

SYDNEY NORTH PLANNING PANEL COUNCIL ASSESSMENT REPORT

Panel Reference	2017SNH01
DA Number	DA2017/0085
LGA	Northern Beaches Council
Proposed Development	Demolition works and redevelopment of part of an existing Seniors Housing Development for the Purposes of Residential Care Facility.
Street Address	3 Martin Luther Place, Allambie Heights
Applicant/Owner	Allambie Heights Village Ltd Dept. Of Lands
Date of DA lodgement	2 February 2017
Number of Submissions	Nil
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 4A of the EP&A Act)	Development with a Capital Investment Value (CIV) of more than \$20 million Total Cost of the Development is \$21,879,000.00
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2000 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 • State Environmental Planning Policy – Infrastructure 2007 • Warringah Local Environmental Plan 2011 • Warringah Development Control Plan 2011
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1: Conditions of Consent • Attachment 2: Pre-Lodgement Meeting Notes • Attachment 3: - SEPP 1 objection / Clause 4.6 in relation to height variation
Report by	David Kerr– General Manager Planning, Place & Community
Report date	31 July 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?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the SEPP (HSPD 2004) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **Not Applicable**

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**
Note: in order to reduce delays in determinations, the Panel prefers 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

Northern Beaches Council is in receipt of a Development Application (DA) from Allambie Heights Village. The DA seeks demolition works and construction of a residential care facility within Lot 1 in DP 822212 and Lot 2676 in DP 752038, known as 3 Martin Luther Place, Allambie Heights.

The applicant seeks consent to demolish the existing hostel buildings and a block containing independent living units through the central and front portions of the site. These buildings will be replaced by a part two, part three storey residential care facility comprising 84 rooms, activity and dining space, kitchen, café and function room. The development relies on existing car parking adjacent to the northern site boundary.

The proposed development constitutes 'regional development' requiring referral to the Sydney North Planning Panel (SNPP) as it has a capital investment value greater than \$20 million (\$21 million). Whilst Council is responsible for the assessment of the DA, the SNPP is the consent authority.

Under the provision of Warringah Local Environmental Plan 2011 (WLEP 2011), the subject site is within the Zone R2 – Low-Density Residential. The proposed development is defined as a "*Residential Care Facility*" (RCF), which is prohibited under the WLEP 2011, however, the proposal is made permissible with consent in the R2 zone, pursuant to the SEPP (Housing for Seniors or People with a Disability) 2004 (HSPD) 2004.

The proposed development has been assessed against the applicable planning controls for the site including the relevant provision of SEPP (HSPD) 2004 and is found to be generally consistent with the relevant requirements, with the exception of building height. The applicant has lodged a request under SEPP 1 / Clause 4.6 for variation to the development standard under the SEPP (HSPD) 2004.

The building height is varied by up to 2m above the permissible height of 8m, representing a variation of 25%. The variation is considered acceptable largely due to the topography of the land and is offset throughout the development. The variation is not considered to result in excessive bulk and scale and does not result in adverse shadow and amenity on surrounding properties. The height variation does not result in an additional floor level.

The proposed development is considered satisfactory with regard to relevant matters such as siting and design, bulk and scale, privacy, amenity, overshadowing, access, traffic impacts, parking and stormwater drainage. The proposed development has been assessed against the relevant matters for consideration pursuant to Section 79C of the Environmental Planning and Assessment Act 1979, including suitability of the site and the public interest, and is found acceptable. The outcome of this assessment is detailed within this report.

The proposed development was notified for a period of 30 days between 17 February 2017 and 23 March 2017. During this period no submissions were received.

Based on a detailed assessment of the proposal against the applicable planning controls, it is recommended that the Sydney North Planning Panel (SNPP) approve the DA subject to the imposition of suitable conditions of consent. Recommended conditions are provided in Attachment 1 to this Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/0085
Responsible Officer:	Lashta Haidari – Senior Planner
Land to be developed (Address):	Lot 1 in DP 822212 and Lot 2676 in DP 752038 3 Martin Luther Place, Allambie Heights
Proposed Development:	Demolition Works and Construction of a new Residential Aged Care Facility
Zoning:	R2 Low-Density Residential
Development Permissible:	Yes under SEPP (HSPD) 2004
Existing Use Rights:	No
Consent Authority:	Sydney North Planning Panel
Land and Environment Court Action:	No
Owner:	Allambie Heights Village Ltd Dept. Of Lands
Applicant:	Allambie Heights Village Ltd
Application lodged:	6 February 2017
Application Type:	Integrated
State Reporting Category:	Residential - Seniors Living
Notified:	17 February 2017 to 23 March 2017
Advertised:	18 February 2017
Submissions:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 21,879,000.00

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SITE DESCRIPTION

The site comprises two irregular shaped allotments fronting Martin Luther Place with the legal description being Lot 1 in DP 822212 and Lot 2676 in DP 752038.

The site is located on the western side of Allambie Road, with a frontage to Martin Luther Place measuring approximately 95m and has a total area of 14,328m².



Figure 1 – Site Map

The area that is the subject of this application is located within the central and front portion of the site and is currently occupied by a series of single and two storey buildings incorporating independent living units and hostel accommodation which form part of the existing senior's housing development. The site also contains a series of buildings generally situated around the perimeter of the site which also contains independent living units. These units will be retained and will remain and is to be retained and occupied during the construction phase.

Vehicular access to the site is via Martin Luther Place and parking is located adjacent the vehicular entry at the northern end of the site. A stopping bay for emergency vehicles is centrally located and also accessed via the vehicular entry from Martin Luther Place. The proposed development seeks to rely on existing parking.

The site is surrounded by low-density residential development comprising single and two storey detached dwellings. On the western side of Allambie Road, to the north and to the south of the subject site, are a series of senior's housing developments and health services facilities. The site is bound on its western site by a large public reserve.

SITE HISTORY

The site has been used for senior's housing development since its establishment in 1966 by the Allambie Heights Village. The site has expanded over the period to provide independent

living units and low care hostel rooms which include respite and dementia care. The village is characterised by one and two storey buildings with the main administrative and communal facilities housed in buildings at the centre of the site.

Pre-Lodgement Meeting

A pre-lodgement meeting (PLM) was held with Council relating to the proposed development on 12 May 2016.

A copy of the notes provided by Council in relation to the PLM meeting is attached to this report (Attachment 2).

Development Application

The application was lodged with Council on 6 February.

Assessment of the proposal initially found a number of issues with the application and required additional information seeking clarification on certain aspects of the proposal.

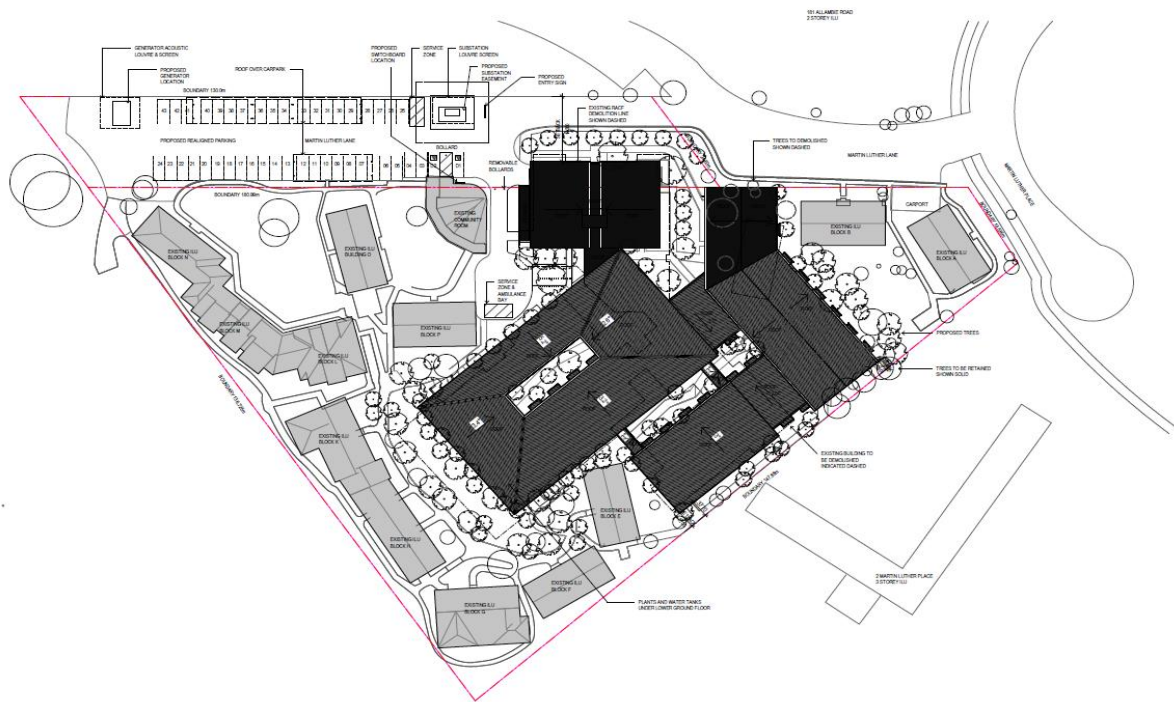
An opportunity was presented to the applicant by letter dated 30 May 2017 to withdraw the application within seven days from the date of the letter with a view to preparing the required information then resubmitting at a later date. The applicant submitted additional information on 6 June 2017 in an attempt to address the concerns raised.

This report is based on the amended information that was submitted to satisfy the requirement of Council.

PROPOSED DEVELOPMENT IN DETAIL

Pursuant to Clause 78A (1) of the EP&A 1979 (as amended) this application seeks consent for the demolition works and construction of residential care facility, which consists of:

- Demolition works, site preparation works and the removal of trees.
- The construction of an Residential Care Facility incorporating a total of 84 rooms, activity and dining spaces, kitchen and function room to be located within the central portion of the site. The proposed development will comprise four distinct components or forms, each linked by internal corridors.
- Existing at-grade parking is situated adjacent to the northern property boundary. Parking will be retained at this location however the configuration and location of parking spaces will be adjusted to provide for a total of 43 spaces.
- Existing vehicular access to the site is via Martin Luther Place and will remain unchanged.
- A turning bay for emergency vehicles is proposed to the south-east of the existing community room



ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See the discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None Applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be address via a condition of consent.</p> <p>Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be address via a condition of consent.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. In summary, the proposed development is not considered to introduce any significant adverse impacts on neighbouring residential amenity, or on the natural or built environments.</p> <p>(ii) The proposal would provide suitable additional housing stock for seniors and would have a positive social impact.</p> <p>(iii) The economic impact of the proposed development on the locality is considered minimal and the provision of accommodation for older people would have a positive impact on the local economy.</p>
Section 79C (1) (c) – the suitability of the site for the development	<p>The site has no inherent physical, social, economic or environmental constraints that would hinder the proposed development on the site that is already used as an existing senior's development and its continued use as a senior's development. The site is suitably located to service the needs of the future residents of the building.</p> <p>It is acknowledged that the site is identified as being bushfire prone, but as discussed in this report, the proposed upgrading works will result in an improved outcome in this respect.</p> <p>The site is not affected by flooding, acid sulphate soils, and does not include or adversely impact on any environmentally sensitive or heritage significant locations or items. Given past uses, no significant contamination issues are anticipated.</p>

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See the discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	<p>The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.</p> <p>The application is considered to have satisfactorily addressed Council's and relevant agencies' criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan. As a result of the public exhibition of the application, Council received no submissions.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<i>No objections subject to conditions to ensure compliance with the Building Code of Australia.</i>
Development Engineers	<i>No objection to approval and subject to conditions as recommended.</i>
Environmental Investigations (Contaminated Lands)	<i>No objections subject to conditions</i>
Health and Protection (Food Premises, Skin Pen.)	<i>No objections subject to conditions</i>
Heritage Advisor	<p><i>This application adjoins a listed heritage conservation area - being Item C9 - Manly Dam and Surrounds listed in Schedule 5 of Warringah Local Environmental Plan 2011. There are no listed heritage items on the subject land.</i></p> <p><i>No objection is raised on heritage grounds.</i></p>
Landscape Officer	<i>The eastern side of the proposed works area contains some minor rock</i>

Internal Referral Body	Comments
	<p><i>outcropping with evidence of previous excavation to accommodate the existing buildings. Site visit did not reveal any immediately visible archaeological features or overhangs.</i></p> <p><i>Tree removal is required to accommodate the works, though none of the trees are considered significant.</i></p> <p><i>No objections to approval subject to conditions as recommended.</i></p>
Natural Environment (Biodiversity)	<p><i>Council's natural environment, biodiversity section raises no objections to the proposal. It is understood that the bushfire APZ within Manly Dam War Memorial Reserve was agreed under previous development consent.</i></p>
Natural Environment (Riparian Lands/Creeks)	<p><i>The proposed development is located more than 100 metres east of the drainage line. No instream works are proposed. No new buildings are proposed in the vicinity of the riparian zone or riparian buffer. All stormwater is to be disposed of via the existing stormwater outlet on the western boundary of the property. Sediment and erosion controls are to be installed prior to works commencing and upstream of all pits and open pipes.</i></p> <p><i>Recommended for approval, subject to conditions</i></p>
Parks, reserves, beaches, foreshore	<p><i>No objection raised.</i></p>
Road Reserve	<p><i>Existing road assets are not impacted by the proposed works. Whilst the vehicle access from Martin Luther Place is via a driveway crossing, the first 57m is within Council road reserve. Any works, such as the reconstruction of paving to the main entry, within this road reserve will require the lodgement of S138 application for approval of works. Development Engineering to provide a standard condition to this effect.</i></p>
Strategic Planning (PDS)	<p><i>Strategic Planning's interest in the application is limited to its impact on/ implications for current work being carried out to prepare the Northern Beaches Hospital Precinct Structure Plan (Hospital PSP).</i></p> <p><i>In this regard, it is noted that:</i></p> <p><i>The subject site lies immediately outside of the Investigation Area for the Hospital PSP and just inside the Area of Influence.</i></p> <p><i>The DA proposes redevelopment within an existing Seniors Housing Development; proposing demolition of certain existing seniors accommodations and replacement of these, generally within the same location, with 'like' or similar accommodation.</i></p> <p><i>The site is zoned R2 Low-Density Residential in which seniors housing is a permitted use (pursuant to SEPP (HSPD) 2004. The Draft Hospital PSP, recently publicly exhibited, does not propose any change to the zone of the subject site or that of adjoining land.</i></p> <p><i>The DA proposes a development that is consistent with the Draft Hospital PSP and will not impact on the form, content or delivery of the plan.</i></p> <p><i>Subject to a DA assessment against all relevant planning controls finding</i></p>

Internal Referral Body	Comments
	<i>that the proposal meets requirements, Strategic Planning has no requirements or recommended conditions in relation to the development application.</i>
Strategic Planning - Urban Design	<p><i>The proposal is not approved due to the following issues:</i></p> <p><i>The building height breach over 8m is excessive in some areas due to the proposed floor to floor height of 4.6m/ 3.5m for the ground/ first level respectively. The building height breach can be minimised if the floor to floor height is reduced to 3.1m. (using the Apartment Design Guidelines as a guide)</i></p> <p><i>With the reduced building bulk as suggested above, the additional shadow impact on the internal courtyards and garden areas will also be minimised allowing more sun penetration to the ground level landscaping and living units. The shadow impact to the neighbouring property on the southeastern boundary will also be reduced.</i></p> <p><u>Comment:</u> This matter has been addressed later in this report (refer to detailed assessment under clause D6 – Access to Sunlight of the WDCP 2011 of this report). In summary, the proposal will result in an extent of overshadowing on the independent living units to the south, and the portion of the proposed building that includes the internal courtyards of the new development. However, the overall extent of shadowing impact resulting from the proposal is not unreasonable given the nature of the development and the configuration and location of the site within a dense site for the purposes of senior's housing development.</p> <p>The concern raised does not warrant the refusal of the application.</p>
Traffic Engineer	<i>The development is supported by Traffic Engineers.</i>
Waste Officer	<i>No objection raised to the proposal.</i>
Water Management	<i>No objection subject to conditions.</i>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21-day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage	The Aboriginal Heritage Office (in an e-mail dated 15 February 2017) indicated that there are no Aboriginal heritage issues for the proposed development as the area subject of this application has been the subject of previous disturbance.
Integrated Development NSW Rural Fire Service (Subdivisions and Special Fire Protection Purposes under Section 100B of Rural Fires Act)	<p>The application was referred to the NSW RFS as Integrated Development.</p> <p>Section 100B of the Rural Fires Act 1997 enables the Commissioner of the NSW RFS to issue a Bush Fire Safety Authority for 'Special Fire Protection Purpose' development. Section 100B (6) of that Act identifies Seniors Housing (within the meaning of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004) as such development.</p> <p>In their response dated 3 July 2017, the NSW RFS issued their Bushfire Safety Authority and General Terms of Approval (GTAs) which are to be</p>

External Referral Body	Comments
	included in any consent should the application be worthy of approval.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All relevant Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of relevant Environmental Planning Instrument's (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

State Environmental Planning Policies (SEPPs)

Further consideration is required for the following State policies:

SEPP (State and Regional Development) 2011

The proposed development does not constitute State Significant Development under State Environmental Planning Policy (State and Regional Development) 2011.

Of more relevance, Clause 20 of this policy cross-references Schedule 4A of the EP&A Act 1979 which identifies a range of developments that either due to their nature, scale, value, impact or location are deemed to be of regional significance and which, as a result, require that the SNPP becomes the consent authority.

In this regard, Schedule 4A (3) indicates that Development that has a capital investment value of more than \$20 million is of regional significance. As indicated on the DA form and as confirmed by a quantity surveyors report accompanying the application, the proposed development has a capital investment value of \$21,879,000.00 and as such, the consent authority for the application will be the SNPP.

SEPP 55 - Remediation of Land

The SEPP establishes State-wide provisions to promote the remediation of contaminated land.

The SEPP 55 states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist councils and developers in determining when the land has been at risk.

Clause 7 of the SEPP requires that a consent authority must not grant consent to a development unless it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

Council's records indicate that the site has been used for residential (Seniors Housing) purposes for a significant period of time. It is therefore considered that the site poses no risk of contamination and as such no further consideration is required under Clause 7(1) (b) and (c) of the SEPP 55.

SEPP (Infrastructure) 2007

Clause 45 – Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any DA (or an application for modification of consent) for any development carried out:

- *Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);*
- *Immediately adjacent to an electricity substation;*
- *Within 5m of an overhead power line;*
- *Includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line.*

The application was referred to Ausgrid under clause 45(2) of SEPP Infrastructure.

To date, no response has been received and it is assumed that Ausgrid does not raise any objection nor impose any conditions.

Clause 102 - Roads and Maritime Service (RMS)

With regards to requirements of Clause 104(2) (b) and Schedule 3 of the SEPP, the development does not have a capacity for 200 or more motor vehicles. Therefore, the SEPP Infrastructure does not apply in this respect and does not require the referral of the application to the RMS.

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

SEPP (HSPD) 2004 commenced on 31 March 2004 and aims to increase the supply and diversity of housing for aged or disabled persons, to make efficient use of existing infrastructure and to encourage the provision of residential care facilities that will be of good design.

The following section of this report provides an assessment of the proposal against the relevant criteria and standards specified in this Policy:

Chapter 1 – Preliminary

The aims of the SEPP are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- Increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- Make efficient use of existing infrastructure and services, and*
- Be of good design.*

Comment: The proposal is consistent with the aims of the SEPP, in that the proposal will increase the supply and diversity of residences that meet the needs of seniors or people with a disability and is of a good design.

The proposal makes efficient use of existing infrastructure and services. The site is well serviced by existing public transport and is located within 400m of the nearest bus stop.

When considering the proposal against the aim of achieving good design, the proposal must be considered in context with other provisions of the SEPP. The SEPP encourages seniors housing to be of a good design outcome which maintains and minimises the impacts on the amenity and character of the area.

The proposed built form effectively minimises and reduces the impacts on the amenity and character of the area as detailed later within the assessment and is considered to be of a good design.

The proposal has been found to be consistent with the aims of the SEPP and is supported in this instance.

Chapter 2 – Key Concepts

The proposal is for seniors living and ancillary uses, which are to be occupied by seniors or people with a disability as provided by the SEPP. On this basis, it is considered that the proposal is consistent with Chapter 2 of the SEPP.

Chapter 3 – Development for Seniors Housing

Chapter 3 of the SEPP contains a number of development standards applicable to the development application made pursuant to the SEPP. Clause 18 of the SEPP outlines the restrictions on the occupation of seniors housing and requires that a condition is to be included in the consent if approved to restrict the types of people who can occupy the development. A condition has been included in the consent.

Part 1a - Site Compatibility Certificates

Clause 24 Site Compatibility Certificates required for certain development applications

The requirement of Clause 24 is not applicable to the proposed development.

Part 2 - Site Related Requirements

Development Criteria			
Clause	Requirement	Proposal	Complies
26(1)	Satisfactory access to: a) Shops, banks 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.	The subject site has satisfactory access to: a) Shops, banks 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.	Yes
26(2)	Access complies with this clause if: a) The facilities and services referred are located at a distance of not more than 400m from the site or b) There is a public transport service available to the residents not more than 400m away.	The subject site is an existing Seniors Housing site and is located within 400m of various bus stops on Allambie Road and these stops are accessible by means of a suitable access pathway. The facility also has the benefit of a communal private bus.	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire	The site is identified as being bushfire prone and has been assessed as a “ <i>special fire protection purpose</i> ”. In this regard, the NSW	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	guidelines.	RFS has reviewed the proposal including the requirement of this clause and raised no objection to the proposed development, subject to conditions.	
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	<p>The site has been operating as senior's housing for a significant period of time and is fully serviced by potable water and sewer Infrastructure.</p> <p>The proposal is satisfactory with regards to the requirements of Clause 28.</p>	Yes
29	The consent authority to consider certain site compatibility criteria for development applications to which Clause 24 does not apply.	<p>The proposed development is found to be consistent with the requirement of Clause 25 (5) for the following reasons:</p> <ul style="list-style-type: none"> • The proposal will have minimal impact on the natural environment and due to it's existence as a seniors housing development, the development will continue to be compatible with surrounding developments. • The site benefits from existing services and infrastructure that are and will continue to be available to meet the demands of the proposed development. • The bulk, scale, built form and character is an improvement and will have minimal impact on the surrounding developments. 	Yes

Clause 30 A site analysis is to be provided

The site analysis information accompanying the application is considered satisfactory in terms of the requirements of Clause 30.

Clause 31 Design of in-fill self-care housing

The requirement of Cause 31 is not applicable to the proposed development.

Clause 32 Design of Residential Development

In accordance with Clause 32 of SEPP a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP.

Control	Requirement	Proposed	Compliance
Clause 33 Neighbourhood amenity and streetscape	a) Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	The proposed development is considered to appropriately respond to the existing character of the area. The substantive articulation of the built form relates favourably to the low-density residential character of the area and will positively contribute to the quality and identity of the site, which is already used for senior's development.	Yes

Control	Requirement	Proposed	Compliance
		The current proposal represents a much improved design outcome for the site and locality from that presently existing on the site currently by virtue of articulation and façade treatment.	
	b) Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that is identified in a local environmental plan.	<p>The development site is not within any Heritage Conservation Area, however, the site is located in the vicinity of an item of heritage significance being a heritage conservation area being 'Manly Dam and Surrounds'.</p> <p>The proposed development is not considered to introduce any significant adverse impacts on the heritage significance of the adjoining conservation area given the physical separation of the site from Manly Dam and its surrounds.</p>	Yes
	<p>c) Maintain reasonable neighbour amenity and appropriate residential character by;</p> <p><i>Providing building setbacks for reducing bulk and overshadowing,</i></p> <p><i>Using building form and siting that relates to the site's land form,</i></p> <p><i>adopting building heights at the street frontage that are compatible in scale with adjacent development</i></p> <p><i>Considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.</i></p>	<p>The siting and location of buildings within the site has regard to the front building line, side setback and has provided sufficient landscape buffer in order to preserve the amenity of the adjoining properties in terms of privacy, solar access, and view lines.</p> <p>The development is found to be consistent with the requirements of this Clause.</p>	Yes
	d) Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line.	<p>The proposed setbacks to the front of the development and the extent of landscaping provided within the setback are considered to be satisfactory to minimise the visual impact of the development.</p> <p>The articulation and stepping of the built form are sympathetic to the character in the area and provides an effective and sensitive transition between the subject development and surrounding development.</p>	Yes
	e) Embody planting that is in sympathy with, but not necessarily the same as, another planting in the streetscape.	The proposal includes significant areas of landscaping which are consistent and sympathetic to the existing provision of landscaping throughout the streetscape.	Yes

Control	Requirement	Proposed	Compliance
	f) Retain, wherever reasonable, major existing trees.	The impact of proposed development on existing trees have been assessed by Council's Landscape officer and found to be acceptable.	Yes
	g) Be designed so that no building is constructed in a riparian zone.	The proposal is not located within a riparian zone.	Not Applicable
CL 34 Visual and acoustic privacy	<p>The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:</p> <p>Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and</p> <p>Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</p>	<p>The development has been designed to maintain a reasonable level of acoustic and visual privacy between properties. Appropriate building setbacks and effective use of privacy treatments maintain a satisfactory level of privacy to adjoining properties.</p>	Yes
Clause 35 Solar access and design for climate	The proposed development should ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space.	The proposed development will allow for adequate levels of daylight to living areas of residents and neighbours as required by the SEPP.	Yes
Clause 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water reuse.	The application has been reviewed by Council's Development Engineer who raises no objections to the proposal with appropriate conditions being imposed on the draft consent.	Yes
Clause 37 Crime prevention	<p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:</p> <p>a) Site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins</p>	<p>The proposal will provide a satisfactory level of personal property security for residents and visitors, which has been designed to encourage crime prevention.</p> <p>The ongoing maintenance of the development is subject to a private arrangement with the body corporate of the proposal</p>	Yes

Control	Requirement	Proposed	Compliance
	<p>any such area, driveway or street, and</p> <p>b) Where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and</p> <p>c) Providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.</p>		
Clause 38 Accessibility	<p>The proposed development should:</p> <p>a) Have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and</p> <p>b) Provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.</p>	<p>The proposal provides safe and obvious pedestrian links from the site that provides access to public transport, services or local facilities.</p> <p>The proposal provides a safe environment for pedestrians and motorists with convenient access and car parking for residents and visitors.</p>	Yes
Clause 39 Waste Management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	Council's Waste Officer has reviewed the proposal and has raised no objection with regards to waste facility provided for the development.	Yes

Part 4 - Development standards to be complied with

Clause 40 – Development standards – Minimum Sizes and Building Height

Pursuant to Clause 40(1) of the SEPP a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposal complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of the SEPP.

Control	Required	Proposed	Compliance
Site Size	1000m ²	14,328m ²	Yes
Site frontage	20.0m.	The site has a frontage greater than 20.0m wide	Yes

Control	Required	Proposed	Compliance
Building Height	8.0m or less (measured vertically from ceiling of top most floors to ground level immediately below).	The building height exceeds the 8m by 2m maximum at various sections of the building.	No* Refer to SEPP 1 objection
	A building that is adjacent to a boundary of the site must not be more than two storeys in height.	Buildings adjacent to the southeastern property boundary are two storeys in height.	Yes
	A building located in the rear 25% of the site must not exceed one storey in height (development within 15.51m of the rear boundary).	No new work will encroach upon the rear 25% of the site. The existing buildings at the rear of the site will not alter as result of the proposed development.	N/A

*The non-compliances with Clause 40 are addressed in detail under SEPP 1 and Clause 4.6 of WLEP 2011 section of this report.

Clause 48 Standards that cannot be used to refuse development consent for Residential care facilities

In accordance with Clause 48 of SEPP, a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a residential care facility on any of the grounds listed in Clause 48.

The following table outlines compliance with standards specified in Clause 48 of the SEPP:

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below) (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys)	The building height exceeds the 8m by 2m maximum at various sections of the building.	No* Refer to SEPP 1 Objection
Density and scale	1:1 - Residential Care Facility 0.5:1 - Self Contained Dwellings	The subject site contains a number of independent living units which constitute self-contained dwellings for the purposes of the SEPP. The redevelopment proposal involves the construction of a residential care facility. As the subject contains both residential care facility and self-contained dwellings. The applicant has divided the area of the site to the two different uses, and has nominated a site area of 7,511m ² to the residential care facility and a site area of 6,822m ² to the existing self-contained dwellings. The density requirements for	Yes

		<p>self-contained dwellings and residential care facilities differ. So therefore, using the applicant's division of the site area, the proposed gross floor area for the new development (RCF) is 0.85:1 (6,398m²), which complies.</p> <p>The gross floor area of the self-contained dwellings, being 3,469m², translates to a floor space ratio of 0.51:1, and therefore will result in breach to the density requirement, being 0.5:1, in relation to the existing self-contained dwelling component of the development.</p> <p>As the self-care housing component of the development, is existing, which has a built form and scale that is considered compatible with development in the locality, the minor breach is considered acceptable.</p>	
Landscaped area	25m ² per residential care facility	<p>The proposed residential care facility contains 84 beds equating to a landscaped area requirement of 2,100m².</p> <p>The portion of the site that has been attributed to the residential care facility for the purposes of calculating density has a landscaped area of 2,254m², thus satisfying the minimum requirement</p>	Yes
Parking	Car Parking – (1 space/10 beds or 15 beds (if only dementia), 1 space/2 staff, 1 ambulance Space.	<p>Based on the parking requirements prescribed in the Seniors Housing SEPP, the proposed development requires parking as follows:</p> <p>58 self-contained dwellings = <u>12 spaces</u></p> <p>84 beds associated with residential care facility = <u>8 spaces</u></p> <p>34 employees on duty at any given time = <u>17 spaces</u></p> <p>The total parking requirement for the facility is = <u>37 spaces</u>.</p> <p>43 spaces are provided thus satisfying the parking requirements prescribed by the Seniors Housing SEPP.</p> <p>In addition, a space for ambulance parking is provided</p>	Yes

		adjacent to the lower entry to the facility.	
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Chapter 4 – Miscellaneous

The proposed development is consistent with the provisions contained in Chapter 4. The site is not on environmentally sensitive land, is not affected by amendments to other SEPPs, and the special provisions do not apply to the land.

Clause 55 states that a consent authority must not grant consent to carry out development for the purpose of a residential care facility for seniors unless the proposed development includes a fire sprinkler system. The proposed development will incorporate a fire sprinkler system to satisfy the requirements of this Clause.

State Environmental Planning Policy 1 - Development Standards (SEPP 1)

SEPP 1 provides that a development standard contained within an EPI may be varied where objection is well founded and where strict compliance with those standards would, in a particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5(a) (i) and (ii) of the *EP&A Act*.

In deciding whether to consent to the variation of development standards in a particular case, the consent authority should examine whether the proposed development is consistent with the State, regional or local planning objectives for the locality, and in particular whether the underlying purpose of the development standard will be achieved despite the proposed variation.

Clause 40 of the *SEPP (HSPD) 2004* stipulates development standards to control minimum lot sizes and building heights and Clause 40(4) provides height standards for development which is located in zones where residential flat buildings are not permitted.

Clause 40 of the *SEPP (HSPD) 2004* stipulates development standards to control minimum sizes and building heights and Clause 40(4) provides height standards for development which is located in zones where residential flat buildings are not permitted.

Under the provisions of the *WLEP 2011*, residential flat buildings are not permitted on a site zoned R2 Low-Density Residential and therefore the provisions of Clause 40(4) are relevant to the proposal.

Clause 40(4) (a) of the SEPP (HSPD) 2004 states:

- a) *The height of all buildings in the proposed development must be 8 metres or less". Height is defined under the SEPP as "the distance measured vertically from any point of the ceiling of the topmost floor of the building to the ground level immediately below that point.*

Figure 4 below illustrates the proposals non-compliance with the requirements of Clause 40 (a)

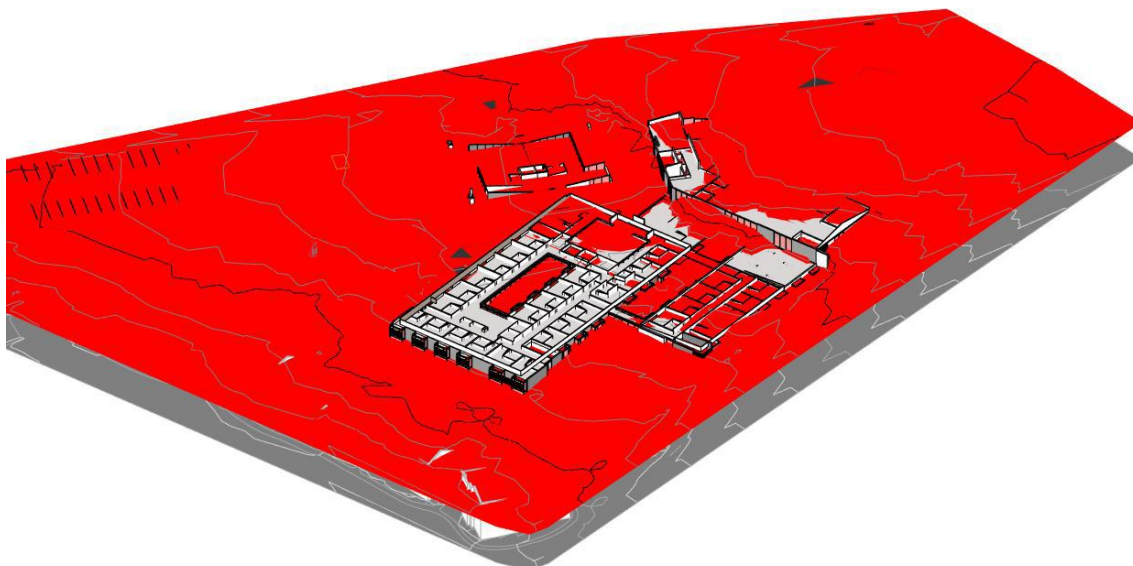


Figure 4 - Proposed non-compliance with requirements of Clause 40 (a). Source: Statement of Environmental Effects, prepared by Planning Ingenuity.

Assessment of the *SEPP 1* Objection to the maximum height development standard as stipulated under Clause 40 (4) (a) of the *SEPP (HSPD) 2004* has been assessed applying the "underlying object test" using the 5 part test suggested in *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79 as follows:

Applicant's SEPP 1 Objection

The applicant has submitted a detailed *SEPP 1 Objection* which is attached to this report (refer to Attachment 3).

1. "Is the planning control in question a development standard"?

Clause 40 (4) (a) of *SEPP (HSPD) 2004* is a numerical development standard for the purposes of *SEPP 1*- Development Standards, and may be varied by the consent authority pursuant to the provisions of the *SEPP (HSPD) 2004*.

2. "What is the underlying objective or purpose of the development standard"?

The *SEPP (HSPD) 2004* does not contain stated objectives for the development standard. It is considered that the underlying intent of the maximum height requirement is to control the height, scale and visual bulk of development such that it is consistent with the desired character and zone objectives for the immediate locality and minimise adverse amenity impacts on adjoining low-density residential development in terms of loss of privacy, views and solar access. For the purposes of this assessment, this has been considered as the objective of the standard.

It is considered that the proposal is consistent with the underlying objectives of the standard for the following reasons:

- The proposed residential care facility will replace an existing senior's housing development and will generally be contained within a similar footprint.
- The proposed development has a two storey form which is visually compatible with the existing two storey self-contained dwellings situated around the perimeter of the site, which will be retained. The two storey form is also compatible with the built form and scale of buildings on adjoining allotments, including the site to the north which is also a senior's housing development.
- The proposal raises no significant external amenity impacts on adjoining developments in terms of loss of views, privacy, solar access or overshadowing.

- The overall height and scale of the proposed building is not considered excessive and is consistent with development that currently exists on this site.
- Building bulk is considered acceptable with the massing of the buildings, which are broken up by variation of the building form. External colour scheme and finishes will blend with the surrounding natural environment to reduce visual impact.

3. *"Is compliance with the development standard consistent with the aims of the Policy and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i)(ii) of the Environmental Planning and Assessment Act?"*

Clause 9 of the Department of Planning's Circular "Varying Development Standards" dated August 2011 states:

"It is necessary to assess the likelihood of similar applications being made to vary the standard in the locality. Councils should consider whether the cumulative effect of similar approvals will undermine the objective of the standard or the planning objectives for the locality. If the council considers that it will do so, the application should be refused or a decision should be made not to approve others like it."

In this instance, it is considered that approval of the proposal will not result in a cumulative impact and is unlikely to create pressure for development with increased height and scale or more intensive developments beyond that already anticipated.

Accordingly, approval of the proposal is unlikely to hinder the attainment of Section 5(a) (i) and (ii) of the *EP&A Act*.

4. *"Is compliance unreasonable and unnecessary in the circumstances?"*

It is considered that compliance with the development standard is unreasonable and unnecessary in this instance having regard to the characteristics of the site and surrounding development.

The proposed non-compliance does not undermine the Objective of the standard nor result in any significant adverse environmental impacts. Compliance with the standard would not result in a better planning outcome for this site.

5. *"Is the objection well founded?"*

The objection to Clauses 40(4) (a) is well founded for the following reasons:

- The proposal has an acceptable bulk height and scale consistent with the existing development within the site;
- The proposal does not undermine the objectives of the standard; and
- The non-compliance does not result in any significant adverse environmental impacts on the amenity of surrounding residential developments.

The *SEPP 1 Objection* is considered to be well founded.

Assessment of the *SEPP 1 Objection* also includes consideration of the "5 ways of establishing that compliance is unreasonable or unnecessary" under *Wehbe v Pittwater Council*. In *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston of the Land and Environment Court expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the *SEPP (HSPD) 2004*:

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

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

For an objection to be well-founded it is only necessary for an applicant to demonstrate that any one of these five different ways is applicable. In the present case, it is the first method that is relied upon, namely that the objectives of the standard are achieved notwithstanding non-compliance with the standard, as outlined in this SEPP 1 Objection.

Conclusion on SEPP 1 Objection

It is considered that the *SEPP 1 Objection* is well founded and strict compliance with Clause 40(4) (a) of the *SEPP (HSPD) 2004* is considered to be unreasonable and unnecessary in the circumstances of this application.

Warringah Local Environment Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal is the development consistent with:	
Aims of the LEP?	Yes
Zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	600m ²	No changes to existing site	N/A	N/A
Height of Buildings:	8.5m	The height requirement is covered by SEPP (HSPD) 2004	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low-Density Residential

Land use definition: <i>WLEP 2011</i>	Permitted or Prohibited
Senior's Housing and associated uses	Prohibited (Permissible via SEPP (HSPD) 2004)

The underlying objectives of the R2 Low-Density Residential zone:

- ***To provide for the housing needs of the community within a low-density residential environment.***

The development will provide housing designed specifically for seniors or people with a disability and therefore the development ensures that the housing stock caters for a broad cross-section of the community.

The proposed design of the development has sought to minimise the impact on the adjoining low-density residential environment, through the incorporation of a landscape buffer, generous setbacks and recessed facades.

The development is considered to be consistent with this objective.

- ***To enable other land uses that provides facilities or services to meet the day to day needs of residents.***

The proposal does not provide any other land use, therefore this objective is not applicable to the proposed development.

- ***To ensure that low-density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

The landscape plans submitted with the application provide for an improved and high-quality landscape outcome for the site, which will ensure that the proposed development is characterised by a landscape setting.

The development is considered to be consistent with this objective.

ASSESSMENT OF CLAUSE 4.6 VARIATION REQUEST

Clause 4.6 of WLEP 2011 applies to the proposed development as the overall height of all buildings exceeds the 8.5m height limit.

However, the application has been lodged pursuant to SEPP (HSPD) 2004, which contains a Building Height Development Standard, which prevails over the height standard within WLEP 2011.

The following assessment of the request to vary the requirements of Clause 40 – Building Height of SEPP (HSPD) 2004 is assessed under the provision of Clause 4.6 taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46*.

Details of Standard being objected to and proposed variations:

Building Height

The development standard being objected to is the height standard in Clause 40 (4) (SEPP (HSPD)), which requires:

"If the development is proposed in a residential zone where residential flat buildings are not permitted:

(a) The height of all buildings in the proposed development must be 8m or less; and

The Clause 4.6 request relates to (a) in the above standard.

The development proposes a maximum height of 10.0m which varies the 8.0m height requirement by 2.0m and equates to a 25% variation to the building height standard as stipulated by SEPP (HSPD) 2004.

The height breach is shown in red in Figure 5 below:

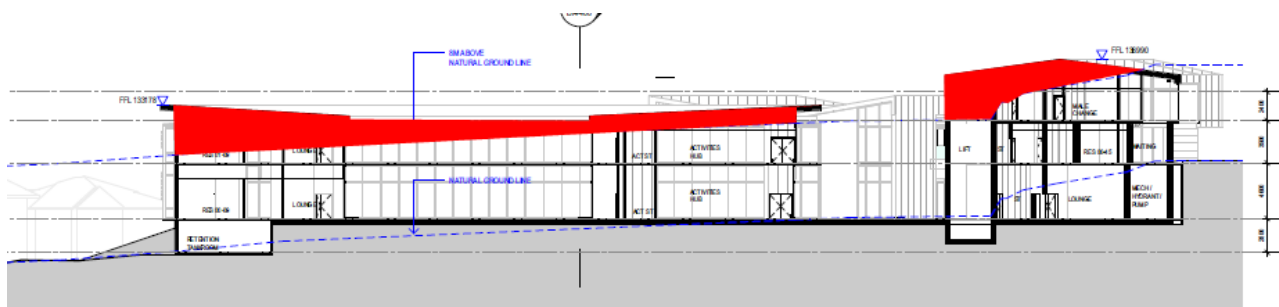


Figure 5 - showing the extent of non-compliance in red

A recent Land and Environment Court Case "*Four2Five Pty Ltd v Ashfield Council*" [2015] NSW LEC, found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe Vs Pittwater* [2007] NSW LEC 827 and demonstrate the following:

- Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- The applicant must satisfy the consent authority that **"the objection is well founded,"** and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That there are sufficient environment planning grounds, **particular to the circumstances of the proposed development** (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity); and
- That maintenance of the development **standard is unreasonable and unnecessary** on the basis of planning merit that **goes beyond the consideration of consistency with the objectives of the development standard** and/or the land use zone which applies to site.

What are the underlying objectives of the development standard?

There are no underlying objectives of the standard within Clause 40 of SEPP (HSPD), therefore it is appropriate for the purpose of this assessment to use the underlying objectives as prescribed by Clause 4.3 – 'Height of Buildings' of the WLEP 2011 to relevantly determine the suitability of the non-compliance associated with the proposed development.

The objectives of Clause 4.3 are as follows:

(a) *To ensure that buildings are compatible with the height and scale of surrounding and nearby development*

Comment: It is not uncommon for senior's housing developments to be somewhat different in character, form or scale to the types of development generally envisaged in R2 Low-Density Zones. The development within the site through its historical development is already inconsistent with the general built form principles of the R2 zoning.

The proposed built form and breaking-up of the building mass will ensure the development fits comfortably within its local context. The overall height and scale of the proposed development is not considered excessive and is consistent with the remainder of the development that will be retained within the site.

The proposed development is considered, in its design, to be compatible with the height and scale of surrounding and nearby development. The substantial articulation of the built form relates favourably to the scale and height of surrounding and nearby development.

The proposed height and scale of the buildings is considered to be an improved design outcome for the site and is consistent with that envisaged for the site.

The development is considered to be consistent with this objective.

(b) *To minimise visual impact, disruption of loss of privacy and loss of solar access*

Comment: The proposed development raises no significant external amenity impacts on adjoining developments in terms of loss of views, privacy, solar access or overshadowing.

The development is considered to be consistent with this objective.

(c) *To minimise the adverse impact of development on the scenic quality of Warringah's coastal and bush environments.*

Comment: The development will not have an unreasonable impact on the scenic quality of Northern Beaches coastal and bush environments. The buildings are broken-up through variation of the building form and use of appropriate colours and finishes which are consistent with the surrounding coastal and bush environment and will assist in reducing any impact on these environments.

(d) *To manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Comment: The substantial articulation of the built form, including the breaking-up of the mass of the buildings, and the use of high-quality materials and finishes, will ensure the development will not have an unreasonable visual impact when viewed from the adjoining and nearby public spaces.

What are the underlying objectives of the zone?

In assessing the variations sought, consideration must be given to the consistency of the proposal with the underlying objectives of the R2 Low-Density Residential zone.

An assessment of the proposed development against the objectives of the R2 Low-Density Residential zone is provided under the zoning section of this report, where it was found that the proposed development is consistent with the zone objectives.

Justification for the variation

As per the decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, a variation must demonstrate sufficient environmental planning grounds particular to the circumstances of the proposed development and development site rather than grounds that would apply to a similar development on the site or a development in the vicinity.

The applicant's justification has been prepared on the grounds of there being sufficient environmental planning grounds. As such, the grounds for the variation that are particular to the circumstances of the proposed development are that the site is sloping and the proposed height responds to the existing topography. In view of the particular circumstances of this case, strict compliance with Clause 4.3 of the LEP is considered to be both unnecessary and unreasonable on the following environmental planning grounds:

- The proposal is consistent with the intent of Clause 4.3 which is to maintain the character of the area. The proposal achieves this outcome, notwithstanding the proposed numerical variation;
- In this instance, it is considered that removal of the non-complying elements to achieve strict compliance would not result in an improved planning outcome – the additional height does not cause any material impact in terms of privacy or view loss to neighbouring residential areas, or adverse overshadowing to residential properties or the public domain. The variation results in an improved internal amenity for the occupants of this development and a built form in keeping with adjoining development and in essence would result in a better planning outcome;
- The development has been designed to respond to the topography by 'terracing' the building mass, where the height breaches occur and are largely unavoidable without incorporating level changes throughout the development, which is not possible in an aged care facility, where level graded access is necessary; and
- The amenity of adjoining properties is not significantly impacted on by the non-compliance, and the proposed non-compliance will not result in any view impacts.

Public Benefits

The proposed variation to the height control of the SEPP (HSPD) 2004 does not result in a loss of amenity to the adjoining properties and is therefore considered to be acceptable particularly when balanced against the benefits of the development which are:

- The redevelopment of the site that will provide visual and amenity improvements to the area;
- The additional building height will not reduce privacy, increase overshadowing or present unacceptable visual impacts to surrounding properties. The shadow diagrams accompanying the application demonstrate that appropriate solar access will be retained to the adjoining properties; and
- It is considered that the proposed height variation will not be contrary to the public interest.

The assessment above demonstrates that the proposal is consistent with the objectives of the building height standard.

Concurrence of the Director-General

Clause 4.6(4) (b) requires that the concurrence of the Director-General has been obtained.

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to

development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone.

The concurrence of the Director-General for the variation to the Building Height Development Standard under Clause 40 of SEPP (HSPD) is assumed.

Clause 5.10 – Heritage Conservation

The site is located in the vicinity of an item of heritage significance being a heritage conservation area, namely “*Manly Dam and Surrounds*” identified under the LEP as Number C9.

The proposed development is not considered to introduce any significant adverse impacts on the Heritage significance of the adjoining Conservation Area for the following reasons:

- The change in levels between the Conservation Area and the subject site;
- The fact that a seniors development already exists on the site;
- The physical separation of the site and the dam structure of greater than 2km; and
- Council’s Heritage Officer has reviewed the proposal and has raised no objection to the proposed development.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Wall Height	7.2m	The height is covered by SEPP (HSPD) 2004	N/A
B5 Side Boundary Setbacks	0.9m	2.2m South Eastern boundary	Yes
B7 Front Boundary Setbacks	10.0m	Nil to 36.0m	No* (refer to discussion below)
B9 Rear Boundary Setbacks	6.0m	There is existing buildings located along the south-western (rear) property boundary however proposed works are situated towards the centre and front of the site and will not encroach on the rear setback area.	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	50%	The LOS is covered by SEPP (HSPD) 2004	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
R2 Side Boundary Envelope Exceptions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	Yes	Yes
Side Setbacks - R2	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
R2 - All another land in R2 Zone	Yes	Yes
Front Boundary Exceptions - All Zones	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
All another land under R2	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

Description of non-compliance

The proposal is non-compliant in the following areas:

The front entry of the proposed development provides a nil setback to a section of Martin Luther Place for the length of 12m.

There is a number of existing building within the site are situated within the 10m setback area, the nearest being approximately 760mm from the property boundary. The proposal involves positioning a building at the front property boundary.

Merit consideration

In assessing this element of the proposal, it is necessary to consider the underlying objectives of the control. Assessments of the proposal's non-compliance against the objectives of the control are addressed below:

- ***To create a sense of openness.***

When compared to the existing development on the site, the non-compliant elements relating to this proposal will be visible at an oblique angle from street frontage, the design and careful placement of the development along the street frontages indicate that the encroachments will complement the overall design of the buildings and provide interest to the streetscape.

It is considered that the encroachments will provide a finishing detail to the development and provide architectural interest when viewed within the streetscapes in comparison to the existing development. The non-compliant elements relating to the proposed buildings are sufficiently recessed from the front boundaries to facilitate a sense of openness.

The development is considered to be consistent with this objective.

- ***To maintain the visual continuity and pattern of buildings and landscape elements.***

The proposal represents a significant improvement over the existing situation for this site, the non-compliances to the development relate favourably to the streetscapes and maintain a visual interest that is consistent with other developments in the locality.

The proposal is therefore found to be consistent with this objective.

- ***To protect and enhance the visual quality of streetscapes and public spaces.***

While the non-compliant elements will be visible at an oblique angle from street frontages, the features and recessed facades will complement the overall design of the buildings and provide much-improved elevation compared to the existing development. The outcome is satisfactory as the design provides a finishing detail to the development and high-quality architectural interest thereby enhancing the visual quality of the streetscape.

The proposal is therefore found to be consistent with this objective.

Conclusion on Front Boundary Setback

The proposal is considered to be consistent with the underlying objectives of the Front Boundary Setback Built Form Control. The variation is supported.

Clause - D6 Access to Sunlight

Site Specific Requirement

Clause 35 under SEPP (HSPD) 2004 establishes precedence for solar access over the WDCP 2011 and states that development is to ensure that adequate daylight is received to the main living areas of neighbours in the vicinity and residents receive an adequate provision of sunlight to substantial areas of private open space.

In the addition to the above, the development is also assessed against the requirements of clause D6 of the WDCP 2011.

Impact on the Adjoining Properties

The shadow diagrams submitted with the application show that the shadow cast by the proposed development will generally fall within or marginally beyond the boundaries of the site. Therefore, the impact of the proposed development on the adjoining properties is found to be acceptable.

Impact on the Independent Living within the subject site

The shadow diagrams accompanying the development application indicate that the existing independent living units (ILU) on the southern side of the proposed development will be overshadowed in the morning and mid-day, but will receive direct sunlight by 3.00pm for Block F.

Block E (existing ILU) is the worse affected being overshadowed for the entire day in mid-winter. However, the applicant has submitted an elevational shadow diagrams which demonstrates that the extent of overshadowing would not be reduced significantly even if the proposed development was reduced to comply with the overall building height as required by the SEPP (HSPD) 2004.

When considering the development as a whole, the impact on Block E whilst not ideal is not unreasonable in the circumstances.

Impact on the proposed development

The shadow diagrams indicate that the development will result in overshadowing of varying degrees to the new and existing buildings on site, including the newly proposed internal courtyard. However, given the density of the existing and proposed development, it is considered that direct sunlight at all times of the day is unachievable and that a degree of overshadowing is both inevitable and unavoidable.

In this regard, the proposed development is found to satisfy the solar access requirement of the SEPP (HSPD) 2004 and WDCP 2011.

E7 Development on land adjoining public open space

Being located adjacent to a public reserve to the immediate east, this provision of the DCP applies. The proposed development is considered to satisfactorily meet the requirements of this Part for the following reasons:

- The proposed landscaping strategy specifically seeks to integrate the site and development into its surrounding environment by considering the landscaping characteristics of the wider locality, including the adjoining reserve;
- No significant adverse impacts on surrounding bushland or open spaces will be introduced as a result of the proposed development;
- Access to public open space is unaffected by the proposal;

- The setback of the proposed buildings adjacent to the public open space exceeds the DCP control for the proposed development; and
- Existing and proposed landscaping assist in screening the development.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Section 5A of the EP&A Act requires that a consent authority to determine whether a development is likely to have a significant impact on threatened species or ecological communities.

A Flora and Fauna Assessment, as prepared by Ecological Australia have been submitted with the application. The report concludes that the site does not contain any threatened ecological communities and is unlikely to provide habitat for threatened species. Therefore, the proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The principles of Crime Prevention through Environmental Design include the consideration of Natural Surveillance, Natural Access Control and Natural Territorial Reinforcement.

Surveillance

The entry to the building and front of the site are overlooked by administrative and communal areas within the building providing good levels of passive surveillance. CCTV will also be fitted to key locations such as entries and the basement area.

Access

Access to the building is made via the main secured entry which will be overseen by an attendant at the reception.

Territorial Reinforcement

The built form of the development and the coordinated landscaping strategy across the site will make the facility clearly identifiable by the public.

The proposed development is considered to represent a satisfactory outcome in terms of security and crime prevention.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

Part 3 Section (6) of the *Warringah Section 94A Developer Contributions Plan 2012* (the Plan) outlines what land and which types of development should be included or are exempt from the Plan.

The exemptions included in the Plan are summarised as: (1) Development which complies with the Ministerial Direction dated 10/11/06 **and** for one of the following types of development: disabled access; affordable housing; water or energy consumption reduction works; adaptive reuse of heritage item; subdivision where levies have previously been imposed.

These exemptions would not apply to the proposed development.

Therefore, the proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 21,879,000		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 207,851
Section 94A Planning and Administration	0.05%	\$ 10,940
Total	1%	\$ 218,790

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

The proposed residential care facility will be located in the centre of the site and effectively will replace the existing buildings that are proposed to be demolished on site.

The proposal is permissible with consent pursuant to *SEPP (HSPD) 2004* and is found to satisfy the relevant requirements of this instrument, with the exception of building height. The proposed variation to the development standard of height of buildings under the SEPP (HSPD) 2004 will not result in any commercial gain for the applicant (in terms of yield or number of storeys) and will be visually imperceptible. The requested variation under Clause 4.6/SEPP 1 is considered reasonable, well founded and is recommended for support.

The development is considered to be consistent with the objectives of the controls for the site and generally consistent with Council's LEP and WDCP requirements. The variation in relation to WDCP relates to the front building setback, which is also found to be acceptable as the proposal effectively replaces the existing building on site and the proposal is considered to be compatible with the pattern of building setbacks within Martin Luther Place, with specific reference to the existing buildings on site which effectively define the character of the streetscape.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

As a direct result of the application and the consideration of the matters detailed within this report, it is recommended that approval be granted to the DA subject to the conditions detailed within the Attachment 1.

RECOMMENDATION

That the SNPP as the consent authority pursuant to Clause 80(1) (a) of the EP&A Act 1979 (as amended) grant Development Consent to DA2017/0085 for demolition Works and Construction of a new Residential Aged Care Facility on land 3 Martin Luther Place, Allambie Heights subject to conditions as contained in Attachment 1.