoned with regard to the environmental character and historical use of the site.

Summary

Following assessment of the proposal, the applicant's objection is considered to be well founded, demonstrating that strict compliance with the height standard would not necessarily result in a better built outcome, and is unnecessary and unreasonable in this instance.

The variation is supported, as the proposal is considered to be consistent with the aims of SEPP 1, and the objects of the Environmental Planning and Assessment Act, particularly with regard to the orderly and economic use and development of land, and promoting the social welfare of the community.

SEPP 71 – Coastal Protection

The site is located within the coastal zone under the policy, however is not located within in a sensitive coastal location nor involves significant coastal development. The matters for consideration in Clause 8 have been taken into consideration. The proposal does not conflict with the requirements of the Policy.

Lake Macquarie Local Environmental Plan (LMLEP) 2014

Definition	The proposed Aged Care Facility fits the definition of "Seniors Housing" in the LEP dictionary.
Zoning	The site is zoned R2 Low Density Residential under LMLEP 2014.
Permissibility	While the application has been sought under the provisions of SEPP Seniors Housing, the proposed Aged Care Facility/Seniors Housing is permissible within the R2 zone under LMLEP 2014, subject to consent.

Objectives The proposal is consistent with the relevant objections of the R2 zone, which are listed below:

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.

The development will provide an improved aged care facility on the site (with a slight increase in capacity) which will benefit the residents of the local community. The design of the development is predominantly two storey, and will not have any significant adverse impact on the character of the surrounding low density residential environment.

To encourage development that is sympathetic to the scenic, aesthetic and cultural heritage qualities of the built and natural environment.

The design of the development, including proposed landscaping, is considered to appropriately respond to the site constraints and context, particularly with regard to its position at the entry to the Teralba Heritage precinct.

Clause 4.3 – Height of Buildings

The site is subject to a height limit of 8.5m, measured from natural ground to the highest point of the building. The development will have a maximum height of 12.35m measured from the ground level to the highest point of the building, which exceeds the LEP height limit by 3.85m or 45%.

The variation to the applicable development standards for building height has been addressed previously in this report in the assessment of SEPP Seniors Housing and SEPP 1.

It is noted the application submitted the application originally with a written variation under the provisions of Clause 4.6 (which was later updated to address SEPP 1), and Council has had regard to the LEP height limit and objectives in this Clause, which are to:

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

Despite the maximum height of 12.35m, this is limited to the basement car park area, and the rest of the building is two storey with a height of approximately 8.85m. As discussed earlier in this report, the design is influenced by the existing topography and drainage constraints, and the objectives of providing high quality aged care.

It is considered that appropriate landscaping measures are proposed to improve the visual appearance of the development, and the height variation does not result in any unreasonable visual impacts. The proposal is consistent with the objectives of this Clause.

Clause 7.21 – Essential Services

The site has existing access to essential services and infrastructure necessary for the proposal. In particular, the plans have been endorsed by Hunter Water prior to lodgement, and referred to Ausgrid for comment.

Section 79C(1)(a)(ii) the provisions of any draft EPI

Nil.

Section 79C(1)(a)(iii) the provisions of any Development Control Plan

Lake Macquarie Development Control Plan 2014

Part 11.3 – Area Plan – Teralba Heritage Precinct

The site is located within the Teralba Heritage Precinct and subject to the Area Plan. The proposal has been reviewed by Council's Heritage Officer, who identified that the proposal will have an impact on the entry point to the heritage precinct, and advised that consideration should be given to the visual impact of the proposed entry driveway and inclusion of more trees on prominent viewpoints to minimize the impact.

This recommendation was consistent with those from Council's Landscape Architect. In response to these comments, the applicant has provided amended landscaping plans.

While the entry driveway has been maintained in the same location, details have been provided showing various pavement materials along its length and landscape plans detailing hedge planting (Resilience Syzygium – mature height of 3-4m) to be provided between the driveway and York Street boundary. Further, additional tree plantings (consisting of Dry White Dwarf Gum, Little Gem and Lemon Scented Gum trees) are proposed between the development and the Toronto Road/York Street intersection, which is the primary viewpoint.

It is considered that these amendments will be appropriate in softening the visual impact of the development when viewed from the street and public domain, and adequately addresses the matters raised by Council's Heritage Officer.

The amended proposal is considered to be consistent with the objectives of the Teralba Heritage Area Plan.

Part 3 – Development in Residential Zones

The development is predominantly located on land zoned R2 Low Density Residential, and the proposal has been assessed against the provision of the Residential chapter of LMDCP 2014. The development is considered to be consistent with the objectives of this Part, particularly with regard to the following relevant sections:

Section 2.7 - Stormwater Management

The proposal will utilise and improve the existing stormwater system. Roof water will be directed to the existing drainage channel through the site, which will be upgraded to cater for the 100 year storm event with 500mm freeboard.

Council's internal Subdivision Engineering referral has not raised any concerns with the proposed stormwater management plans. The proposal is considered to be comply with Council's Stormwater requirements.

Section 3.1 – Streetscape

The York Street streetscape character is largely created by the existing Aged Care Facility, as there is no other development clearly visible along the street until the Lake Crescent intersection, located 150m north of the site. At that point the character is formed by single storey older style residential dwellings on the eastern side of the road, and the existing Teralba Colliery buildings on the western side of the road.

The development will provide an appropriate street setback and due to the design will provide an appropriate mix of built form and landscaping that will provide visual interest along York Street. The development will also improve the site entry along York Street, and will maintain existing pedestrian connectivity from the bus stop/footpath to the development.

The development will provide an improved streetscape outcome, and is not likely to adversely impact the existing character of the streetscape.

Section 3.2 – Street Setback

The development will reduce the existing street setback to York Street from 12.5m (approx. existing) to a minimum of 6.19m, however due to the design the development generally has a much greater setback, which breaks up the bulk of the built form when viewed from the street. It is noted there is no other nearby development on adjoining properties, nor is there any established streetscape pattern. The proposal complies with the 4m minimum street setback requirement in Section 3.2, and is considered suitable in this instance.

Section 3.5 – Site coverage

The proposal will have a reduced footprint compared to the existing C A Brown/Fred Lean facility, and will not exceed the maximum 65% site coverage requirement of Section 3.5.

Section 3.6 – Building Bulk

The proposed development is consistent with the controls and objectives of Section 3.6. The building height and roof form are considered to adequately respond to the site topography and context, and the change in street setback will not unreasonably increase the visual bulk of the development. The design will result in the building having areas with significantly greater setback to the street, with landscape screening to break up the built form and roof line, and reduce the visual bulk of the development. It is considered that the proposal is consistent with the objectives of this Section.

Section 3.8 – Roofs

The proposed roof height is consistent with the objectives and controls in Section 3.8, and will not be a dominant feature of the building design.

Section 3.10 – Solar Access and Orientation

The proposed development is located on the northern side of the site. The majority of rooms will have windows with either a northerly or easterly aspect and all common rooms and terrace areas will have suitable solar access.

Section 4 and 4.1 – Visual and Acoustic Privacy

The development is considered to provide a suitable level of visual and acoustic privacy. The design results in adequate separation between the various wings in the development and service areas off George Wright Drive.

Section 4.2 – Landscaped Area

The proposed development will improve landscaping within the site, and is consistent with the objectives of Section 4.2. The proposal was reviewed by Council's Urban Design and Landscape Architect, who did not raise any objection to the proposal subject to recommended conditions.

Section 4.4 – Landscape Design

The application has been supported by a suitable landscape design, inclusive of the additional information and amendments provided in response to Council's request for additional landscaping along the York Street frontage, in accordance with Section 4.4.

Section 4.5 – Front Fences

The development will replace the existing cream palisade fencing along York Street with black palisade fencing 1.8m high. Council's Landscape Architect has reviewed the proposal, which is considered acceptable and consistent with the objectives of Section 4.5.

Section 4.11 – Car parking

See SEPP Seniors Housing assessment for details.

Section 4.12 – Non-Discriminatory Access

The proposal is for Seniors Housing, and has been designed to comply with accessibility standards. An Access Audit was submitted with the application, and was considered acceptable by Council's Seniors and Disability Access Officer.

Section 4.13 – Safety and Security

A Crime Risk Assessment was submitted with the application, and was considered acceptable by Council's Social and Community Planning Officer. It is noted that the new entry to the Aged Care Facilities will provide improved security, and the design is considered to be consistent with Crime Prevention Through Environmental Design principles.

Section 4.14 – Cut and Fill

The development proposes minor earthworks (both cut and fill) for the proposed road, however this will be battered and will not involve any significant retaining walls outside the building footprint. The proposed cut and fill complies with the controls and objectives of Section 4.14.

Section 5.2 – Waste Management

The development will maintain the existing arrangements for combined internal collection of waste from the development. The proposal is not likely to increase waste generation or requirement changes to this arrangement.

Section 5.7 – Noise and Vibration

The development is in close proximity to the Sydney-Newcastle rail corridor, and may be impacted from rail noise. An Acoustic Assessment has been submitted addressing potential noise impacts on the development, and supports the development subject to recommendations for rooms facing the rail corridor.

The application has been reviewed by Council's Environmental Management Section, who has raised no objection subject to standard noise certification and monitoring conditions.

Part 9.17 – Signage

The application seeks consent for signage as part of the proposed development, including:

- A free standing sign (6m x 2.5m) along the boundary at the Toronto Road/York Street intersection
- A sandstone wall (1.8m high x approx. 16m in length) with stainless steel lettering at the York Street entry

- A sandstone wall (1.8m high x approx. 12m in length) with stainless steel lettering at the entry driveway location (where it turns off from George Booth Drive)

The signs are located to either provide site, entry and direction identification. The signs will not be illuminated, and conditions will be imposed restricting flood lights being used to light up the sign area.

The proposed signage is considered to comply with the controls and objectives of this Section, as detailed below:

- The design and position of the signs is considered reasonable given their purpose, and are not likely to have a significant impact on visual amenity.
- Section 17.3 sets an allowable area of approx. 7m², based on maximum dimensions of 3.75m (width) and 6m (height) – assuming clearance of 2.6m above ground.

The lettering on the sandstone walls along York Street are not a concern, as they will not be visually obtrusive. However, the freestanding sign will have dimensions of 6m (width) and 2.5m (height) with a signage area of 8sqm, which will be visually prominent at the York Street/Toronto Road intersection and exceeds both the size of the existing site identification sign and DCP recommended width and area for free standing signs. Council's Landscape and Urban Design Architect has raised concern with the size and location of the proposed sign, and the removal of existing street trees to facilitate this.

The applicant has amended the design to integrate the sign into the proposed fencing and landscaping, with additional street tree planting to offset the loss of the existing trees.

Following review of the amended details, Council does not have any further concerns with the proposed replacement to the existing site identification sign, subject to a recommendation that the width of the sign be reduced to 5m total (with a signage area 4m wide) to reduce the visual impact and bring the new sign closer to the size of the existing sign and further into compliance with LMDCP 2014.

Section 94 Contributions Plan – Toronto (2016)

The site is subject to the Toronto 2016 Development Contributions Plan, and the additional beds within the Aged Care Facility would normally attract Section 94 contributions.

The applicant has sought an exemption to this requirement as a "Social Housing Provider" under Ministerial Direction under Section 94E dated 14 September 2007. The applicant has been obtained this exemption under previous projects in the Lake Macquarie Local Government Area.

Section 79C(1)(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

Nil.

Section 79C(1)(a)(iv) any matters prescribed by the regulations

Nil.

Section 79C(1)(b) the likely impacts of the development

Built Environment - The development is consistent with the design guidelines of Council's DCP, and is suitable with regard to the both the streetscape character and that of

development on adjoining properties. The development is not likely to have a significant or adverse impact on the built environment.

Natural Environment - The proposed tree removal and stormwater arrangements are considered acceptable. The development is not likely to have a significant impact on the natural environment.

Social Impact - The development will improve the service provided by the existing Aged Care Facility, and is likely to have a positive social impact.

Economic Impact – The development is not likely to have any wider economic impacts.

Section 79C(1)(c) the suitability of the site for development

The development is considered suitable for the location with regard to the character of the surrounding area, existing development on the site and adjoining properties and the physical and environmental constraints of the site.

Section 79C(1)(d) any submissions made in accordance with the Act or Regulations?

Public Submissions

Nil.

Submissions from Public Authorities

NSW Rural Fire Service

The site is mapped as bushfire prone. The proposal is considered to be a Special Fire Protection Purpose. The application was referred to the NSW RFS as Integrated Development under Section 100B of the Rural Fires Act.

General terms of approval were issued on 31 July 2017, subject to conditions requiring BAL 12.5 construction for specified areas and standard APZ, services, landscaping and emergency evacuation conditions. These have been included in the draft conditions.

Mine Subsidence Advisory

The site is within a Mine Subsidence District, and was referred to Subsidence Advisory NSW as Integrated Development under the Mine Subsidence Compensation Act. At the time of this report, Subsidence Advisory NSW have not yet issued their approval, but have indicated it should be available prior to the determination meeting. A standard condition has been included regarding compliance with the requirements of Subsidence Advisory NSW, which will be updated following receipt of their approval and provided to the Panel at the determination meeting.

Sydney Trains

The application was referred to Sydney Trains under State Environmental Planning Policy (Infrastructure) 2007 for development immediately adjacent to rail corridors. Sydney Trains provided comment on recommending conditions regarding Acoustic Assessments, Stray Currents/Electrolysis, General Access and Excavations. These have been included in the conditions of consent.

Ausgrid

Ausgrid provided comment on 23 August 2017. No objections were raised to the proposal, subject to general advice, which was provided regarding matters that required consideration prior to construction works.

A condition requiring the development to be undertaken in accordance with Ausgrid's requirements has been included in the draft conditions.

Section 79C(1)(e) the public interest

The proposal is not considered to raise any public interest matters beyond those discussed in Council Section 79C Assessment above.

CONCLUSION

This application is for the demolition of the existing Aged Care Facility and construction of a new Residential Aged Care Facility.

Following assessment of the application, it is considered the variation to the heights standards in SEPP Seniors Housing should be supported, and approval of the application will be in the public interest as development is consistent with the objectives of the Act in promoting orderly and economic development of the land.

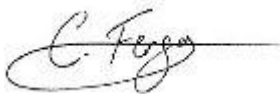
RECOMMENDATION

That Development Application DA/1132/2017 be approved subject to the draft conditions in Attachment A.

ENDORSEMENT

The staff responsible for the preparation of the report, recommendation or advice to any person with delegated authority to deal with the application has no pecuniary interest to disclose in respect of the application.

The staff responsible authorised to assess and review the application have no pecuniary interest to disclose in respect of the application. The report is enclosed and the recommendation therein adopted.



Carlos Ferguson
Development Planner
Development Assessment and Compliance
Lake Macquarie City Council

I have reviewed this report and concur with the recommendation.



Elizabeth Lambert
Chief Development Planner
Development Assessment and Compliance
Lake Macquarie City Council

Attachment A: Draft Conditions of Consent

Attachment B: Development Plans

Attachment C: Agency Submissions

Attachment D: Applicants SEPP 1 Objection