

LAKE MACQUARIE CITY COUNCIL

DEVELOPMENT APPLICATION

EXECUTIVE SUMMARY

APPLICATION REFERENCES	
DA Number	DA/1950/2017
Assessing Officer	Chris Dwyer
Property Description	120 Redhead Road, Redhead Lot 1938 DP 704459
Application Description	Seniors Housing – Residential Care Facility
Land Zoning	R2 Low Density Residential Lake Macquarie Local Environmental Plan 2014
Owner	Crown Land Frank Whiddon Nominees Pty Ltd as Reserve Trust Manager
Applicant	The Whiddon Group
Consent Authority	Hunter and Central Coast Regional Planning Panel 2017HCC042
Approval Bodies	NSW Subsidence Advisory NSW Rural Fire Service
Capital Investment Value:	\$28,521,042

Background

A development application for alterations and additions to an existing Residential Aged Care Facility was lodged with Council on 17 October 2017.

At the time of lodgement, the proposal was Regional Development as the development has a CIV of more than \$20 million (\$28 million). Although the threshold under SEPP (State and Regional Development) 2011 has increased to \$30 million, the development remains Regional Development due to the Savings and Transitional Provisions of Clause 24(3) of the SEPP.

The development was notified to adjoining and adjacent land owners from 23 October 2017 to 15 November 2017. Seven submissions were received, all objecting to the proposal.

The development was referred to internal and external stakeholders.

Internal referrals generally support the development and advise the proposal is satisfactory if erected in accordance with the proposed plans and with the imposition of conditions of consent including a Vegetation Management Plan addressing the proposed Internal Asset Protection Zone and edge effects on E2 zoned land, and an updated Soil and Water Management Plan.

The NSW Rural Fire Service provides General Terms of Approval dated 23 November 2017. See **Appendix A**.

Subsidence Advisory NSW provides General Terms of Approval dated 5 December 2017. See **Appendix B**.

Two written submissions under Clause 4.6 have been made by the applicant. A written submission regarding Clause 40(4)(c) of SEPP (Housing for Seniors or People with a Disability) 2004 (one storey limit within rear 25% of the site) is contained in **Appendix C**. A written submission regarding Clause 4.3 of LMLEP 2014 (8.5 metre building height) is contained in **Appendix D**.

Additional information was requested of the applicant on 21 December 2017 regarding visual amenity, flora and fauna and edge treatment, asset protection zone and fuel management, acoustic impact, cut and fill, stormwater and waste management.

Based upon the response received on 19 February 2018 and additional landscaping information on 2 May 2018, an assessment of the development application and matters identified within internal and external stakeholders responses, no significant issues remain outstanding.

The application is recommended for approval, with conditions as contained in **Appendix F**.

Site and Locality

The site is located at Redhead, on the eastern side of Lake Macquarie.



Figure 1: Locality Plan

The site consists of one lot with an area of approximately 5.292 hectares. The site contains an established residential aged care facility ('Redhead Gardens') including independent living units and a central residential aged care facility, with associated internal roads, car parking and landscaping.



Figure 2: Aerial photo of site

Vehicular and pedestrian access to the site is obtained via an existing driveway and footpath from Redhead Road.

Adjacent lands comprise the following:

- Crown owned vacant land to the north and west (zoned E2 Environmental Conservation), which includes native vegetation;
- Suburban residential development to the east across Redhead Road, and immediately to the south (zoned R2 Low Density Residential).

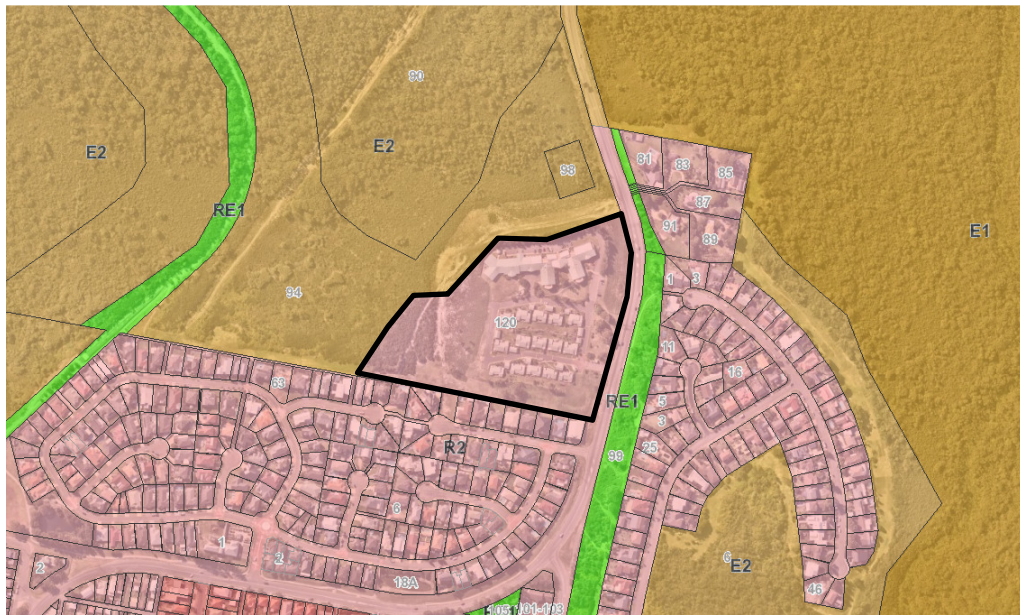


Figure 3: Aerial photo of development site and adjoining properties including zonings

Description of Development

The existing facility known as 'Redhead Gardens' comprises a two storey 60 bed Residential Aged Care Facility and 30 single storey independent living units. The development has been established since 1991, with the most recent additions in 2001.

The development application proposes an additional 116 beds through alterations and additions to the existing residential care facility and incorporates:

- Internal renovations and a two storey extension to the south providing 36 new beds to the existing building (bringing the total to 96);
- A new two storey building to the south west containing 80 beds in two 'wings' and including kitchen and laundry services to the ground floor of one wing;
- Landscaping and carparking.

No change is proposed to existing site access arrangements.

The development proposal will result in a total of 176 beds, and 30 independent living units.

The works result in an increase in staff numbers from 27 to approximately 60, mostly care and hospitality workers.

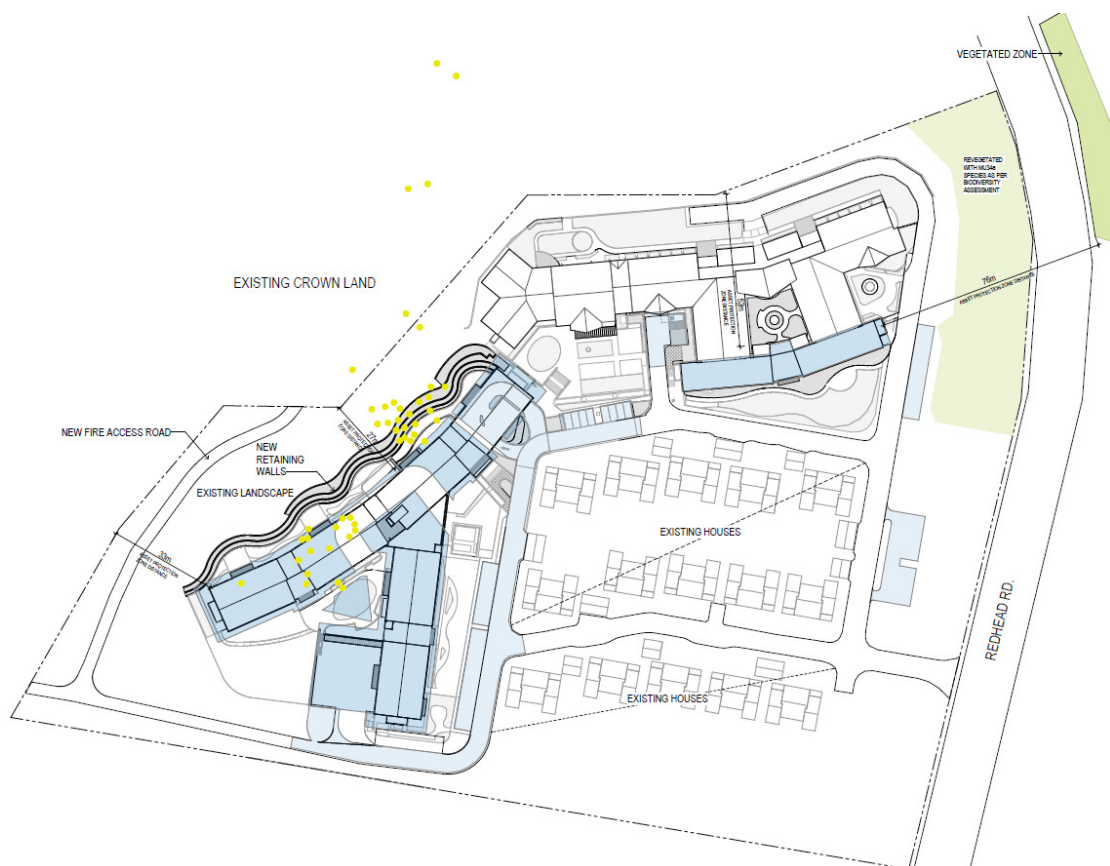


Figure 4: Site Plan showing existing and proposed building layout.



Figure 5: Additions to existing building – upper and lower floors



Figure 6: Ground and Upper floor –New Building



Figure 7: Ground Floor, New Building (laundry and kitchen)

LA03 - Site plan

Legend

- 1 Entry signage and sequence
- 2 Community hubs with playground, bowling green and communal facilities
- 3 Nature walk
- 4 Private residential courtyards
- 5 South facing ornamental garden
- 6 Vegetated landscape mounds
- 7 Viewing platform/ pavilion
- 8 Staff courtyards
- 9 Kinetic sculptures
- 10 MU34a vegetation refer to Biodiversity Assessment
- 11 Vegetated OSD basin to Engineer details
- 12 New screen tree planting to boundary. Spacing in accordance with RFS guidelines
- 13 New 1800mm high radiant fence & gate to western boundary as per RFS requirement



Figure 8: Site Landscape Plan



PERSPECTIVE 1



PERSPECTIVE 2



PERSPECTIVE 3

Figure 9: Perspectives

ASSESSMENT

Environmental Planning and Assessment Act 1979

CLASSIFICATION OF DEVELOPMENT		Y/N
Is the development Regional Development?		Y
Is notification necessary?		Y
Have all adjoining and affected owners been notified?		Y
Is the development State Significant Development?		N
Is the development Advertised Development?		N

DESIGNATED DEVELOPMENT		Y/N
Is the development proposal Designated Development?		N
Is the proposal for alterations or additions to development (whether existing or approved) that fits the definition of designated development?		N

INTEGRATED DEVELOPMENT			
Is the development Integrated Development?			Y
ACT		APPROVAL	
<i>Rural Fires Act 1997</i>	S100B	Development of bushfire prone land for a special fire protection purpose as defined in Section 100B of the Rural Fires Act 1997.	Y
The NSW Rural Fire Service provides General Terms of Approval dated 23 November 2017. See Appendix A .			
<i>Coal Mine Subsidence Compensation Act 2017</i>	Part 3	Approval to alter or erect improvements within a mine subsidence district or to subdivide land therein	Y
Subsidence Advisory NSW provides General Terms of Approval dated 5 December 2017. See Appendix B .			

INTERNAL REFERRAL ASSESSMENT	
DAC – Building DAC – Landscape/Visual Impact DAC – Flora and Fauna DAC – Erosion and Sediment Control DAC – Engineering DAC – Tree Assessment WER – Environmental Management WER – Food Premises WER – Waste Collection	Sustainability – Flora and Fauna Sustainability – Recycling / Waste Asset Management – Traffic Asset Management – Driveway Asset Management – Drainage Community Planning – Contributions Community Planning – Aged Care/Disabled Access Community Planning – Crime Prevention Community Planning – Social Impact
The proposal including additional information has been assessed by the above subject matter experts within Council. Staff support the proposal in principle. Where possible impacts are raised, these are mitigated to satisfactory levels by recommended conditions of consent.	

SECTION 1.7 CONSIDERATIONS	Y/N
Having regard for Section 1.7 of the Act, do any of the following issues require further consideration?	N
Whether the life cycle of a threatened species will be disrupted.	
Whether the life cycle of an endangered population will be disrupted.	
Whether the habitat of a threatened species or ecological community will be modified.	
Whether habitat will become isolated from other areas of interconnecting or proximate habitat.	
Whether critical habitat will be affected.	
Whether a threatened species, ecological community or habitat are represented in the region's conservation reserves.	
Whether the development is recognised as a threatening process.	
Whether any threatened species or ecological community is at the limit of its known distribution.	

SECTION 4.15 – POTENTIAL MATTERS FOR CONSIDERATION
(a)(i) the provisions of any environmental planning instrument (EPI)
<i>State Environmental Planning Policies</i>
<i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i>
<p>Although permissible with consent under the LMLEP 2014, the application is lodged with reference to the SEPP.</p> <p>Chapter 1 - Preliminary</p> <p><u>2. Aims of Policy</u></p> <p>The Aims of the Policy are:</p> <ol style="list-style-type: none"> (1) ... to encourage the provision of housing (including residential care facilities) that will: <ol style="list-style-type: none"> (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and (b) make efficient use of existing infrastructure and services, and (c) be of good design. (2) These aims will be achieved by: <ol style="list-style-type: none"> (a) ... (b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and (c) ... <p>The development is consistent with the aims of the Policy through the supply of housing for people with a disability in close proximity to urban services and on a site that currently contains a residential aged care facility.</p> <p>Chapter 2 – Key Concepts</p> <p><u>8. Seniors</u></p> <p>The development will cater specifically for seniors, meeting the definition under the SEPP.</p>

10. Seniors housing

The development constitutes a residential care facility which is a form of seniors housing under the SEPP.

11. Residential Care Facility

The facility will include the provision of meals and cleaning services, nursing care and appropriate staffing, furniture, furnishings and equipment for the intended residents to meet the definition of a residential care facility.

Chapter 3 – Development for Seniors Housing

Part 1 General

18. Restrictions of occupation of seniors housing allowed under this chapter

Subclause 18(2) requires that a condition of consent be imposed on any seniors housing development restricting occupancy to seniors or people with a disability, people who live in the same household as the afore mentioned or staff employed to assist in the administration or provision of services to housing provided under the SEPP.

A condition of consent relating to the above restriction is proposed and a restriction as to user registered on the property title is required.

Part 2 Site-related Requirements

26. Location and access to facilities

The SEPP requires that a consent authority must not consent to a development application unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:

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

Access on the subject site complies with clause 26 if there is a transport service available to the residents who will occupy the proposed development:

- (i) that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and
- (ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and
- (iii) that is available both to and from the proposed development during daylight hours at least once each day from Monday to Friday (both days inclusive),

and the gradient along the pathway from the site to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) complies with subclause (3).

The SEE states that the residents of the facility will have access to shops, banking facilities and other retail and commercial services, community services and recreation facilities and medical services through the provision of a community bus that will collect residents from the site and transport them to shops and other facilities identified above, at least once a day Monday to Friday. This provision satisfies subclause 26(2)(c).

In addition, the SEE states that there is a bus stop located on either side of Redhead Road within 400 metre of the entry to the site.

In order to ensure compliance with this clause, a condition of consent is proposed that requires the provision of the bus and ensures it is available Monday to Friday.

27. Bush fire prone land

The application was referred to the NSW Rural Fire Service requesting General Terms of Approval as the site is identified as bushfire prone land and the facility is defined as a special fire protection purpose under the Rural Fires Act 1997.

General Terms of Approval have been provided by NSW Rural Fire Service, dated 23 November 2017, and are included in the recommended conditions of consent.

The development, with General Terms of Approval, will comply with the requirements of *Planning for Bushfire Protection*.

28. Water and Sewer

The submitted plans have been endorsed by Hunter Water recognising that adequate water and sewerage services are available for connection.

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

The consent authority must take into consideration the criteria referred to in subclause 25(5)(b)(i), (iii) and (v). The development must be compatible with surrounding land uses having regard to:

- (i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land within the vicinity of the proposed development.
- (iii) the services or infrastructure that are or will be available to meet the demands arising from the proposed development (particularly retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision.
- (v) without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.

The site is bush fire prone (addressed under clause 27), within a mine subsidence area, and contains a threatened species (*Tetratheca Juncea*). Neighbouring land uses include suburban residential and environmental conservation (Crown land).

The application has been referred to RFS and NSW Subsidence Advisory which have both issued General Terms of Approval subject to conditions.

The assessment indicates that with the inclusion of GTA conditions, standard conditions and specific mitigations measures such as a Vegetation Management Plan and Biodiversity Offset, the proposal is compatible with the natural environmental and neighbouring land uses.

The development will provide a community bus service for residents to access services in the surrounding town centres. The existing services in the surrounding town centres are capable of accommodating the demand created by the development.

The design of the facility responds to the site and endeavours to provide appropriate setbacks to sensitive neighbouring development including suburban residential dwellings to the south.

Where adjacent to existing dwellings in White Cap Close and Elandale Place, the development observes a setback of 19 metres (Building B). The setback area will include buffer landscaping (Bracelet Honey Myrtle) which when combined with acoustic conditions will mitigate the impact of the development on neighbouring residents. The separation distance mitigates privacy, acoustic and overshadowing issues.

Part 3 Design Requirements

Division 1 General

30. Site analysis

A site analysis plan and supporting documentation has been prepared for the subject site.

Division 2 Design Principles

33. Neighbourhood amenity and streetscape

Development adjoining the site is characterised by low density residential dwellings and environmental conservation land. The site has been occupied and used as a seniors housing facility for many years. The existing (and proposed) facility is accessed directly from Redhead Road.

The development has been designed to reflect the existing built form layout (the proposal is to connect into the existing facility), topography of the site and increased setbacks from residential land. Buildings have been designed to cater for the specialised aged care facility land use and have been separated to reduce the bulk of the development.

Tree removal has been kept to a minimum and additional plantings together with a Vegetation Management Plan mitigate impacts in this regard.

The site does not contain riparian areas.

34. Visual and acoustic privacy

The development is orientated to maximise visual privacy within the site and to adjoining properties. Any opportunities for overlooking are mitigated by proposed landscaping and the relatively large separation distances (19 metres) from neighbouring properties.

Driveways and parking areas are generally located away from neighbouring properties with the exception of the proposed road leading to the internal loading zone to the south of the site. The proposed hours of operation of service vehicles to the site is 7:00am to 10:00pm (i.e. daytime and evening periods).

As a precautionary approach, a condition of consent limiting the hours of operation of the loading zone / service vehicles to between 8:00am and 8:00pm Monday to Friday, and 8:00am to 1:00pm Saturdays, Sundays and Public Holidays, is recommended to mitigate any impacts.

The proposed mechanical plant falls within the requirements for a maximum sound power output and/or the attenuation of noise with the installation of acoustic barriers.

A condition of consent requires acoustic certification of the structural and mechanical components on completion of the building, as well as an acoustic performance compliance report at 90 days of occupation.

35. Solar access and design for climate

The proposed buildings will not cause overshadowing to required private open space areas of neighbouring properties. Overshadowing does occur to one property at 9:00am June 21 however this overshadowing is not to a private open space area and it is probable that the existing boundary fence not shown on the overshadowing plans results in similar levels of impact.

Within the development, the southern extension to the existing building partially overshadows an existing Independent Living Unit (ILU) at 9:00am June 21, and Building A partially overshadows an existing ILU at 3:00pm June 21. Both instances are minor and acceptable. The ILUs maintain an acceptable level of more than three hours solar access throughout the day on June 21.

Within communal areas and open spaces, 80% of communal areas, 60% of dining areas and

71% of bedrooms comply with a minimum of three hours of sunlight between 9:00am and 3:00pm on June 21.

The proposed buildings are oriented to receive adequate solar access and natural ventilation.

36. Stormwater

The revised Stormwater Management Plan prepared by Opus International Consultants meets Council's requirements and is satisfactory. Soil erosion and sedimentation management through construction is satisfactory. A specific condition of consent requiring a Stormwater Management Plan prior to works commencing is proposed.

37. Crime Prevention

The Crime Risk Assessment Report prepared by James Marshall & Co (October 2017) identifies and addresses areas of crime risk and identifies a number of strategies to mitigate risk to ensure that the proposal is designed / constructed in accordance with CPTED principles and are supported.

38. Accessibility

A courtesy bus is provided with the development to transport residents to local facilities. Bus stops are located in Redhead Road in front of the facility. The disability access report and audit is supported and no issues are raised in this regard.

39. Waste Management

Waste is collected from the service yard where items are separated into bins for general waste, recycling, medical, organic and co-mingled waste. The applicant advises that waste will be collected by a private contractor with up to five collections each week.

Part 4 Development standards to be complied with

Division 1 general

40. Development Standards – minimum sizes and building height

The subject site and proposed development meet the development standards as follows:

- Site size: 5.3292ha - complies.
- Site frontage: - The site has a 263.31m to Redhead Road - complies.
- Height:

Under the SEPP, height means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

The development complies with the eight metre height limit [Clause 40(4)(a)].

Regarding Clause 40(4)(b) requiring two storeys only adjacent to a boundary is complied with.

Clause 40(4)(c) provides that a building located in the rear 25% area of the site must not exceed one storey in height. The proposal does not comply with this development standard.

The applicant seeks a variation to the development standard for height under the SEPP, through Clause 4.6 of LMLEP 2014. Refer to Clause 4.6 assessment in this report.

It is concluded that the height as proposed is acceptable.

Part 7 Development standards that cannot be used as grounds to refuse consent

Division 2 Residential Care Facilities

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

- Building height – Building height is above 8m. See comments above and in Clause 4.6 assessment.
- Density and scale – the FSR is less than 1:1.
- Landscaped Area – the landscaped area of the site exceeds 25m² per care bed.
- Parking for residents and visitors for 176 beds and 30 ILUs, with 60 employees.
Required:
 - (i) 1 parking space for each 10 beds in the residential care facility, and
 - (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and
 - (iii) 1 parking space suitable for an ambulance48 spaces are required, and 53 spaces are provided, including ambulance parking. The car parking will be the subject of a condition of consent.

Chapter 4 Miscellaneous

55. Residential care facilities for seniors required to have fire sprinkler systems

The applicant intends to install a fire sprinkler system.

State Environmental Planning Policy (State and Regional Development) 2011

At the time of lodgement, the proposal was Regional Development as the development has a CIV of more than \$20 million (\$28 million). Although the threshold under SEPP has increased to \$30 million, the development remains Regional Development due to the Transitional Provisions of Clause 24(3) of the SEPP. The Hunter and Central Coast Regional Planning Panel is the consent authority.

State Environmental Planning Policy No. 55 – Remediation of Land

There are no known potentially contaminating previous land uses or activities on the site.

State Environmental Planning Policy 71 – Coastal Protection

Note that SEPP 71 has been repealed, however the replacement SEPP (Coastal Management) 2018 does not apply to the application due to the savings and transitional provisions of the SEPP under Clause 21(1). SEPP 71 continues to apply to the application.

This Policy aims:

- (a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and
- (b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and
- (e) to ensure that the visual amenity of the coast is protected, and
- (f) to protect and preserve beach environments and beach amenity, and
- (g) to protect and preserve native coastal vegetation, and
- (h) to protect and preserve the marine environment of New South Wales, and
- (i) to protect and preserve rock platforms, and
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the *Protection of the Environment Administration Act 1991*), and
- (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and

- (l) to encourage a strategic approach to coastal management.

This application has been assessed having regard to the aims of the SEPP. It is not expected that the proposed development will have adverse impact on achieving the aims of the SEPP.

In addition, the application has had regard to the matters for consideration in Clause 8 of the SEPP, as follows:

- (a) the aims of this Policy set out in clause 2,
- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,
- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,
- (d) the suitability of development given its type, location and design and its relationship with the surrounding area,
- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,
- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,
- (g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,
- (h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats
- (i) existing wildlife corridors and the impact of development on these corridors,
- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,
- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,
- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,
- (m) likely impacts of development on the water quality of coastal waterbodies,
- (n) the conservation and preservation of items of heritage, archaeological or historic significance,
- (o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,
- (p) only in cases in which a development application in relation to proposed development is determined:
 - (i) the cumulative impacts of the proposed development on the environment, and
 - (ii) measures to ensure that water and energy usage by the proposed development is efficient.

The application has been assessed against these matters for consideration. The application will generally comply with the aims of the SEPP and the other matters for consideration under Clause 8 of the SEPP.

Lake Macquarie Local Environmental Plan 2014

Part 1 - Preliminary

1.9A	Suspension of covenants, agreements or instruments	Not applicable.
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Part 2 – Permitted or Prohibited Development	
What is the land zoned?	R2 Low Density Residential
What is the proposal for?	Seniors Housing – Residential Care Facility
Is this permissible within the zone?	Yes
Does it meet the objectives of the zone?	
<p>The objectives of the R2 zone are:</p> <ul style="list-style-type: none"> - 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 encourage development that is sympathetic to the scenic, aesthetic and cultural heritage qualities of the built and natural environment. <p>The proposed extension to the Seniors Housing – Aged Care Facility proposal is consistent with these objectives.</p>	
2.4 – 2.8	Not applicable.
Part 4- Principal Development Standards	
4.1 – 4.2C	Not applicable.
4.3	Height of buildings.
<p>The land has a building height limit of 8.5 metres.</p> <p>The proposal exceeds this height. A submission seeking an exception to this development standard is made pursuant to Clause 4.6 of the LEP - see below.</p>	
4.4 – 4.5	Not adopted
4.6	Exceptions to development standards
<p>The proposal exceeds one development standard in SEPP (Housing for Seniors and People with a Disability) 2004 (the SEPP) and one development standard in LMLEP 2004 (the LEP).</p> <p>Clause 40(4) of the SEPP provides for an 8 metre height limit (a), and a one storey height limit in the rear 25% of the site (c).</p> <p>In contrast the LEP provides for a 8.5 metre building height limit across the site.</p> <p>Which building height to apply?</p> <p>The applicant identifies that the building height in the SEPP may override the building height in the LEP (however in case that opinion is not correct the applicant addresses both development standards separately). Clause 5(3) the SEPP provides:</p> <p><i>5(3) If this Policy is inconsistent with any other environmental planning instrument, made before or after this Policy, this Policy prevails to the extent of the inconsistency.</i></p> <p>A review of the definitions of building height reveals that there are two different terms applying to the SEPP and LEP. The SEPP defines building height as <i>the distance measured vertically from any point on the <u>ceiling</u> of the topmost floor of the building to the ground level immediately below that point.</i></p> <p>The LEP defines building height as <i>the vertical distance from ground level (existing) to the <u>highest point of the building</u>, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.</i></p>	

It appears that the SEPP and LEP development standards refer to different material outcomes.

Therefore the relevant development standards are those provided for in the SEPP and LEP. The non-compliances are one storey within rear 25% of the site (SEPP) and building height of 8.5 metres (LEP). The building height under the SEPP (8 metres) is complied with.

The applicant addresses all development standards (SEPP and LEP) under Clause 4.6 of the LEP. See **Appendix C** (SEPP) and **Appendix D** (LEP) for the relevant written submissions.

Comment:

Clause 1.9(2) of the LEP provides that SEPP 1 – Development Standards does not apply to the land.

1.9 (2) The following State environmental planning policies (or provisions) do not apply to the land to which this Plan applies: [State Environmental Planning Policy No 1—Development Standards](#)

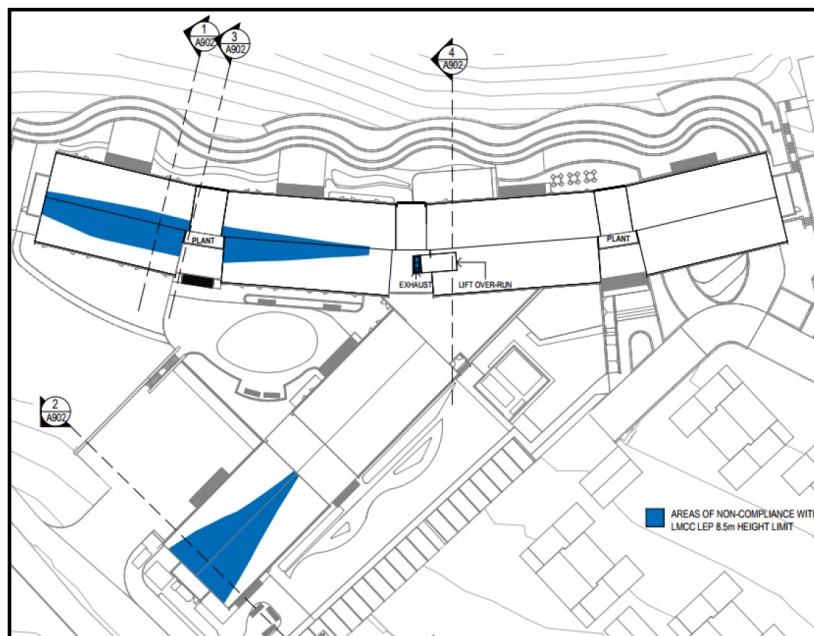
The correct vehicle for a development standard non-compliance is found within Clause 4.6 (2) of the LEP which provides:

4.6 (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

This is consistent with the findings in *Ku-ring-gai Council v Pathway Properties Group Pty Ltd* [2018] NSWLEC 73.

1 Building Height - LEP

The building exceeds the building height of 8.5 metres at the locations indicated in Figure 10 below:



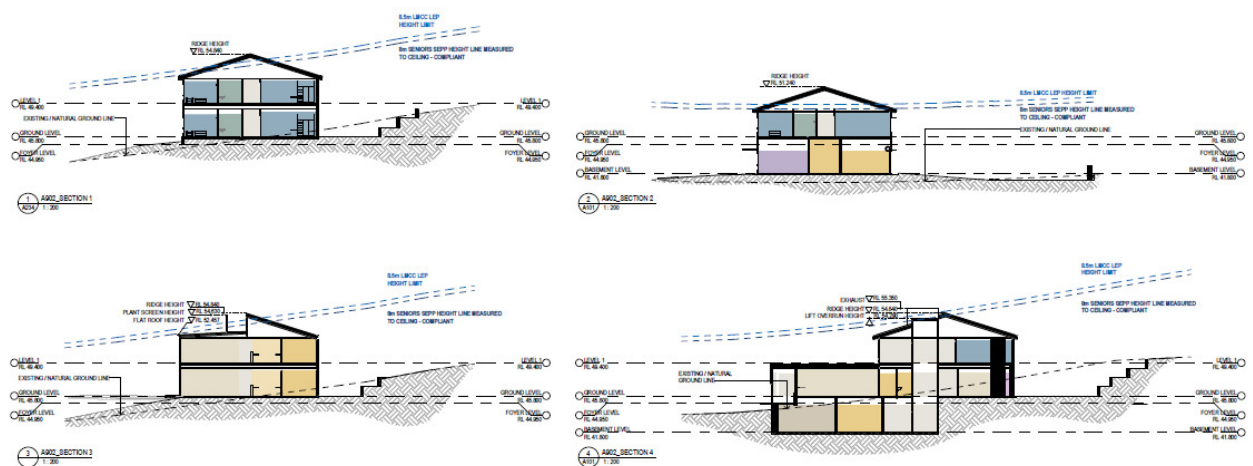


Figure 10: Building height exceedence

The written submission addresses the relevant objectives and is formulated against the correct guides and relevant case law, including the ‘five part test’.

The relevant height encroachments are:

The proposed variations are detailed below.

- From foyer level to East-West Wing Roof Ridge level: 9890mm
- From ground level to East-West Wing Roof Ridge level: 9040mm
- From ground level to services exhaust: 9550mm
- From basement level to South Wing Roof Ridge level: 9440mm

Figure 11 – Height encroachments

The height encroachment does not result in additional overshadowing, visual impact, acoustic impact, streetscape impact or built form and bulk impacts. The elements of non-compliance are roof features associated with the desired construction method of pitched roof over the extended width of the building. The width of the building is determined by the specific land use requirements of a residential aged care building on one level, housing bedrooms off a central corridor. The non-compliant aspects of the building remain central to the site or with substantial side setbacks to neighbouring properties.

The objectives of the zone and Clause 4.3 of the LEP are met even with the non-compliance. As such compliance is not necessary and non compliance is supported in this instance.

2 Building Height - SEPP

In the absence of any definition, the rear 25% of the site is identified using Redhead Road as the ‘front’. An approximate of the rear area is made in Figure 12 below.



Figure 12 – Approximate rear 25% of site

The applicant provides an alternate, but similar view:

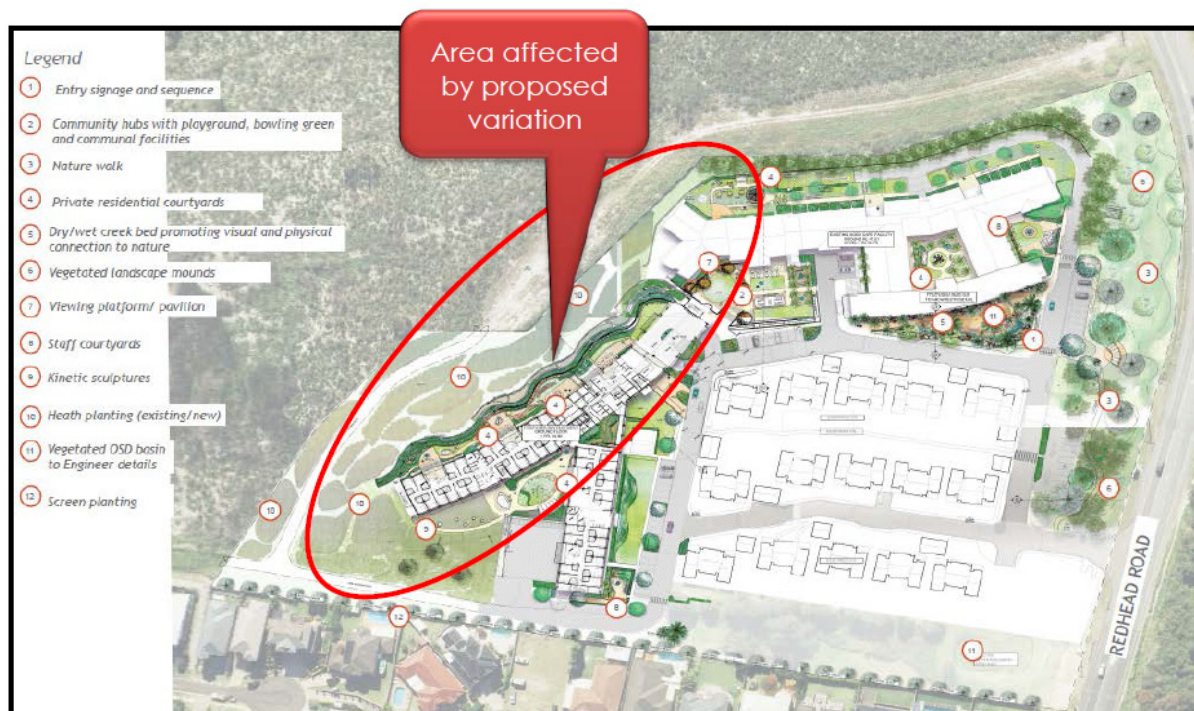


Figure 12A – Applicant's approximate rear 25% of site

The proposal exceeds the one storey requirement under the SEPP in Building A to the left of the

line in Figure 12, or within the circled area in Figure 12A.

The written submission addresses the relevant objectives and is formulated against the correct guides and relevant case law, including the 'five part test'.

The sloping topography and context of the site results in a built form that is 'cut in' to the slope, reducing its effective height but retaining it as a two storey building.

The land to the west is Crown land and zoned E2 Environmental Protection. Development potential on this land is limited and it is unlikely to accommodate any built form in the future.

The two storey component is setback to the western and southern boundaries between 20 and 40 metres.

There are no additional environmental impacts resulting from the additional one storey above the development standard.

With consideration of the objectives of Clause 40(4)(c) of the SEPP, the site context and slope, the built form response, separation from the boundary and the likely future development on neighbouring land, the proposed non-compliance of the one storey height limit within the rear 25% of the site is consistent with the zone objectives, consistent with the relevant objectives of the SEPP, and acceptable and supported in this instance.

Concurrence to the variation by the Department of Planning and Environment may be assumed as the application is regional development and is not being determined by a staff member of Council (Planning Circular PS18-003 dated 21 February 2018).

Part 5 – Miscellaneous provisions

Not applicable.

Part 6 – Urban release areas

Not applicable.

Part 7 – Additional local provisions

7.1	Acid sulfate soils	Not applicable. The land is not identified on the acid sulfate soil map.
7.2	Earthworks	Council's engineer advises that the earthworks proposed by the development are satisfactory and consistent with the provisions of subclause 7.2(3) of the LEP.
7.3	Flood planning	Not applicable. The land is not flood prone.
7.4	Coastal Risk Planning	Not applicable. The land is not identified on the coastal risk map.
7.5	Terrestrial biodiversity	Not applicable. The land is not identified on the terrestrial biodiversity map.
7.6	Limited development on foreshore area	Not applicable. The land is not identified on a foreshore building line map.
7.7	Development on sensitive Aboriginal landscape areas	Not applicable. The land is not identified on a sensitive Aboriginal landscape area map.
7.8 – 7.11	Not applicable	
7.12	Development for the purpose of	Not applicable – this clause has ceased to

	Seniors Housing	apply.
7.13 – 7.19	Not applicable.	
7.20	Environmentally Sensitive Land	Not applicable - The land is not identified on the environmentally sensitive land map.
7.21-7.23	Not applicable.	
Schedule 1 – Additional permitted uses		
Not applicable.		

(a)(ii) the provisions of any draft environmental planning instrument (EPI)
Not applicable.

(a)(iii) any development control plan		
Development Control Plan 2014		
Part 1 – Introduction		
<i>Section 1.15 – Development Notification Requirements</i>		
Does the application require notification?		Y
Have all adjoining and affected properties been properly notified?		Y
Has the application being subject to an extended notification period under Cl. 1.15.5?		N
Part 3 – Development in Residential Zones		
<i>Section 2 – Context & Setting</i>		
2.1	Site Analysis	A site analysis plan is included in the submitted documentation.
2.2	Scenic Values	The visual impact assessment and Council review indicates that the proposal, whilst able to be viewed from outside the site, will not impact upon scenic values in the locality.
2.3	Geotechnical	Council's engineers advise that no objections are raised to the development form a geotechnical perspective. A condition will be placed on any consent requiring a dilapidation survey prior to construction commencing.
2.4	Mine Subsidence	Subsidence Advisory NSW provides its General Terms of Approval which will be included as conditions of consent.
2.5	Contaminated Land	The land is not known to be contaminated or potentially contaminated.
2.6	Acid Sulphate Soils	The land is not mapped as being affected by acid sulfate soils.
2.7	Stormwater Management	Council's engineers advise of support for the submitted stormwater management and revised

Fire Trail

An internal firefighting access trail is proposed, and required, by the RFS. However this fire trail is shown on the plans (see highlight on Figure 14 below) as terminating at the northern boundary. Land beyond the northern boundary is Crown owned and is not designated as a formal fire trail. The design of the internal fire trail is required to cater for the turning and manoeuvring of a fire truck on site and a condition of consent is recommended in this regard.



Figure 14 – Fire Access Trail

2.12 Flora and Fauna

Council's Development Planner Flora and Fauna provides the following assessment:

The application has been assessed for compliance with ecological requirements / recommendations detailed in the EP&A Act 1979, TSC Act 1995, NV Act 2003, FM Act 1994, EPBC Act 1999, SEPP 14, 19, 26 & 44, LMCC LEP (2014), and LMCC Guidelines for Flora and Fauna Survey (2012), Tetratheca juncea (2014), Grevillea parviflora subsp. Parviflora (2013), Squirrel Glider (2015), Large Forest Owls (2014) and Coastal Management.

Flora and Fauna Site Attributes / Proposal

Vegetation

The application proposes to remove approximately 0.82 ha of native vegetation (see Table 1). The Bushfire Threat Assessment nominates an asset protection zone across the subject site, which is supported in the RFS General Terms of Approval. The APZ is restricted to the R2 zone and protects the adjacent E2 zone.

Native vegetation nominated for removal is not characteristic of a threatened community listed on the TSC Act or EPBC Act, however is locally rare, with only 127 ha of this vegetation community occurring in the LGA.

Vegetation Community	Proposed to be removed	Proposed to be retained
MU 34a coastal sand	0.82 ha	Unclear, entire site to be treated

wallum heath		as asset protection zone.
Exotic/ planted vegetation	0.22 ha	
TOTAL	1.04	0

Table 1 – Summary of vegetation communities proposed to be retained / removed

Threatened Species

The site provides habitat to a number of threatened species (see Table 2).

Level of Occurrence	Species
Threatened species known to occur on subject site	<ul style="list-style-type: none"> • <i>Tetratheca juncea</i> – 65 clumps
Threatened species considered to potentially occur on subject site	<ul style="list-style-type: none"> • Squirrel Glider (<i>Petaurus norfolcensis</i>), Long-nosed Potoroo (<i>Potorous tridactylus tridactylus</i>), New Holland Mouse (<i>Pseudomys novaehollandiae</i>); • Glossy Black Cockatoo (<i>Calyptorhynchus lathami</i>), Masked Owl (<i>Ninox novaehollandiae</i>), Powerful Owl (<i>Ninox strenua</i>), Barking Owl (<i>Ninox connivens</i>), Little Lorikeet (<i>Glossopsitta pusilla</i>), Little Eagle (<i>Hieraaetus morphnoides</i>), White-bellied Sea-eagle (<i>Haliaeetus leucogaster</i>); • East Coast Freetail bat (<i>Mormopterus norfolkensis</i>), Little Bentwing bat (<i>Miniopterus australis</i>) and Eastern Bentwing-bat (<i>Miniopterus schreibersii oceanensis</i>); • <i>Cryptostylis hunteriana</i>, <i>Chamaesyce psammogeton</i>.

Table 2 – Summary of threatened species that occur and are likely to occur on site based on habitat

Significant Habitat Features

There are a number of significant habitat features on the subject site (see Table 3).

Habitat Feature	Site Attribute
Threatened species habitat	Approximately 0.82 ha of habitat would be impacted that is important to species such as <i>Tetratheca juncea</i> .
Habitat Hollows	No hollow-bearing trees occur on the site.
Corridors	Native vegetation at the site forms part of a corridor in Council's Native Vegetation and Corridor Map v 1(2011). The corridor has good connections to the north, east and west and is part of a large patch of habitat which includes Awabakal Nature Reserve.
Riparian Habitat	No watercourses or riparian habitat occur on the site.

Table 3 – Summary of significant habitat features on site

aged care facilities within the Lake Macquarie LGA that have an increasing demand and important social role in the local and wider ageing population.		
2.18 – 2.19	Not applicable.	
2.20	Utilities	All relevant utilities are available to the site.
Section 3 and Section 4 – Development Design		
3.1	Streetscape	
<p>The facility as it presents to Redhead Road will be visible but due to extensive setbacks into the site will not present an incongruous or intrusive element in this streetscape.</p> <p>Additional landscaping to the road side elevation of the proposed car park will assist in mitigating any impacts from a streetscape perspective.</p> <p>No objections are raised to the development from a streetscape perspective.</p>		
3.2 – 3.5	Setback	
<p>The built setbacks from Redhead Road, and the northern and western boundaries respond to the topography of the site and comply with this section of the DCP.</p> <p>The setback of 19 metres to the southern boundary adjoining existing suburban residential development is appropriate and serves to mitigate visual, privacy and acoustic impacts.</p>		
3.6	Building Bulk	
<p>The requirements of the facility and specific landuse result in a relatively large building footprint on one level.</p> <p>The building is sited with regard to the topography of the site and is separated from boundaries to sensitive receivers.</p> <p>Whilst a large, long built form in two wings, the building bulk is assisted by elevation changes (e.g. from bedrooms to break out areas / dining areas and sitting area) reflected in a change in fenestration which assists in ‘breaking’ the length visually and reducing the perceived bulk of the building.</p> <p>The siting and design approach is supported from a built form and bulk perspective.</p>		
3.7 – 3.8	Not applicable.	
3.9	Views	
<p>Council’s Landscape Architect advises that the Visual Impact Assessment considers viewpoints from Redhead Road and neighbours to the south. The proposed landscape response included detailed and updated tree planting schedule assists in lessening any visual impact from these areas.</p> <p>The siting and built form are supported from a visual impact perspective.</p>		
3.10	Solar Access and Orientation	See comments in Seniors SEPP assessment section of this report.
3.11	Energy Efficiency and Generation	The specialise use and needs of residents and users of the facility is combined with an orientation and design to provide appropriate solar access and natural cross ventilation and provides opportunities for future installation of renewable energy generation.
4	Visual Privacy	The setbacks and orientation of the building does not raise

		concern with regard to visual privacy.
4.1	Acoustic Privacy	
<p>Council's Principal Environmental Officer advises the proposal complies with the relevant acoustic criteria in particular regarding plant and equipment and the operation of the loading / service area, traffic associated with this area, and matters addressed in the original and revised acoustic report.</p> <p>To ensure continued and audited compliance, conditions of consent are recommended requiring acoustic certification of the structural and mechanical components on completion of the build, as well as an acoustic performance compliance report at 90 days of occupation.</p> <p>The advice from the Principal Environmental Officer is supported.</p>		
4.2 – 4.6	Landscaping	
<p>Councils Landscape Architect advises the revised landscaping plan including additional planting to the southern and street boundaries satisfies the provisions of the DCP.</p> <p>The landscaping serves the multi purpose of visual impact mitigation, buffering to neighbouring residential development and internal site amenity.</p>		
4.7	Traffic and Transport	
<p>Council's Traffic and Transport Engineer raises no objection to the proposal.</p> <p>The site gains access of Redhead Road through an existing intersection with a purpose built protected right turn lane into the facility, with no other developments gaining access off the intersection. The increase in intensity of the use is able to be catered for within the existing road infrastructure.</p> <p>There are no historic or expected parking issues off the site.</p>		
4.8 – 4.10	Design of Parking and Service Areas and design of driveways	Council's engineer advises that the proposal complies with these provisions of the DCP.
4.11	Car Parking Rates	The proposal complies with the required parking rates under SEPP Seniors.
4.12	Non-Discriminatory Access	Council's Disabled Access officer advises support for the proposal from a disability access perspective.
4.13	Safety and Security	Council's Crime Prevention officer advises support for the CPTED report.
4.14	Cut and Fill	There is significant cut and fill proposed on the site. Following receipt of additional information Council's engineer advises that the cut and fill proposed is acceptable when assessed against the site constraints, building siting and objectives of this section of the DCP.
Section 5 – Operational Requirements		
5.1 – 5.7	Construction Management	
<p>The proposal will include a significant construction program in close proximity to adjoining and adjacent residents.</p> <p>As a precautionary approach conditions are recommended for the regulation of noise and associated impacts, including hours of operation for construction, which seek to mitigate these impacts.</p>		

In addition, a Construction Environmental Management Plan is proposed by the applicant, and is required by a condition of consent.

Part 8 – Subdivision

Part 9 – Specific Land Uses

Not applicable.

Part 10 - Town Centre Area Plans

Not applicable.

Part 11 - Heritage Area Plans

Not applicable.

Part 12 – Precinct Area Plans

Not applicable.

(a)(iia) - any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4

There is no planning agreement that has been entered into under Section 7.4, and no draft planning agreement that a developer has offered to enter into under Section 7.4 of the Act that relates to this development.

(a)(iv) – any matters prescribed by the regulations

Primary Matters

Specific Considerations

Clause 92 EP&A Regulation and Government Coastal Policy

Where relevant, the proposal is consistent with the above requirements.

(b) – the likely impacts of the development

Impacts of the development including Context and Setting; Access, Transport and Traffic; Public Domain; Utilities; Heritage; Other Land Resources; Water; Soils; Air and Microclimate; Flora and Fauna; Waste; energy; Noise and Vibration; Natural Hazards; Technological Hazards; Safety, Security and Crime Prevention; Social and Economic Impact in the Locality; Site design and Internal Design; Construction; Cumulative Impacts; are considered within this report.

(c) – the suitability of the site for the development

Does the proposal fit the locality?

The proposal is suited to the locality.

Are the site attributes conducive to development?

The site attributes are conducive to development.

(d) –any submissions made in accordance with this Act or the regulations

Public Submissions

The development application was notified to adjoining and adjacent properties, including those located on the opposite side of Redhead Road, from 23 October 2017 until 15 November 2017. Seven submissions were received in relation to the development application.

Issues raised by submissions include noise and amenity impacts from the new building, specifically from services, kitchen and laundry. Other issues include cost of boundary fencing, privacy, overshadowing, stormwater drainage, odour and dust, and impact on internal self care units.

All submissions have been considered and the applicant was invited to address the concerns. Amended plans were lodged in response, increasing and detailing buffer and boundary landscaping, confirming acoustic mitigation measures and stormwater management. Advice from relevant Council staff indicates that the revised plans are acceptable and that possible points of adverse impact to neighbours have been mitigated to a satisfactory level.

Submission Addressee	Issue(s)
Resident 7 Elendale Place	Replacement of boundary fence requested
Resident 9 Elendale Place	Acoustic impact of air conditioning, service road and service yard Odour pollution of service yard Soil stockpile dust concerns
Resident 10 White Cap Close	Uncertainty of site detention basin and overflow pipe Privacy requested through screen planting Acoustic impact of air conditioning and service yard
Resident 12 White Cap Close	Detention basin location on boundary concern and lack of detail regarding overflow Tree / vegetation removal impacts Acoustic impact of air conditioning, service road and service yard and odour impact Soil stockpile dust and debris concerns Damage to houses
Resident 16 White Cap Close	Acoustic impact of air conditioning, equipment, service road and service yard Soil stockpile dust and debris concerns Impacts from staff area (smoking) Objects to height of building Privacy (overlooking) impact Construction noise and vibration Uncertainty over stormwater detention basin and overflowing

Owner 18 White Cap Close (vacant allotment)	Acoustic impact of air conditioning, service road and service yard Soil stockpile dust concerns Impacts from staff area (smoking) Objects to height of building Privacy (overlooking) impact
13/120 Redhead Road (current resident of the facility)	Loss of solar access Traffic and parking impacts Privacy Noise

(e) –the public interest

Federal, State And Local Government Interests And Community Interests	Plans are endorsed by the Hunter Water Corporation
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SECTION 4.17 CONSIDERATIONS	Y/N
Having regard to the matters for consideration detailed in Section 4.15 of the Act, do any of the following issues require further assessment?	N
Whether any consent/right should be modified/amended?	
Whether any development should be modified or ceased?	
Whether the period of the development should be limited?	
Whether any building/works should be removed after period?	
Whether any works should be carried out regarding S4.15?	
Whether any application details should be modified?	

SECTION 7.11 - CONTRIBUTIONS									
Are contributions required for the provision, extension or augmentation of public amenities and public services?	Y								
<u>No 1 City Wide – Charlestown Catchment (2004)</u> Section 7.11 Contributions are required for the following purposes: <p style="text-align: center;">CONTRIBUTION FEE SCHEDULE</p> <table> <tr> <th>DESCRIPTION</th><th>FEE AMOUNT</th></tr> <tr> <td>COA-Public Transport Facilities-CPI</td><td>\$1,841.07</td></tr> <tr> <td>COA-Plan Preparation & Administration-CPI</td><td>\$29,841.06</td></tr> <tr> <td></td><td>TOTAL \$31,682.13</td></tr> </table>		DESCRIPTION	FEE AMOUNT	COA-Public Transport Facilities-CPI	\$1,841.07	COA-Plan Preparation & Administration-CPI	\$29,841.06		TOTAL \$31,682.13
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COA-Public Transport Facilities-CPI	\$1,841.07								
COA-Plan Preparation & Administration-CPI	\$29,841.06								
	TOTAL \$31,682.13								

SECTION 7.11 - CONTRIBUTIONS

Developer Contributions of **\$31, 682.13** are applicable to the proposal and will be included as a condition of consent.

SECTION 4.65 – EXISTING USE RIGHTS**Y/N**

Is the proposal prohibited under an environmental planning instrument in force?

N

ECOLOGICALLY SUSTAINABLE DEVELOPMENT**Y/N**

Having regards for the principles of ecologically sustainable development, do any of the following issues require further consideration?

N

Precautionary principle?

Intergenerational equity?

Conservation of biological diversity and ecological equity?

Improved valuation, pricing and incentive mechanisms?

RECOMMENDATION:

Approval, subject to conditions.

DETERMINATION

At what level should the application be determined?

Hunter and Central Coast Regional Planning Panel

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.

Site Inspection

A site inspection was carried out on a number of dates in 2017 and 2018. This inspection has been carried out in accordance with all relevant procedures for site inspections.

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

Chris Dwyer

Principal Development Planner

Development Assessment and Compliance

SENIOR SIGN OFF:**Section 7.11**

I have reviewed the Section 7.11 contributions section of this report and confirm that contributions have been levied on the consent in line with the relevant section 7.11 contribution plan; the section 7.11 condition is evident on the consent.

Elizabeth Lambert

Chief Development Planner

Development Assessment and Compliance