

SYDNEY NORTH PLANNING PANEL ASSESSMENT REPORT

Panel Reference	2017SNH050
DA Number	DA0014/17
LGA	Ku-ring-gai
Proposed Development	Demolition of existing structures and staged construction of a residential aged care facility, comprising 101 beds, basement car parking and associated landscaping works - State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
Street Address	12, 14 and 16 Trafalgar Avenue, Roseville
Applicant	KOPWA Ltd C/O Smyth Planning
Owner	KOPWA Ltd
Number of Submissions	Original DA: 13 submissions Amended DA: 4 submissions
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	General development with a CIV of more than \$30 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • SEPP 55 – Remediation of Land • Draft Remediation of Land SEPP • SREP (Sydney Harbour Catchment) 2005 • SEPP (Housing for Seniors or People with a Disability) 2004 • State Environmental Planning Policy (State and Regional Development) 2011 • Ku-ring-gai LEP (Local Centres) 2012 • Ku-ring-gai Local Centres DCP • Ku-ring-gai Contributions Plan 2010 • Clause 92(1)(b) of the Environmental Planning and Assessment Regulation 2000
Is a Clause 4.6 variation request required?	Yes: The proposal does not comply with clause 26 'Location and access to facilities' of SEPP (Housing for Seniors or People with a Disability) 2004
List all documents submitted with this report for the Panel's consideration	Attachment A – Pre DA report for meeting held 6/08/2015 Attachment B – Assessment letter dated 28/04/2017 Attachment C – Assessment letter dated 15/03/2018 Attachment D – Applicant's clause 4.6 variation request to clause 26 'Location and Access to Facilities' Attachment E – Applicant's clause 4.6 variation request to clause 40 'Height in zones where residential flat buildings are not permitted' Attachment F - Heritage Advisor comments Attachment G – KOPWA Services Statement Attachment H – Location Sketch Attachment I - Zoning Extracts Attachment J – Plans and Elevations
Report prepared by	Jonathan Goodwill – Executive Assessment Officer
Report date	12/09/2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

No

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 summarised, 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 LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

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

PURPOSE OF REPORT

To determine Development Application No. DA0014/17 which is for demolition of existing structures and staged construction of a residential aged care facility, comprising 101 beds, basement car parking and associated landscaping works - State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 in a heritage conservation area.

INTEGRATED PLANNING AND REPORTING

Places, spaces & infrastructure

Community Strategic Plan Long Term Objective	Delivery Program Term Achievement	Operational Plan Task
P2.1 A robust planning framework is in place to deliver quality design outcomes and maintain the identity and character of Kuring-gai	Applications are assessed in accordance with State and local plans	Assessments are of a high quality, accurate and consider all relevant legislative requirements

THE PROPOSAL (AS AMENDED)

The application is for the staged redevelopment and expansion of the existing residential care facility (Archbold House) at No. 16 Trafalgar Avenue, Roseville to increase the number of beds from 58 to 101. The proposal includes the consolidation of the existing allotment No. 16 Trafalgar Avenue with two allotments Nos. 12 & 14 Trafalgar Avenue that are currently used for residential purposes. The proposal will increase the site area from 4560m² to 8186m². The proposed works include:

First stage

Demolition of the existing dwelling house and ancillary structures (swimming pool, garage, sheds and carport) at No. 12 Trafalgar Avenue and construction of the Stage 1 building which includes the south-eastern part of the new residential care facility over a basement car park, with 29 car spaces and support services including loading dock, waste rooms, kitchen, laundry, staff rooms, workshop, storage space and plant rooms. The intention of the staged construction process is to allow the existing 58 bed KOPWA facility to continue operating while Stage 1 is being constructed.

The first floor level of the two storey contributory building at No. 14 Trafalgar Avenue is proposed to be converted into temporary accommodation (four bedrooms) and the enclosed balconies reinstated to their original open form. The front portion of the ground floor level of the building is proposed to be converted into a café for resident use and the rear of the building converted into office and interview space. The enclosed verandas at the front of the building are proposed to be reinstated to their original open form.

Second stage

Demolition of the existing 58 bed Residential Care Facility and construction of the north-western wing

of the new facility. The first floor level of the two storey contributory building at No. 14 Trafalgar Avenue is proposed to be converted from temporary accommodation (four bedrooms) into a family room, consultation room, multi purpose room and a hair and beauty salon.

The facility is divided into five 'care clusters'. Care cluster 1 contains 25 beds and is located on the ground floor level (RL 102) of Stage 1. Care cluster 2 contains 10 beds and is located on the ground floor level (RL 102) of Stage 2. Care cluster 3 contains 24 beds and is located on the first floor level (RL 105.4) of Stage 1. Care cluster 4 contains 26 beds and is located on the first floor level (RL 105.4) of Stage 2. Care cluster 5 contains 16 beds and is located on the second floor level (RL 108.8) of Stage 2. All care clusters have internal and external facilities including dining rooms, lounge rooms, reading areas, sitting areas, libraries, courtyards and terraces. On completion of Stage 2, the facility will have 101 beds and a maximum of 29 staff on duty at any time.

THE AMENDMENTS

The revised proposal submitted on 9 November 2017 incorporated the following amendments:

- i. the basement driveway was relocated from in front of the Stage 1 building (14m side boundary setback) to the south-eastern side of the building closer to the south-eastern side boundary (2.8m side boundary setback)
- ii. one bedroom was deleted from the eastern corner of Level 2 of Stage 1 and replaced with landscape planters
- iii. the enclosed verandas and balconies of No. 14 Trafalgar Avenue reinstated as open verandas
- iv. the rainwater tanks behind Beds 18 and 19 were relocated
- v. a Green Star Pathway Report to achieve a 4 star rating was provided
- vi. the cobblestone finish for the porte cochere was changed to asphalt
- vii. revised Stormwater Management Report submitted
- viii. stormwater tanks deleted from the front setback
- ix. landscape plans amended to include additional canopy tree planting
- x. the Services Statement was amended to include details of the proposed mini bus

The revised proposal submitted on 14 June 2018 incorporated the following amendments:

- i. the connection between the southern side elevation of No. 14 Trafalgar Avenue and the northern side elevation of Stage 1 was redesigned
- ii. the substation was relocated from the northern side of the basement carpark driveway to the northern side of the porte cochere driveway
- iii. the roof tiles were changed from dark grey to a mix of dark grey and brown
- iv. the side setback of the basement driveway was increased from 2.8m to 5.4m
- v. the lounge room adjoining Bed 7 in Stage 1 was cut back to increase the landscape setback and emphasise the gap between the northern and southern parts of Stage 1
- vi. one bedroom was deleted from the eastern corner of Level 2 of Stage 1
- vii. the existing levels, plantings and front wall of No. 14 Trafalgar Avenue were retained
- viii. twelve additional canopy trees are proposed

THE SITE AND SURROUNDING AREA

The site:

The site is known as No. 12, 14 & 16 Trafalgar Avenue, Roseville. No. 16 Trafalgar Avenue contains a two storey aged care facility known as Archbold House. No. 14 Trafalgar Avenue contains a two storey attached duplex that is a contributory building in the HCA. No. 12 Trafalgar Avenue contains a single storey dwelling-house, swimming pool and outbuildings on a double block of two 20.115m wide allotments. The natural fall of No. 12 Trafalgar Avenue is from RL 100 at the northern end of the street frontage to RL 98 at the southern end of the street frontage, fill and retaining walls have been used to create a building platform of approximately RL 101.5. The consolidated site is irregularly shaped, has an area of 8186m² and a frontage of 109 metres to Trafalgar Avenue.

The site is zoned R2 Low Density Residential and is within a locality that is characterised by detached dwelling houses on well landscaped allotments. The western side of Trafalgar Avenue is located in 'The Grove' Heritage Conservation Area under KLEP (Local Centres) 2012 and the eastern side of Trafalgar Avenue is located in the Clanville Heritage Conservation Area under KLEP 2015.

Constraint:	Application:
Visual character study category	1920-1945
Easements/rights of way	No
Heritage Item - Local	No
Heritage Item - State	No
Heritage conservation area	Yes – The Grove Heritage Conservation Area
Within the vicinity of a heritage item	Yes
Bush fire prone land	No
Natural Resources Biodiversity	No
Natural Resources Greenweb	No
Natural Resources Riparian	No
Within 25m of Urban Bushland	No
Contaminated land	No
Within 25m of Classified Road	No
Within 25m of a rail corridor/tunnel	Yes: Epping/Chatswood Rail Tunnel

Surrounding development:

The site is located on land zoned R2 Low Density Residential which is subject to a statutory building height limit of 9.5m and a floor space ratio of between 0.3:1 and 0.4:1, depending on site area. With the exception of the existing residential care facility, all the allotments in Trafalgar Avenue are occupied by dwelling-houses.

The adjacent property to the south-east of the site is No. 8 Trafalgar Avenue. This property contains a single storey dwelling house and a swimming pool in the backyard. The site contains a contributory building that dates from the key period of significance for the Heritage Conservation Area.

The adjacent properties to the north-west of the site are No. 18 Trafalgar Avenue and No. 21 Clanville Road. The subject site adjoins the rear and southern side boundaries of No. 18 Trafalgar Avenue which contains a two storey dwelling that is listed as a heritage item of local significance in Ku-ring-gai LEP 2012. The subject site adjoins the rear boundary of No. 21 Clanville Road, which contains a two storey early Inter-War residential flat building.

The adjacent properties to the south-west of the site include No. 17 Clanville Road and Nos. 9 to 17. The Grove. Inside the northern boundary of No. 17 Clanville Road, the ground levels range from RL 109.2 to RL 110.6, within the subject site and on the other side of the shared boundary the ground levels range from RL 110 to RL 108.5 directly adjacent to the boundary and RL 106.5 to RL 105.5 at the face of the existing south-western elevation. The survey plan demonstrates that the ground levels at the rear of No. 16 Trafalgar Avenue have been lowered through significant excavation that likely occurred during the construction of Archbold House in the 1970s.

No. 17 The Grove contains a two storey brick dwelling that is listed as a heritage item of local significance in Ku-ring-gai LEP 2012. The rear of this property contains a tennis court which is adjacent to the southern end of the south-western side boundary of No. 16 Trafalgar Avenue.

Nos. 9 and 11 The Grove contain single storey dwelling houses located to the south-west of the site. The rear of these properties are adjacent to the rear boundary of No. 12 Trafalgar Avenue. No. 11 The Grove is listed as a heritage item of local significance in Ku-ring-gai LEP 2012.



Figure 1 - subject site identified by a blue border

THE GROVE HERITAGE CONSERVATION AREA

The DCP describes the character and significance of The Grove Heritage Conservation Area in the following manner:

Character:

Both the section of Clanville Road within the area and The Grove consists of a largely intact group of single storey Federation Queen Anne, Federation Bungalow and Inter-war California Bungalow style single storey houses within garden settings on large allotments. 13 Clanville Road (Corner The Grove) is a two storey Inter-war Mediterranean style residential flat building..... Housing from the key historical periods (Federation, Interwar) have brick walls, sometimes with sandstone foundations, unglazed terracotta tile roofs and occasionally slate roofs, and timber framed windows, casement or double-hung. The area includes a few Interwar period residential flat buildings, which also contribute to the area's character - 13 and 21 Clanville Road and 15 The Grove – the Clanville Road examples feature rendered brick walls, which appear original.

Significance:

The Grove HCA is of historical significance as the area reflects its historical development following both the 1903 Clanville Estate subdivision and re-subdivision in 1922 as part of Hordern's Roseville Estate. The Grove HCA is of aesthetic significance for its intact streetscapes of Federation to Inter-war period housing, largely single storey, with mature street tree planting (predominantly Brush Box) characteristic of the same period.

HISTORY

Pre DA

A pre-development application consultation meeting was undertaken for the proposed development.

PRE0049/16

A pre DA consultation for, 'Demolition of existing buildings and construction of Residential Aged Care Facility containing 118 units pursuant to SEPP (Housing for Seniors or People with a Disability 2004)' was held on 11 May 2016. The applicant was advised that the following fundamental issues had been identified:

- i. prohibited development
- ii. does not comply with location and access to facilities requirements
- iii. site compatibility test
- iv. unacceptable impacts on heritage conservation area
- v. compatibility with area character
- vi. departures from development standards

The pre DA meeting report (**Attachment A**) was issued to the applicant on 7 June 2016.

Site DA history

Council's electronic database does not reference any recent Development Applications made with respect to the subject site:

Current application history

Date	Action
19 January 2017	Application lodged.
3 February 2017	The application was notified to neighbouring property owners for a period of 30 days.
29 March 2017	Sydney Trains advised Council that additional information is required.
5 April 2017	The Sydney Trains request for additional information was forwarded to the applicant.
8 June 2017	<p>An assessment letter (Attachment B) was sent to the applicant advising that the following issues were required to be addressed:</p> <ol style="list-style-type: none"> 1. heritage 2. neighbourhood character 3. clause 4.6 variation to the development standards in clause 26 4. solar access to courtyards 5. overshadowing 6. excavation 7. subterranean accommodation 8. waterproofing 9. rooftop terrace junction 10. structural depth 11. plan details 12. structural feasibility 13. laundry and kitchen exhausts 14. green buildings 15. sawn cobblestones 16. water management 17. waste management 18. vehicular manoeuvring 19. roof level plant rooms 20. landscape works 21. tree replenishment 22. landscape plan details 23. stormwater plan <p>The applicant was requested to submit the amended plans by 28 May 2017.</p>
3 August 2017	The applicant submitted draft concept plans in response to the assessment letter.
9 August 2017	The SNPP briefing was held.
9 November 2017	The applicant submitted amended plans.
15 November 2017	The applicant advised that they will be pursuing deferred commencement conditions from Sydney Trains rather than providing the

	requested information.
5 March 2018	The applicant provided an update on the status of the information requested by Sydney Trains.
16 March 2018	An assessment letter (Attachment C) was sent to the applicant, advising that the following issues were required to be addressed: 1. heritage 2. neighbourhood character 3. landscape design
5 April 2018	The applicant was asked for an update on the information requested by Sydney Trains. The applicant advised that a draft will be ready 14 April 2018.
11 April 2018	A SNPP briefing and site inspection was held.
16 April 2018	A draft version of the information requested by Sydney Trains was submitted.
19 April 2018	The applicant submitted draft amended plans for review.
23 April 2018	The applicant provided further information to Sydney Trains.
9 May 2018	The applicant advises that Sydney Trains are likely to complete their assessment by 25 May 2018.
1 May 2018	Comments on the draft amended plans submitted 18/04/2018 are provided to the applicant.
14 June 2018	The applicant submitted amended plans.
25 June 2018	The amended plans were notified.
2 August 2018	The applicant submitted a report on the potential impact on the Epping to Chatswood Rail Line tunnels.
3 August 2018	The applicant submitted amended civil/stormwater plans.
21 August 2018	The applicant was requested to amend the Services Statement to include the use of the mini-bus for trips to nearby shops or a bus stop on a 'as requested' basis'.
22 August 2018	The applicant amended the Services Statement to include the use of the mini-bus for trips to Banks and Shopping Centres at least once per day (Monday to Friday) on an 'as requested' basis'.

SUBMISSIONS AND COMMUNITY CONSULTATION

In accordance with the notification controls of the Ku-ring-gai Development Control Plan, owners of surrounding properties were given notice of the application. In response, submissions from the following were received:

1. Andrew Marr, No. 19 Trafalgar Avenue, Roseville
2. Hannah Lu, Arrunga Avenue, Roseville
3. Margaret Haines, No. 15 Trafalgar Avenue, Roseville
4. A R Kidd, No. 25 Trafalgar Avenue, Roseville
5. JE and RJ Wruck, No. 9 The Grove, Roseville
6. Ann Meagher and Tony Jackson 17 Clanville Road, Roseville
7. John and Mary-Anne Mildren, 9 Trafalgar Avenue, Roseville
8. Edwina and Gareth Axtens, No. 19 The Grove, Roseville
9. Patricia Clark, No. 17 The Grove, Roseville
10. Ian Smith, No. 14 Clanville Road, Roseville
11. Cynthia Bluett and Marcus John, No. 7 Trafalgar Avenue, Roseville
12. Catherine Wilkinson (no address provided)
13. Elizabeth Cornell, No. 6 Trafalgar Avenue, Roseville

The following issues were raised in the submissions:

the proposal is excessively bulky and the selected materials do not complement the character of the heritage conservation area

Council's Heritage Advisor is of the opinion that the proposal will have an unacceptable impact on the heritage significance of The Grove and Clanville Heritage Conservation Areas.

the proposal will have an adverse impact on the privacy of adjacent dwellings

The proposal has been designed to minimise privacy impacts through the provision of generous side and rear setbacks of minimum 6 metres which allow for visual separation and the provision of screening vegetation between the side elevations and the side boundaries. In addition, no first floor balconies facing the side boundaries or the rear boundaries are proposed. The elevation with the greatest potential to impact upon privacy is the south-eastern elevation facing No. 8 Trafalgar Avenue, this elevation has no balconies and all windows have boundary setbacks of between 6-10m. Existing trees and additional tree planting will also form a landscape screen that will assist in minimising privacy impacts. The existing residential care facility has external access ways at the first floor level which provide filtered views into the backyard of No. 18 Trafalgar Avenue, the proposed residential care facility has internal access ways which reduce opportunities for overlooking.

the number of car spaces is insufficient

The number of car spaces complies with the requirements of SEPP Seniors.

the proposal will result in excessive noise

The amended acoustic report, dated 3 November 2017, includes an assessment of the acoustic impacts of the proposal from mechanical plant, residents and guests, car park and additional road traffic. Part 4.3 'Car Park Noise Emission' assumes that delivery trucks and garbage trucks will only access the premises between 9am and 5pm, accordingly if approval of the application were recommended, truck access would need to be restricted to these hours to ensure that the predicted noise levels which comply with the NSW Industrial Noise Policy are achieved. The potential noise impacts of the proposal have also been assessed by Council's Environmental Health Officer who has advised that the potential impacts are acceptable, subject to conditions.

the proposal will result in excessive traffic

The traffic impacts of the proposal have been assessed by Council's Development Engineer who considers that the proposal will not have an adverse impact on the operation of the local road network.

screen planting adjacent to the boundary shared with No. 17 Clanville Road should be carried out in Stage 1 so that they have had time to establish prior to commencement of Stage 2

If approval of the application were recommended, a condition could be imposed to achieve this outcome.

the height of the proposal is excessive

At the street frontage, the height of the buildings in Stage 1 (RL 110.52) does not exceed the height of the contributory building at No. 14 Trafalgar Avenue (RL 112.35). The maximum height of the rear portion of Stage 2 (RL 114.45) is greater than No. 14 Trafalgar Avenue, however this part of the development has a setback of more than 40 metres from the front boundary and will have minimal impact upon the character of the streetscape. The rear elevation has a maximum single storey presentation to the properties at the rear (with frontage to The Grove) as the rear of No. 16 Trafalgar Avenue has ground levels that are up to 4m lower than the ground levels within the adjacent property.

the buildings at the rear of the site should be no higher than the height permitted for dwelling houses

If the site was redeveloped pursuant to Ku-ring-gai LEP (Local Centres) 2012 the building height development standard would be 9.5m. The maximum height of the tallest building (Stage 2) is approximately 9.2m per the LEP definition of building height.

the buildings in the rear 25% of the site should be single storey as required by the SEPP

This provision does not apply to the proposal as the application has been made on behalf of a social housing provider.

the facility will generate significant waste

The proposal includes a waste storage and collection room in the basement. All waste will be collected from inside the basement to minimise noise impacts on adjacent and nearby properties.

No. 12 Trafalgar Avenue has heritage significance and its demolition should not be supported

The house was built in the 1950's therefore it does not date from the key period of significance for the heritage conservation area, accordingly its demolition may not be refused on heritage grounds.

the development should not be staged as it will extend the length of the construction process

The proposed staging plan will allow for the relocation of the existing residents into the new accommodation in Stage 1 prior to the construction of Stage 2. The proposed staging plan is considered reasonable as the proposal relates to an existing occupied facility and the temporary relocation of residents to other facilities during construction is unlikely to be feasible.

the design of roof level plant/equipment is not acceptable

Plant and equipment is to be located within purpose designed plant rooms which sit below the roof ridge and will be covered with louvres. The plant rooms are well integrated into the roof form.

AMENDED PLANS

The amended plans were notified for 30 days from 26 June 2018 to 25 July 2018. In response to the notification, submissions from the following were received:

1. Megan Maguire, No. 11 The Grove, Roseville
2. Elizabeth Cornell, No. 6 Trafalgar Avenue, Roseville
3. Paul McNamee, No. 23 Clanville Road, Roseville
4. Xiongbin Xue, No. 8 Trafalgar Avenue, Roseville

The submissions raised the following additional issue:

the plans fail to show on elevation or section the plant rooms in the roof space

The plant rooms are identified on the roof plan (DA-2005) and detail sections are shown on DA-3101. The applicant has also provided a letter from an Engineer attesting to the feasibility of the plant rooms.

REFERRALS

Heritage

Council's Heritage Advisor provided the following comments on the amended plans:

The proposal will introduce a highly visible unsympathetic development into The Grove HCA and into the Trafalgar Avenue streetscape. It will adversely affect the setting of heritage items located within the vicinity of the subject site, as well as the setting of the Clanville Heritage Conservation Area located opposite the subject site. The typology, scale, form, relationship to topography, architectural character, materials, colours, and landscaping of the proposal are not in keeping with the established positive characteristics of the area. While it is understood that KOPWA wish to expand their existing facility, a preferred approach would have been to seek a better suited site for an enlarged facility and to replace the existing unsympathetic aged care home with development compatible with the area.

The proposed aged care facility would have an adverse impact on the heritage values of The Grove HCA, as well as the heritage values of the heritage items and HCA in its vicinity. The proposal does not meet the requirements of Ku-ring-gai Local Environmental Plan (Local Centres) 2012 nor of Ku-ring-gai Development Control Plan 2015 (Local Centres) Development Control Plan. In addition, the proposal does not meet the requirements of Clause 33 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

On the basis of the above issues, Council's Heritage Advisor is of the opinion that the proposal does not satisfy the requirements in clause 33 of SEPP Seniors for development to, *'retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items'* and is also inconsistent with the objectives of clause 5.10 'Heritage conservation' of the Ku-ring-gai LEP (Local Centres) 2012 and the objectives and design controls in Part 19 'Heritage Items and Heritage Conservation Areas' of the Ku-ring-gai DCP. The full comments of Council's Heritage Advisor are **Attachment E**.

Urban design

Council's urban design consultant provided the following comments on the amended plans:

Basement Lift 3 tunnel

A skylight or highlight window should be incorporated into the long tunnel in the basement linking to Lift 3 (see section 3 at DA-4006 (C)). It aligns with the planter above in the Care Cluster 2 courtyard, which provides an opportunity to get natural light and possibly some natural ventilation into the basement tunnel space. As proposed, the tunnel remains long, dark, insufficiently welcoming, and requires 24hr energy demand for lighting and ventilation over the life-cycle operations of the building. See attached screenshot with two suggested locations within the planter (shown in red cloud) that can accommodate skylights/highlight windows to the Lift 3 basement tunnel below. It would be preferable it to be included in final amended stamped plans and section drawings but it can be conditioned.

Heritage and streetscape character - eastern corner

The amendments increase the bulk and scale at the eastern corner and interface with No 10 Trafalgar Ave. Room 9 is deleted and Room 33 increases in size to replace the bed otherwise lost. This results in a 2-storey wall that appears taller due to the 4.4m excavation for the driveway now clearly visible and exacerbating the impact. The location of the ground floor planted terrace above the driveway will somewhat assist in the visual softening, but this is set back significantly from the front building line so there is a quite sudden change in scale that will be perceived. However, the amended scheme has increased the setback along the boundary with No 10 Trafalgar Ave, which achieves additional building separation that now enables meaningful deep soil landscape now critical to soften the built form transition. The improvements to the landscape outcome must therefore outweigh the impacts of the transferred building height to achieve a successful transition in the streetscape. This should be confirmed by the landscape and heritage officers. The roof forms are now more consistent with the overall architectural expression of the development and within the surrounding streetscape, and the rhythm of massing addressing the street is more clearly articulated.

If approval of the application were recommend, the addition of a skylight to the tunnel could be achieved through a condition of consent. With the exception of unacceptable impacts on the heritage significance of The Grove Heritage Conservation Area and adjacent heritage items, the proposal is considered to satisfy the Design principles in Part 3 of SEPP Seniors and the aims of SEPP Seniors which includes that housing will, 'be of good design'.

Landscaping

Council's Landscape and Tree Assessment Officer provided the following comments:

SEPP (Vegetation in Non-Rural Areas) 2017		
Part 3 Aims	Proposed	Satisfies
To protect the biodiversity value of trees and other vegetation and to preserve the amenity of non-rural areas through the preservation of trees and other vegetation.	<p>Trees to be removed 46. The majority of the trees to be removed have low landscape value or are over mature or in declining health</p> <p>Trees to be retained – 18</p> <p>Trees to be transplanted - 1</p>	YES

SEPP (Housing for Seniors or People with a Disability) 2004		
Part 3 Clause 33	Proposed	Satisfies
(b) Retain, compliment and sensitively harmonise with any HCA and any Heritage Item	<p>The development is within a HCA and adjoins 3 Heritage Items. The plans are acceptable, subject to the following amendments;</p> <p>Trafalgar Avenue streetscape (HCA)</p> <ul style="list-style-type: none"> To minimise impacts on the streetscape, additional planting is required between the port cochere and the front boundary To provide continuity of the street tree planting, the 3 x <i>Lophostemon confertus</i> (Brushbox) on the Trafalgar Ave nature strip are to be replaced with 3 x <i>Jacaranda mimosifolia</i> (Jacaranda) To minimise the visual impacts of the eastern corner of the building and the driveway, the pump room is to be relocated a minimum distance of 2 metres from the north western edge of the driveway. The remaining space is to be planted with shade tolerant species that will soften the built form. <p>South western (rear) boundary (adjacent to 2 x heritage items)</p> <ul style="list-style-type: none"> To maintain neighbour amenity, an additional 4 <i>Elaeocarpus eumundii</i> are to be planted adjacent to rooms 81 to 83 To maintain neighbour amenity, an additional 6 x <i>Syzygium leuhmanii</i> are to be planted adjacent to rooms 12 to 19. 	YES subject to conditions
(e) To embody planting that is in sympathy with, but not necessarily the same as, other plantings in the streetscape	The proposal satisfies the planting design requirements of the SEPP	YES
(f) To retain, wherever reasonable, major existing trees	The proposal retains all major existing trees	YES
Part 3 Clause 34	Proposed	Satisfies
Impacts on neighbours (a) To consider visual privacy of neighbours in the vicinity and residents by the use of landscaping	<p>The proposed development is acceptable subject to the following amendments:</p> <p>South eastern (side) boundary (adjacent to No. 8 Trafalgar Avenue)</p> <ul style="list-style-type: none"> To minimise amenity impacts on the adjoining property, the <i>Angophora floribunda</i> (Rough 	YES subject to conditions

	<p>barked Apple) proposed to be planted on the south eastern boundary between the roof top garden and the adjoining dwelling is to be replaced with 3 x <i>Elaeocarpus reticulatus</i> (Blueberry Ash).</p> <ul style="list-style-type: none"> To maintain the amenity of the adjoining property, an additional layer of screen planting is required in the garden bed beneath the canopy of Tree 74. To maximise the available soft landscaped area, the path is to be a maximum width of 1.2 metres. <p>Internal amenity</p> <ul style="list-style-type: none"> To provide high quality internal amenity, an additional retaining wall is required to be constructed parallel to the proposed retaining wall along the south western boundary. The wall is to be a minimum height of 1 metre high at TOW RL 102.98 and located a minimum of 1 metre from the proposed retaining wall. The garden area between the new wall and the proposed wall is to be planted to soften and reduce the scale of the proposed retaining wall. To provide winter solar access within Courtyard 3, the 5 x <i>Polyspora axillaris</i> (Gordonia) are to be replaced with a deciduous species such as <i>Lagerstroemia indica</i> (Crepe Myrtle) or similar. 	
Part 7 Clause 48	Proposed	Satisfies
(c) Landscaped area: If a minimum of 25 square metres of landscape area per residential care unit is provided	<p>The proposal satisfies the requirements for landscaped area:</p> <ul style="list-style-type: none"> There are 101 rooms proposed requiring a minimum of 2525 sqm of landscaped area The proposed development provides 4676.4 sqm of landscape area 	YES

Part 19 Heritage Items and Heritage Conservation Areas		
<p>19D.3 Gardens and Landscaping – Within HCAs: New Dwellings</p> <p>19F.3 Gardens and Landscaping – in the vicinity of Heritage Items/HCA</p>	<p>The development is within a HCA and adjoins 3 Heritage Items. The plans are acceptable, subject to the following amendments:</p> <p>Trafalgar Avenue streetscape (HCA)</p> <ul style="list-style-type: none"> To minimise impacts on the streetscape, additional planting is required between the port cochere and the front boundary. To provide continuity of the street tree planting, the 3 x <i>Lophostemon confertus</i> (Brushbox) on the Trafalgar Ave nature strip are to be replaced with 3 x <i>Jacaranda mimosifolia</i> (Jacaranda). To minimise the visual impacts of the eastern corner of the building and the driveway, the pump room is to be relocated a minimum distance of 2 metres from the north western edge of the driveway. The remaining space is 	YES subject to conditions

	<p>to be planted with shade tolerant species that will soften the built form.</p> <p><u>South western (rear) boundary (adjacent to 2 x heritage items)</u></p> <ul style="list-style-type: none"> To maintain neighbour amenity, an additional 4 <i>Elaeocarpus eumundii</i> are to be planted adjacent to rooms 81 to 83. To maintain neighbour amenity, an additional 6 x <i>Syzygium leuhmanii</i> are to be planted adjacent to rooms 12 to 19. 	
Part 21 General Site Design		
<p>21.1 Earthworks and Slope</p> <p>Landscape cut or fill should not be more than 600mm above or below natural ground line.</p> <p>A minimum 0.6m width is required between retaining walls.</p> <p>Existing ground level is to be maintained for a distance of 2m from any boundary.</p>	The proposal is considered acceptable.	YES
<p>21.2 Landscape Design</p> <p>To ensure the landscape design and species selection is suitable to the site its context and considers the amenity of residents and neighbours.</p>	<p>The proposed development is acceptable, subject to the following amendments:</p> <p>South eastern (side) boundary (adjacent to 8 Trafalgar)</p> <ul style="list-style-type: none"> To minimise amenity impacts on the adjoining property, the <i>Angophora floribunda</i> (Rough barked Apple) proposed to be planted on the south eastern boundary between the roof top garden and the adjoining dwelling is to be replaced with 3 x <i>Elaeocarpus reticulatus</i> (Blueberry Ash). To maintain the amenity of the adjoining property, an additional layer of screen planting is required in the garden bed beneath the canopy of Tree 74. To maximise the available soft landscaped area, the path is to be a maximum width of 1.2 metres. <p>Internal amenity</p> <ul style="list-style-type: none"> To provide high quality internal amenity, an additional retaining wall is required to be constructed parallel to the proposed retaining wall along the south western boundary. The wall is to be a minimum height of TOW RL 102.98 and located a minimum of 1 metre from the proposed retaining wall. The garden area between the new wall and the proposed wall is to be planted to soften and reduce the scale of the proposed retaining wall. 	YES subject to conditions

	<ul style="list-style-type: none"> To provide winter solar access within Courtyard 3 the 5 x Polyspora axillaris (Gordonia) are to be replaced with a deciduous species such as <i>Lagerstroemia indica</i> (Crepe Myrtle) or similar. 	
Part 23 General Building Design and Sustainability		
23.10 Construction, demolition and disposal	<p>The Environmental Site Management Plan is acceptable subject to the following amendments:</p> <ul style="list-style-type: none"> All trees are to be clearly numbered in accordance with the arborist report. Plan DA-1105 Issue C shall indicate the retention of Tree's 65, 66 and 67. Tree protection measures are to be indicated on the plan in accordance with the conditions of consent and as recommended by the Project Arborist. The plans shall be consistent with the landscape works within the south western (rear) setback adjacent to No. 17 The Grove. 	YES subject to conditions

Development Engineer

Council's Development Engineer provided the following comments:

Water management

The subject site has a gradual fall towards the street of approximately 3 metres. It is proposed to have the site discharge directed to the existing kerb and gutter in Trafalgar Avenue.

The pit/pipe system comprises a north side and a south side system, both of which discharge to the OSD tank, which discharges to the existing kerb and gutter in Trafalgar Avenue. Refer to civil engineering plans MMD-367640-DR-C-XX-0040 for indicative details of the pit/pipe system. Rainwater storage tanks are provided as part of the south side system to capture 28kL of roof runoff for on-site landscape irrigation.

The submitted Stormwater Management Report by Mott McDonald, dated 3 November 2017, suggests a reuse rate of 56%. While this calculation has been considered by Council, it does not address the DCP requirement for a reduction in runoff days. No supporting hydraulic calculation has been submitted to demonstrate compliance with Part 24C.3 of the Ku-ring-gai DCP that requires rainwater retention and re-use to be provided to achieve a 50% reduction in runoff days.

The pollutant load standards set out in Part 24C.6 of the Ku-ring-gai DCP have been satisfied using MUSIC Modelling. Nineteen Enviropod pit inserts will be used as a primary treatment for northern side of the site as well as a rainwater tank and a JellyFish® filter as a tertiary treatment device. Similarly, for southern side of the site the primary treatment device will be fifteen Enviropod pit inserts and JellyFish® filter will be the tertiary.

Vehicle access and accommodation arrangements

The SEPP (Seniors Living) requires 1 parking space to be provided for each 10 beds and one per two staff, a total of 28 spaces. The plans show that the minimum of 28 spaces are provided, with two of these being small car spaces. The required ambulance space is within the porte cochere area, at the entry to reception.

Vehicle access to the car parking facility is to be provided via a new single 6m wide entry / exit driveway to the basement entry. The requirements of Part 22.2 of the Ku-ring-gai DCP have been satisfied.

The access ramp, driveway widths, driveway gradients and manoeuvring into and out of the parking bays comply with Australian Standard 2890.1 (2004) "Off-Street car parking".

Impacts on Council infrastructure

The access report and the statement of environmental effects confirm that the development is non-compliant with Clause 26 and 38 of the SEPP.

The subject site does not comply with clause 26- Location and access to facilities, as the site is located at a distance greater than 400m from the services and facilities specified in clause 26(1) and are located greater than 400m from a public transport service to the specified services and facilities that is accessible via a suitable access pathway. The subject site is located approximately 500m from Roseville Village which contains access to a bus stop, train station and the following facilities: Medical Practice, Dentist, Post Office, Chicken Shop, dress shop, fruit shop, baker, Pharmacy, dry cleaner, milk bar, café, newsagent.

The facility intends to provide a range of "in home" services within the new facility. Also, the centre currently operates a minibus that is used to provide excursions for residents and can take them to any of the services and facilities outlined in SEPP (HSPD) if required.

This non-compliance with clause 26 of the SEPP was not raised in the first engineering referral that was prepared by the former Team Leader of Development Engineering. This non-compliance is not supported however the proposed variation to the development standard as identified in the SEE shall be at the discretion of Council's Assessment Officer.

Waste collection

The waste management plan contains calculations which demonstrate how the waste and recycling rooms were sized. Confirmation has been provided that the waste collection vehicle can drive onto the turntable while the minibus is parked in space 29.

The development allows a garbage truck to enter and depart the garbage/room recycle storage area in a forward direction. The turning manoeuvrability is suitable for the small waste collection vehicle as shown by the swept paths in the revised traffic report.

A driveway longitudinal section has not been submitted. However the traffic Report also confirms that typical garbage truck heights can be comfortably accommodated in the proposed 4.4m overhead clearance. Driveway gradients shown on the architectural plans are compliant. The requirements of Part 23.7 of the Ku-ring-gai DCP have been satisfied.

Construction management

Indicative construction traffic management (CTMP) has been provided which suggests trucks entering and exiting the site in a forward direction utilising the site access driveway, which is desirable. There are 2 site access driveways, 1 for each stage. The report also suggests that a 40m long Work Zone will be required in Trafalgar Avenue site frontage for the construction stage.

It could be conditioned that a detailed CTMP be submitted prior to the issue of the construction certificate showing the largest vehicle to be used entering and exiting the site for the demolition, excavation and construction stages, stockpiles and all necessary tree protection fencing.

Geotechnical investigation

Excavation of about 8 metres is required to reach design basement level. For that depth, the site is underlain by weathered shale. The report contains recommendations for excavation methods and support, groundwater monitoring and further assessment of impact on the rail tunnel. If approval were to be recommended, then conditions for dilapidation survey of neighbouring structures would also be required.

Environmental Health

Council's Environmental Health Officer advised that the proposal was acceptable, subject to conditions.

STATUTORY PROVISIONS

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 require Council to consider the potential for a site to be contaminated. The subject site has not been used for a purpose likely to result in contamination. The Preliminary Investigation Screening Report concludes that the site unlikely to be contaminated and that further investigation should be carried out after demolition has been carried out, accordingly the proposal satisfies the requirements of the draft SEPP.

Draft Remediation of Land State Environmental Planning Policy

The draft SEPP is a relevant matter for consideration as it is an Environmental Planning Instrument that has been placed on exhibition. The Explanation of Intended Effects accompanying the draft SEPP advises:

As part of the review of SEPP 55, preliminary stakeholder consultation was undertaken with councils and industry. A key finding of this preliminary consultation was that although the provisions of SEPP 55 are generally effective, greater clarity is required on the circumstances when development consent is required for remediation work.

The draft SEPP does not seek to change the requirement for consent authorities to consider land contamination in the assessment of development applications. The Preliminary Investigation Screening Report submitted with application concludes that the site unlikely to be contaminated and that further investigation should be carried out after demolition has been carried out, accordingly the proposal satisfies the requirements of the draft SEPP.

Sydney Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005

Matters for consideration under SREP 2005 include biodiversity, ecology and environmental protection, public access to and scenic qualities of foreshores and waterways, maintenance of views, control of boat facilities and maintenance of a working harbour. The proposal is not subject to the provisions that apply to the assessment of development applications as the site is not located in the Foreshores and Waterways Area.

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

The application has been submitted pursuant to the SEPP. The relevant provisions are addressed below.

Chapter 3 'Development for seniors housing'

Clause 14 states that the objective of this chapter is:

'...to create opportunities for the development of housing that is located and designed

in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.'

Clause 15 of the SEPP states that development on land zoned primarily for urban purposes for the purposes of any form of seniors housing is permitted despite the provisions of any other environmental planning instrument if the development is carried out in accordance with the SEPP. In accordance with clause 15, the proposal is permissible development as the site is located on land that is zoned primarily for urban purposes and development for the purpose of dwelling-houses is permitted.

Clause 18 - Restrictions on occupation of seniors housing allowed under Chapter 3

This clause states that development allowed by Chapter 3 may only be carried out for the accommodation of:

- (a) seniors or people who have a disability,*
- (b) people who live within the same household with seniors or people who have a disability,*
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.*

Consent must not be granted to a development application unless a condition reinforcing the above through a requirement to register a restriction to user on the property title has been imposed. Subclause (3) of clause 18 states that subclause (2) does not limit the kinds of conditions that may be imposed on a development consent, or allow conditions to be imposed on a development consent otherwise than in accordance with the Act.

Clause 26 - Location and access to facilities

This clause states that:

(1) A consent authority must not consent to a development application made pursuant to this Chapter 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.*

Subclause (2) states:

(2) Access complies with this clause if:

(a) the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development that is a distance accessible by means of a suitable access pathway and the overall average gradient for the pathway is no more than 1:14, although the following gradients along the pathway are also acceptable:

- (i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,*
 - (ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,*
 - (iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time,*
- or*

(b) in the case of a proposed development on land in a local government area within the Sydney Statistical Division—there is a public 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 at least once between 8am and 12pm per day and at least once between 12pm and 6pm 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 public transport services to the facilities and services referred to in subclause (1)) complies with subclause (3),*

Subclause (2) states that compliance with the clause can be achieved in two ways, the site being within 400m of the facilities and services specified in clause 26 (1) or the residents of the development having access to a public transport service that will take the residents to facilities and services specified in clause 26 (1).

The site is unable to comply with the access requirements in clause 26 (2) (a) as the Roseville town centre is approximately than 500 metres from the site. The site is unable to comply with the access requirements of clause 26 (2) (b) as the nearest bus stop is 416 metres from the site.

A section of footpath (approximately 100m) at the top of Roseville Avenue has a gradient of up to 1:8.5 which does not comply with the maximum gradient control of 1:12 for a maximum length of 15 metres specified by the SEPP.

The applicant acknowledges that the proposal does not comply with the development standards in clause 26 of SEPP Seniors and has provided a clause 4.6 variation request. The merits of the clause 4.6 variation request are considered under the heading, 'Clause 4.6 Exceptions to Development Standards' below.

Clause 29 - Site compatibility

Clause 29 of the SEPP provides that where a site compatibility certificate is not required the matters listed in clause 25 (b) (i) (iii) and (v) must be considered in the assessment of the development application. The consent authority must be of the opinion that the proposed development is compatible with the surrounding land uses having regard to (at least) the following criteria:

*(i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,
(iii) the services and 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 proposal is not considered to be consistent with the requirements of subclause (v) as the bulk, scale, built form and character of the proposed development will have an unacceptable impact on The Grove Heritage Conservation Area and the Clanville Heritage conservation Area.

Part 3 Design requirements

Clause 30 – Site analysis

This clause requires that the consent authority be satisfied that the applicant has taken into account a site analysis prepared in accordance with the requirements specified in the clause. The site analysis submitted with the application complies with the requirements specified in clause 30 of the SEPP. The consent authority can be satisfied that the applicant has taken into account the site analysis.

Clause 33 - Neighbourhood amenity and streetscape

This clause states:

The proposed development should:

- (a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and*
- (b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and*
- (c) maintain reasonable neighbourhood amenity and appropriate residential character by:*
 - (i) providing building setbacks to reduce bulk and overshadowing, and*
 - (ii) using building form and siting that relates to the site's land form, and*
 - (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and*
 - (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and*
- (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, and*
- (e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and*
- (f) retain, wherever reasonable, major existing trees, and*
- (g) be designed so that no building is constructed in a riparian zone.*

The site is zoned R2 Low Density Residential and is located within The Grove Heritage Conservation Area. The planning controls which apply to the site and locality are designed to ensure that development is sensitive to the character of the area and do not anticipate or promote significant changes to the character of the area. These characteristics include a regular subdivision pattern and coherent streetscapes characterised by buildings that sit within a garden setting and date from the same era.

The SEPP requires that development recognise the desirable elements of the locations character so that new buildings contribute to the quality and identity of the area and retain, complement and sensitively harmony within heritage conservation areas and heritage items. For the reasons identified by Council's Heritage Advisor, the proposal does not satisfy the requirements of clause 33.

Clause 34 - Visual and acoustic privacy

This clause states that development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:

- (a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and*
- (b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.*

The proposal has addresses these requirements by incorporating appropriate setbacks, privacy screening, landscaping opportunities and sensitive window locations.

Clause 35 - Solar access and design for climate

This clause specifies that:

The proposed development should:

- (a) 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, and*

(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.

The site most likely to be impacted by the shadows cast from the development is No. 8 Trafalgar Avenue which is adjacent to the south-eastern boundary. The shadow diagrams demonstrate that a minimum 4 hours solar access to the north-western elevation of the dwelling house will be achieved and that more than 50% of the private open space area (back garden) will receive 4 hours solar access. The site orientation, topography, wall heights and setbacks to the side and rear boundaries result in minimal overshadowing impacts to living areas and private open space of adjoining dwellings.

Clause 36 - Stormwater

This clause specifies that:

The proposed development should:

- (a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and*
- (b) include, where practical, on-site stormwater detention or re-use for second quality water uses.*

The proposal includes a stormwater detention system and run-off treatment measures.

Clause 37 - Crime prevention

This clause specifies that:

The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:

- (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 any such area, driveway or street, and*
- (b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and*
- (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.*

The proposal is consistent with the intent of the above controls, the internal courtyards are overlooked by private rooms and communal areas, the front path is visible from the entry foyer and reception area.

Clause 38 - Accessibility

This clause specifies that:

The proposed development should:

- (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and*
- (b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.*

The pedestrian entrance to the site is located on the southern side of the porte cochere driveway in the location of an existing driveway. The design and location of the pedestrian entrance is obvious and safe as required by clause 38 (a).

The proposal provides more than the minimum number of car spaces within a basement carpark that has been designed in accordance with the design standards of AS2890.1. There

is a lift in the basement which provides direct access to the main lobby at the ground floor level. The proposal is generally consistent with the clause requirements.

Clause 39 - Waste management

This clause specifies that:

The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities

Waste rooms of adequate size for the likely number of waste containers are located in the basement. The applicant has submitted a waste management plan which details the waste management procedures for the facility. General waste and recyclables is to be separated by staff and collected from the basement by a private contractor twice a week during normal business hours. The proposal is therefore consistent with the requirements of this clause.

Clause 40 - Development standards

Standard	Proposal	Compliance
Site area: 1000m ²	8,186m ²	YES
Site frontage: 20m	109.66m	YES
The height of all buildings in the proposed development must be 8 metres or less	8m max.	YES
A building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height.	2 storeys maximum for elevations adjacent to a site boundary	YES
A building located in the rear 25% area of the site must not exceed 1 storey in height.	The proponent is a <i>social housing provider</i> , therefore this development standard does not apply	N/A

The applicant has submitted a clause 4.6 variation request to the 2 storey development standard in clause 40 (4) (b) of SEPP Seniors as part of Stage 2 contains three levels.

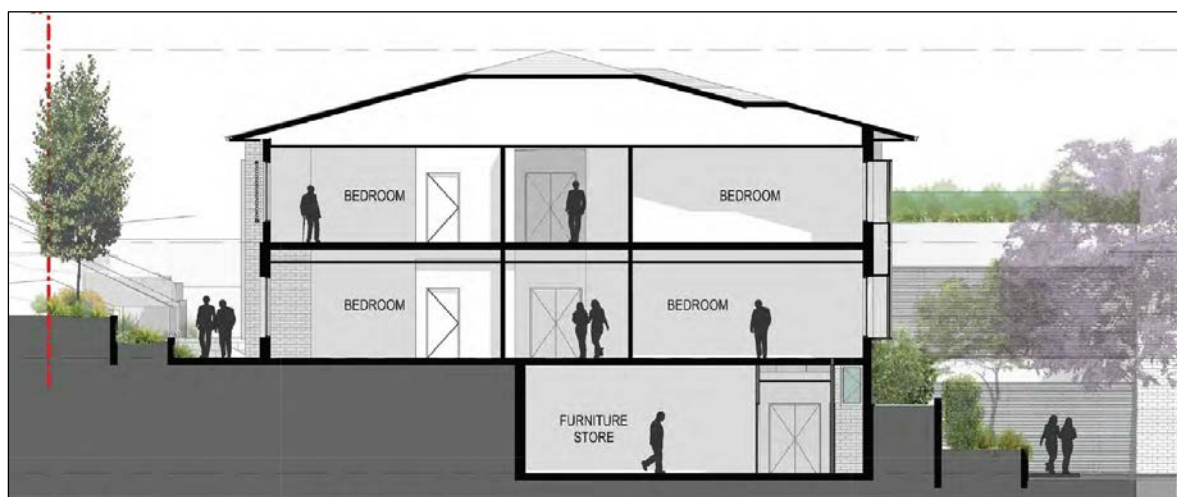


Figure 2 - Section through 3 storey portion of Stage 2 – the rear boundary is on the left side of the section

The SEPP states that a building that is adjacent to a boundary of the site must not be more than 2 storeys in height. The SEPP does not define the meaning of adjacent, however the dictionary meaning is, 'Lying near, close, or contiguous; adjoining; neighbouring'. The SEPP contains a note which states that the purpose of this standard is to avoid an abrupt change in the scale of

development in the streetscape. The 3 storey portion has a setback of more than 40 metres from the street boundary, therefore it is considered that compliance with the development standard has been achieved as the 3 storey portion is not 'adjacent' to a boundary. Should the Panel have an alternative view the applicant has provided a clause 4.6 variation request which is **Attachment E**.

Clause 46 - Inter-relationship of Part 7 (non-discretionary development standards) with design principles in Part 3

This clause states:

(1) Nothing in this Part permits the granting of consent to a development application made pursuant to this Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Note.

It is considered possible to achieve good design and achieve density ratios set out in Division 2. Good design is critical to meriting these density ratios.

(2) For the avoidance of doubt, nothing in this Part limits the matters to which the Director-General may have regard in refusing to issue a site compatibility certificate

In accordance with this clause the proposal is considered to not satisfy the design principles in clause 33 'Neighbourhood amenity and streetscape' despite being compliant with the non-discretionary development standards in clause 48.

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

Standard	Proposal	Compliance
Building height: 8m	8m max.	YES
Floor space ratio: 1:1	0.82:1	YES
Landscaped Area: 25m ² per bed	46.2m ² per bed	YES
Parking: 1 per 10 beds or 1 per 15 dementia beds 1 for every 2 employees 1 ambulance space	YES	YES

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

If the application were to be approved, a condition requiring the installation of a fire sprinkler system would need to be imposed.

State Environmental Planning Policy (Infrastructure) 2007

In accordance with Clause 86 of State Environmental Planning Policy (Infrastructure) 2007 the application was referred for concurrence to Sydney Trains on 3 February 2017 as the development involves the penetration of ground to a depth of at least 2m below ground level (existing) on land within 25m of a rail corridor (the site is located above the Epping to Chatswood Rail Tunnel). Sydney Trains requested copies of missing documents on 21 March 2017 and were provided these documents on 22 March 2017. On 29 March 2017 Sydney Trains formally requested the submission of additional information, this request was forwarded to the applicant on 5 April 2017. On 23 April 2018 the applicant provided the additional information to Sydney Trains. At the time of preparing this report, more than 21 days had passed since the additional information was submitted and Sydney Trains had not advised whether they would grant concurrence to the application.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

Council's Landscape and Tree Assessment Officer has considered the provisions in Part 3 'Council permits for clearing of vegetation in non-rural areas' in the assessment of the proposed tree removal. Council's Landscape and Tree Assessment Officer is satisfied that the proposed tree removal is consistent with the provisions in Part 3 and the Aims of the Policy.

Ku-ring-gai Local Environmental Plan (Local Centres) 2012

Ku-ring-gai Local Environmental Plan (Local Centres) 2012 is the statutory LEP for the subject site.

In summary, the objectives of this plan are to:

- guide future development with respect to environmental, social, economic, heritage and cultural outcomes,
- provide housing choice,
- achieve land-use relationships that promote efficient use of infrastructure.

Permissibility

The site is zoned R2 Low Density Residential. The proposed use is defined as *seniors housing* which is a prohibited form of development in the R2 Low Density Residential zone. The proposal has been submitted pursuant to the provisions of SEPP Seniors. The SEPP applies to the site as it is zoned primarily for urban purposes and dwelling-houses are permitted on land zoned R2 Low Density Residential.

Zone objectives

The objectives of the zone are:

- *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 provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai.*

The first two objectives are overridden by SEPP Seniors as Seniors Housing is prohibited in the R2 zone and SEPP Seniors allows for development densities significantly greater than that ordinarily permitted by the floor space ratio controls for R2 zoned land. It is considered that for the reasons of heritage impacts the proposed development is not compatible with the existing environmental and built character of the locality and is therefore inconsistent with the third objective of the R2 Low Density Residential zone.

Development standards

The development standards for building height (9.5m) and floor space ratio (0.3:1) in the LEP do not apply to the proposal as they are overridden by the standards for height and floor space ratio in SEPP Seniors.

Clause 4.6 - Exceptions to development standards

Clause 4.6 'Exceptions to development standards' is the mechanism by which an applicant's request to vary a development standard can be considered. In the *Principal Healthcare* judgement, Robson J of the Land and Environment Court held that clause 26 of SEPP Seniors was a development standard amenable to clause 4.6 of the Ryde LEP 2014. Both Ryde LEP 2014 and Ku-ring-gai LEP (Local Centres) 2012 are 'standard instrument' style LEPs, therefore clause 26 of SEPP Seniors is also amenable to clause 4.6 of the Ku-ring-gai LEP (Local Centres) 2012.

The arguments advanced in the clause 4.6 variation can be summarised as:

- (i) Of the existing 58 residents only 3 are able to leave the facilities unassisted, these residents generally undertake short walks in the immediate vicinity of the site, they do not undertake extensive outings to the services/facilities referred to in clause 26.
- (ii) The majority of residents will be very frail or suffering from dementia therefore the carers, guardians and professional staff attend to all their needs.
- (iii) The proposed mini bus will provide access in lieu of public transport which is generally an inappropriate mode of transport for high care residents given their physical condition and limited mobility.
- (iv) A wide range of services will be offered on site.

Clause 4.6 provides flexibility in applying certain development standards on the following grounds:

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

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

(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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Director-General has been obtained.*

The provisions of clause 4.6 fall into two distinct parts, those for which the consent authority must be 'indirectly satisfied' (clause 4.6(4)(a)(i)) through the clause 4.6 variation request and those for which the consent authority must be directly satisfied (clause 4.6 (4)(a)(ii)).

If the consent authority finds that the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority cannot be satisfied that the development will be in the public interest for the purposes of clause 4.6(4)(a)(ii) and cannot uphold the clause 4.6 variation request.

1. Whether compliance with the standard is unreasonable and unnecessary in the circumstances of the case

The appropriate methodology for the consideration of this question is enunciated in the decision of Chief Justice Preston in *Wehbe v Pittwater Council*. In this decision, the Chief Justice summarised the case law on the consideration of this question and expressed the view that there are five ways in which an applicant may demonstrate that compliance with a development standard is unreasonable or unnecessary. The applicant seeks to rely on the first way and the second way, details of which are provided in the table below:

Planning principle	Summary of applicant's response
The objectives of the standard are achieved notwithstanding non-compliance with the standard	The services required by clause 26 will be provided on site (Full details in Attachment G). A mini bus will be provided and used for shopping trips, mystery bus tours and on an 'as requested' basis.
The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	The applicant states that the objective of the standard is of minimal relevance to a Residential Care Facility as the majority of residents are incapable of independent travel.

Objectives of the development standard

Clause 26 of the SEPP does not specify any objectives for the development standard. In the Land and Environment Court judgement for *Symon v Hornsby Shire Council* [2015] NSWLEC 1028, Pearson C endorsed the following approach:

'...the underlying objectives of the standard in cl 26 are to be derived in the context of Chapter 3 as expressed in the objective in cl 14, which requires a focus on the design and location of housing intended to serve the needs of both independent and mobile seniors and those who are frail or have a disability. In that context, the underlying objective of the standard in cl 26 is appropriately expressed in (a) and (b) above, that is, ensuring access to the appropriate services and facilities, by means that are appropriate.'

In the above excerpt, the references to (a) and (b) above, are:

- (a) To ensure that older people and people with disabilities have access to public transport or shops and services and are able to walk to or travel to bus stops and services by electric wheelchair or motorised cart.*
- (b) To provide suitable pathways to access a transport service to shops, services or facilities as set out in clause 26(2) of the SEPP.*

The clause 4.6 variation request adopts the following objectives:

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

It can also be assumed that the overarching objective of cl 26 is to ensure residents of Seniors housing have appropriate access to the facilities and services identified in cl 26 via a suitable access path or via a mode of public transport.

The clause 4.6 variation request states that the different types of Seniors Housing permitted by the policy will be occupied by residents with differing levels of independence:

It is noted that cl 26 does not identify the different practical requirements for residents living in different categories of Seniors Housing. The proposed facility is a high care facility which will cater for persons who require a high standard of care and are no longer capable of independent living or travel. Given that a high portion of residents will have mobility restrictions and/or have advanced stages of dementia, they will be unable to leave the facility unaccompanied.

On the basis of the above the clause 4.6 variation request suggests that the development standard is not relevant to the proposal:

In these circumstances, it is considered that the underlying objective and purpose of the standard is not relevant to the proposed development given the category of seniors housing that is being proposed. Therefore, the requirement to be within 400m of the facilities and services identified in cl 26 or public transport is not relevant.

In the assessment report for the Bushlands Avenue Gordon Residential Care Facility the following concerns with a similar argument advanced in a clause 4.6 variation request were identified:

Clause 26 is a site related requirement that applies to all forms of housing covered by the SEPP. The obiter dicta comments of Robson J in the Principal Healthcare judgement, suggest that the relevance of the clause 26 requirements to seniors housing will vary depending on the type of senior housing proposed. Whilst a residential care facility is likely to accommodate persons with the lower level of independence than persons residing in a self-contained dwelling, people capable of undertaking independent travel do live in residential care facilities.

The decision of the Land and Environment Court in Symon is that the objectives of clause 26 are to provide access, whether by walking, motorised scooter or electric wheelchair to pathways or transport services to the services and facilities described in clause 26. The applicant seeks to distinguish the proposed use on the basis of the likely frailty of the residents, however the SEPP does not distinguish between residential care facilities that provide high or low levels of care. (Note: the terms high care and low care were removed from the Aged Care Act in 2014). If approved, the facility would be required to operate as a residential care facility in accordance with clause 11 of the SEPP. Clause 11 sets the following requirements for residential care facilities:

- i. residential accommodation is provided for seniors or people with a disability;*
- ii. meals and cleaning services are provided;*
- iii. personal care or nursing care, or both is provided; and*
- iv. appropriate staffing, furniture, furnishing and equipment for the provision of that accommodation and care is provided.*

As required by clause 18, a restriction on occupation of the development to the following people must be imposed:

- (a) seniors or people who have a disability,*
- (b) people who live within the same household with seniors or people who have a disability,*
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.*

If the intention of the SEPP was to exclude residential care facilities from the location and access requirements of clause 26, this type of seniors housing would not be subject to the clause. The proposal does not meet the provisions of clause 26 of the SEPP and is inconsistent with the intent and objectives of the SEPP.

The Service Statement submitted with the application (**Attachment G**) states that 85% of all residents entering the existing facility as assessed as 'High Care' under the Commonwealth Aged Care Funding Instrument and that, given the limited mobility and frailty of these residents, they are not able to access external services independently. The applicant has therefore established that for a high proportion of residents the objective of the development standard is not relevant to the proposal as they are not capable of independently accessing nearby shops or a bus stop.

On the basis of this statement, it must be determined whether a variation to the development standard can be justified if 15% of the residents at their time of admission are capable of undertaking independent travel if that opportunity was available to them by the provision of a pathway that complied with the requirements stipulated in clause 26 or an alternative and equivalent arrangement.

The applicant has stated that 3 existing residents of Archbold House are capable of undertaking independent travel, however they do not go on extensive outings to the services/facilities referred to in clause 26. The extent to which the fact that the existing facility does not have a clause 26 compliant access pathway contributes to this situation is unclear. The bus service required to satisfy clause 26 must be available both to and from the premises at least once between 8am and 12pm per day and once between 12pm and 6pm each day, Monday to Friday. The applicant has amended the Services Statement so that the mini bus is available on an 'as requested' basis (equivalent to clause 26 compliance) for those residents capable of independent travel, accordingly the objectives of the development standard are achieved.

2. Whether there are sufficient environmental planning grounds to justify contravening the development standard

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ stated:

- i. *The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
- ii. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

The clause 4.6 variation request does not specifically identify the 'environmental planning grounds' that support the case for a variation, however the following matters which fall within the scope of 'environmental planning grounds' have been identified:

- i. the proposal is for the expansion, redevelopment and improvement of a facility that has been providing a service to local residents for approximately 40 years
- ii. the precedent created by the acceptance of a variation to clause 26 by the Sydney West Joint Regional Planning Panel
- iii. that the functional access requirements of the facility with respect to visitors, staff and residents will be met
- iv. that a range of services above and beyond those required by clause 26 will be provided on site
- v. that a mini bus will provide access to services such as banks, shopping centres, post offices

The clause 4.6 variation request states that the Sydney West Joint Regional Planning Panel approved on 10 December 2015 an application for a new Residential Care Facility at Nos. 9, 11 & 13 Gelibolu Parade and 2, 2A, 4 & 6 St Hilliers Road, Auburn (2015SYW096) which was not within 400m of the services and facilities identified in clause 26 or within 400 metres of a mode of public transport that would take residents to the services and facilities identified in clause 26 for the reason that:

'compliance with the standard would be unreasonable in the circumstances of this case as the variation will not deny residents reasonable access to facilities and services given the level of onsite care, onsite facilities and the dedicated bus service to the provided'

It is also noted that the Sydney North Planning Panel in determining a development application for a Residential Care Facility in Bushlands Avenue, Gordon, which also did not comply with clause 26, did not include as a reason for refusal that the clause 4.6 variation request to that development standard

was not supported. In addition, the Record of Deferral issued by the Sydney North Planning Panel, dated 8 March 2017, included the following comments which indicated support for the clause 4.6 variation request:

In relation to the reason for refusal in respect of location and access (reason 1) the Panel notes cl.26 of the Seniors SEPP is a development standard and able to be varied pursuant to cl.4.6 (which has been submitted by the applicant). Having regard to the recent judgement of Justice Robson, the Panel considers the proposal for the provision of services on site, visiting professionals and the provision and operation of a bus for the use of the residents addresses the objective of the provisions to provide development in a manner suited to residents who are both mobile, independent, active and frail. The Panel considers that the site specific circumstances and facilities proposed would be a better planning outcome in the circumstances of this case and therefore is minded to accept the clause 4.6 variation to clause 26 of the SEPP.

In comparison to the Bushlands Avenue, Gordon Residential Care Facility, the subject proposal:

- i. is for the same land use and located on land with the same zoning, building height and floor space ratio control
- ii. exhibits a lesser departure from the development standards in clause 26 by way of a shorter distance to bus stops / services
- iii. exhibits a lesser departure from the development standards in clause 26 by way of a less steep gradient for the access pathway to bus stops / services
- iv. is supported by a clause 4.6 variation request that relies on the same grounds (a mini bus and on site services) to achieve the objectives of clause 26
- v. is supported by a clause 4.6 variation request that relies on the same grounds (likely frailty of residents) to establish that the development standard is not relevant to the proposal

The environmental planning grounds in support of the variation included the grounds on which a variation to clause 26 was previously endorsed by the Sydney North Planning Panel, therefore, whilst the Panel is not bound by its previous decision, there is a reasonable expectation that planning decisions will be made in a consistent fashion and that the clause 4.6 variation request would be upheld by the Panel.

3. Public interest – Development consistent with the zone objectives and objectives of the development standard

Zone objectives

The R2 Low Density Residential zone objectives are:

- *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 provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai*

Clause 4.6 states that the consent authority must not grant consent unless the development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is not considered that the density of the development is consistent with the characteristics of the low density residential environment in which the proposal is located. The dimensions of the building in terms of width and depth are substantially greater than the dwelling houses situated in the locality. The 0.82:1 floor space ratio of the development substantially exceeds the maximum permitted for R2 zoned land, which under the provisions of Ku-ring-gai LEP (Local Centres) 2012 is generally between 0.3 and 0.4:1. Whilst it is generally considered that the proposal is not consistent with the first zone objective by reason of excessive density, it is noted that the density requirement of 1:1 specified by the SEPP is a non-discretionary development standard and that clause 5 of the SEPP states that the provisions of the SEPP prevail over the provisions of the LEP, therefore in this instance the failure of

the proposal to comply with the first of the three R2 zone objectives is not an issue that could justify rejection of the clause 4.6 variation request.

The second objective of R2 zoned land is the provision of facilities and services to meet the day to day needs of residents. The facilities and services to which this objective refers are considered to be those land uses that are permissible in the zoning table for the R2 zone. The objective is inconsistent with the SEPP as the SEPP seeks to set aside local planning controls that prevent the development of housing for seniors or people with a disability (clause 2 (2) (a)). This objective cannot be used to justify rejection of the clause 4.6 variation request as the SEPP prevails over any inconsistency with any other environmental planning instrument.

The third objective of R2 zoned land is to provide housing that is compatible with the existing environmental and built character of Ku-ring-gai. This objective is consistent with the SEPP as the Design principles in Division 2 of the SEPP contain similar requirements. For the primary reason that the development will have an unacceptable impact on the heritage significance of the heritage conservation area, the proposal is not considered to be consistent with these principles. As the proposal is not consistent with the third objective of the R2 Low Density Residential zone the clause 4.6 variation request may not be upheld by the consent authority.

4. Concurrence of the Director General.

Circular PS 18-003, issued on 21 February 2018, advised that Sydney district and regional planning panels may assume the Secretary's concurrence where development standards will be contravened. In deciding whether to grant assumed concurrence the following matters must be considered:

- (a) *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.*

This matter has previously considered by Council in the assessment report for the Bushlands Avenue Gordon residential care facility which contained the following comments:

The clause 4.6 variation request relates to a development standard that is contained in a State Environmental Planning Policy which overrides local planning controls and has the effect of allowing development in circumstances where it would be prohibited under the local plan. The development standard variation has regional significance as the proposal is to be determined by the Sydney North Planning Panel which is responsible for the determination of Schedule 4A Development in the Sydney North Region. If the development standard variation is endorsed, it is likely to have implications for other proposals for residential care facilities submitted pursuant to SEPP Seniors.

In Hooker Corporation Pty Ltd v Hornsby Shire Council (1986) 130 LGERA 428 Cripps J said:

'...Furthermore it is now established that although the discretion conferred by the SEPP No 1 is not to be given a restricted meaning and its application is not to be confined to those limits set by other tribunals in respect of other legislation, it is not to be used as a means to effect general planning changes throughout a municipality such as are contemplated by the plan making procedures set out in Part III of the Environmental Planning and Assessment Act'

The comments of Cripps J are in reference to SEPP 1, however they have also been accepted by the Land and Environment Court as being of relevance to the application of clause 4.6. The determining authority should consider whether the construction of residential care facilities on land which does not comply with clause 26, but where on site services and a mini bus is proposed, is a planning outcome that does not affect a general planning change throughout the Sydney North Region.

The Sydney North Planning Panel expressed their support for the variation to the development standard in the Record of Deferral mentioned above. The clause 4.6 variation request seeks to rely on similar grounds to those contained in the clause 4.6 variation for the Bushlands Avenue, Gordon residential care facility application. Contravention of the development standard is unlikely to raise any

matter of significance for State or regional environmental planning as the Sydney North Planning Panel has already expressed their support for a variation to clause 26 in the circumstances that a Residential Care Facility has on site services, visiting professionals and a bus service.

(b) *The public benefit of maintaining the development standard.*

The Sydney North Planning Panel in their Record of Deferral, dated 8 March 2017, for the Bushlands Avenue, Gordon residential care facility application outlined the grounds on which a variation to clause 26 may be supported. The subject clause 4.6 variation request relies on similar grounds, accordingly it would be difficult to reject the clause 4.6 request on the basis of the public benefit of maintaining the development standard.

(c) *Any other matters required to be taken into consideration by the Director-General before granting concurrence.*

No other matters require consideration.

LEP - Part 5 Miscellaneous provisions

Clause 5.3 Development near zone boundaries

Not applicable to this application

Clause 5.4 Controls relating to miscellaneous permissible uses

Not applicable to this application

Clause 5.10 – Heritage conservation

Refer to Heritage Advisor's comments above.

LEP - Part 6 Additional local provisions

Clause 6.2 - Earthworks

The proposed earthworks are required to accommodate the proposed development. The proposal will not restrict the existing or future use of the site, adversely impact on neighbouring amenity, the quality of the water table or disturb any known relics.

Clause 6.3 - Biodiversity protection

The site is not mapped as biodiversity significant land.

Clause 6.4 - Riparian land and waterways

The site is not mapped as riparian land.

Clause 6.5 - Stormwater and water sensitive urban design

Council's Development Engineer is satisfied that the proposed development has been designed to manage urban stormwater run-off as per the requirements of the LEP & DCP.

Ku-ring-gai Development Control Plan

KU-RING-GAI DEVELOPMENT CONTROL PLAN - COMPLIANCE TABLE		
Section A		
Part 2.1: Site Analysis		
Control	Proposal	Compliance

Development applications must contain a site analysis that includes: i) a sketch/diagrammatic plan with a legend; and ii) a written component.	An adequate site analysis has been provided.	YES
Part 3: Land Consolidation and subdivision		
The proposal is not subject to these requirements as it will not isolate any adjoining sites.	N/A	N/A
Part 13: Tree and Vegetation Preservation		
The proposal seeks consent for the removal of trees and works within the root zone of trees which requires consent under the DCP.	Refer to Landscape and Tree Assessment Officer comments.	

SECTION B		
Control	Proposal	Compliance
Part 15: Land Contamination		
Refer to Council's <i>Contaminated Land Policy 2016</i> for a list of activities that may cause a site to be considered 'potentially contaminated land', and for requirements for development applications, rezoning and remediation works on contaminated land.	The site history indicates that the site has not been used for a potentially contaminating activity.	YES
Part 16: Bushfire Risk		
The site is not bushfire prone land.	N/A	N/A
Part 17: Riparian Lands		
The site is not riparian land.	N/A	N/A
Part 18: Biodiversity		
The site is not biodiversity significant land.	N/A	N/A
Part 19: Heritage Items and Heritage Conservation Areas		
The site is adjacent to a Heritage Item and is within a Heritage Conservation Area.	Refer to Heritage Advisor's comments.	NO
Part 20: Development Near Road or Rail Noise		
The site is not near road or rail noise.	N/A	N/A
SECTION C		
Part 21: General Site Design		
Part 21.1: Earthworks and slope		
Control	Proposal	Compliance
Development must be accommodated within the natural slope of the land. Level changes across the site are to be primarily resolved within the building footprint. This may be achieved by: i) stepping buildings down a site; and ii) locating the finished ground floor level as close to existing ground level as practicable.	Level changes are primarily resolved within the building footprint, excavation for courtyards and access paths outside the building footprint is proposed with existing ground levels retained near the site boundaries.	YES
Development is to minimise earthworks on steeply sloping sites. Sites with a slope in excess of 15% may require certification from a geotechnical engineer as to the stability of the slope in regard to the proposed design.	Not a steeply sloping site	N/A
Landscape cut or fill should not be more than 600mm above or below natural ground line.	>600mm	NO
A minimum 0.6m width is required between retaining walls to provide adequate soil area and depth to ensure that they do not read as a single level change, and for the viability of landscaping.	YES	YES
Existing ground level is to be maintained for a distance of 2m from any boundary.	YES	YES
Grassed embankments are not to exceed a 1:6 slope.	N/A	N/A

Vegetated embankments, planted with soil stabilising species, may be to a maximum of 1:3.		
Fill and excavation are not permitted within sensitive environments, such as riparian lands, bushland, or significant vegetation.	YES	YES
Retaining walls, excavated and filled areas shall be located and constructed to have no adverse impact on: <ul style="list-style-type: none"> structures to be retained on the site; structures on adjacent public or private land; trees to be retained on site or on adjoining sites. 	YES	YES
Excavated and filled areas are to be constructed so as not to redirect or concentrate stormwater or surface water runoff onto adjoining properties.	N/A	N/A
The design of the proposal must consider the impacts of altered subsurface/groundwater flows or direction on groundwater dependent ecosystems or species.	A waterproofed basement is proposed.	YES
For any dwelling house development, excavation within the building footprint must not exceed 1.0m depth relative to ground level (existing), fill must not exceed 1m relative to ground level, with a maximum level difference across the building footprint of 1.8m.	N/A	N/A
Retaining walls on low and medium residential density sites must not exceed 1m in height above existing ground level. Where greater level change over the site is required, the site should be terraced.	YES	YES
Part 21.2: Landscape Design		
The site planning and design of developments must:		
i. retain and enhance indigenous vegetation, biodiversity corridors and existing natural features on the site including trees, shrubs and groundcovers, soils, rock outcrops and water features. These provide habitat, breeding sites, food and shelter for a wide variety of life forms and ecological processes that support life and define the character of the locality.	Existing trees are retained where possible.	YES
ii. retain the most significant and visually prominent trees and vegetation that contributes to neighbourhood character	Existing trees are retained where possible.	YES
iii. retain vegetation and garden fabric such as paths, walls,	Retention of existing landscaping plus new landscaping is proposed.	YES
iv. steps, ponds and terraces, that contribute to the heritage significance of the setting of a heritage item or a site within a heritage conservation area;	Retention of garden features is proposed.	YES
v. be located to retain views of public reserves;	The site is not located near a public reserve.	N/A
vi. consider subsurface/groundwater flows near bushland	The site is not located near bushland.	N/A
vii. Retain habitat within the site including: <ul style="list-style-type: none"> -- drainage features and damp areas; -- rock outcrops -- hollow-bearing trees; -- areas of leaf litter; -- bushrock. 	N/A	N/A
The retention of existing appropriate screen planting is encouraged.	YES	YES
Structures (including services) must be located outside the canopy spread of trees to be retained. This applies	YES	YES

to street trees, trees on site and on adjoining sites.		
Disturbance of natural soil profiles must be minimised.	YES	YES
Existing ground level must be maintained beneath the canopy spread of trees to be retained.	YES	YES
The introduction of imported soils and disturbance of local seed banks must be avoided wherever possible.	YES	YES
Vegetation retention must consider the following: i) healthy specimens that have a high Safe Useful Life Expectancy are to be the first priority for retention; ii) trees within heritage items or heritage conservation areas are to be assessed in terms of heritage significance; iii) mature trees and hollow-bearing trees within biodiversity areas are a priority for retention; and iv) while single trees may be ecologically important in their own right, or as part of a broader community, retaining and planting trees in groups.	An arborist assessment of tree health has been provided and considered in the assessment of the development application.	YES
Seasonal temperature control and improved air quality can be achieved through effective landscape design and application of the design principles in design control No. 8.	These provisions have been considered by Council's Landscape and Tree Assessment Officer.	YES
Siting and choice of planting must consider the design principles in design control No. 9.	These provisions have been considered by Council's Landscape and Tree Assessment Officer.	YES
Planting beds for screen planting must be of adequate width to allow the plants to flourish.	YES	YES
Where development is located close to a reserve, the landscaping design is not to prevent passive surveillance of the reserve.	N/A	N/A
The height of planting within the front setback is to allow partial views to and from the dwelling or main building and beyond.	YES – additional planting to screen the porte cochere is recommended.	YES
Where a property boundary is within 100m of bushland, planting is to consist of not less than 70% locally native tree species and 30% locally native understorey species. Species are to reflect the relevant vegetation communities within the area.	N/A	N/A
Where a property boundary is between 100m and 300m from bushland at least 50% of the overall number of trees and shrubs must be locally occurring native species. Species are to reflect the relevant vegetation communities within the area.	N/A	N/A
For development on sites where single residential development is permitted, and all property boundaries are greater than 300m from bushland, at least 25% of the overall number of trees and shrubs must be locally occurring native species. Species are to reflect the relevant vegetation communities within the area.	YES	YES
The planting of species listed in Council's Weed Management Policy will not be permitted.	The planting of weed species is not proposed.	YES
Species used for planting in or directly adjacent to areas with significant vegetation or habitat should be of local provenance.	N/A	N/A

Part 22: General Access and Parking		
Part 22.1: Equitable Access		
<i>Control</i>	<i>Proposal</i>	<i>Compliance</i>
1 For the purpose of this Part "access" is defined as:	An Access Report	YES

<p>i) an ability to travel from one point to another in a continuous and independent manner, following a reasonable route;</p> <p>ii) an ability to communicate or obtain information or service from any person, display or facility which is intended to communicate or provide that information or service to any person.</p> <p>2 Designing for access for all people is encouraged for all development types.</p> <p>3 Where minor alterations or additions to an existing building are proposed, the alterations must not reduce the accessibility of the building.</p> <p>4 Applications for development, other than single dwellings, are to demonstrate how access to and within developments meets the requirements of the Disability Discrimination Act 1992 (DDA).</p> <p>5 Entry access ramps for people with a disability must be located within the site and must not dominate the front façade.</p> <p>6 The provision of access for all to and within heritage items is to:</p> <p>i) have minimal impact on the significant fabric of the item;</p> <p>ii) be, as far as possible, reversible.</p> <p>7 Where such access is likely to have a major adverse impact on significant fabric, alternative solutions should be considered. However every effort is to be made to provide equitable access through the main entrance to the building.</p> <p>8 Building entries are to be clearly visible from the street. Where site configuration is conducive to having a side entry, the path to the entry must be obvious from the street.</p> <p>9 Ensure pedestrian areas have clear sightlines, are appropriately lit and overlooked by buildings that provide street level activity.</p> <p>10 Access ways for pedestrians and for vehicles are to be separated.</p> <p>11 Ensure landmarks, including landmark buildings, are distinctive in form and reinforce the street pattern and topography to enable people to find their way.</p> <p>12 Buildings are to be sited and designed to avoid obscuring landmark features and views which enable ease of orientation from the street and public open space areas.</p> <p>13 Ensure all users of the site can find their way within the development. This can be achieved by:</p> <p>i) Designing foyers and orienting reception and information desks so that arriving visitors can be seen;</p> <p>ii) Locating reception and information desks near lifts to enable staff to assist visitors with directions;</p> <p>iii) Dividing large-scale sites into distinctive smaller parts, or zones of functional use, while preserving a 'sense of place' and connectivity between spaces;</p> <p>iv) Organising the smaller parts of the development under a simple organisational principle, such as 'use' through a zonation plan with a logical and rational structure;</p>	<p>addressing the requirements of the Disability Discrimination Act 1992 was submitted with the application.</p>	
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v) Providing frequent directional cues throughout the space, particularly at decision points along routes in both directions; vi) Displaying/using appropriate international symbols for facilities.		
Residential only 14 All Multi Dwelling Housing, Residential Flat Buildings and Shop Top Housing within Mixed Use developments are to provide access to, and between, dwellings and parking in accordance with the <i>Livable Housing Guidelines</i> as stipulated in Part 6 Multi Dwelling Housing, Part 7 Residential Flat Buildings and Part 8 Mixed Use Development	N/A	N/A
Part 22.2: General Vehicle Access		
1 Except as provided in <i>Part 14 of this DCP</i> , car park entry and egress, for developments other than low density residential, must be provided from secondary streets or lanes where these are available.	A secondary street or laneway is not available.	N/A
2 The width and number of vehicle access points are to be limited to minimise potential pedestrian/vehicle conflicts. Wherever practicable, commercial and mixed use buildings are to share, amalgamate or provide a rear lane for vehicle access.	The proposal will reduce the number of vehicle access points from four to two.	YES
3 Vehicle access driveways must be set back a minimum of 10m from street intersections or as specified in <i>Clause 3.2.3 of AS2890.1</i> (whichever is the greater).	YES	YES
4 Vehicle and pedestrian access to buildings must be separated and clearly distinguished. Vehicle access must be located a minimum of 3m from pedestrian entrances.	Separate vehicle and pedestrian access points are proposed.	YES
5 Provide clear sight lines at pedestrian and vehicle crossings.	YES	YES
6 The width of any driveway for a low density residential development, as measured at the front site boundary, must not exceed 3.5m.	N/A	N/A
7 For all other development types, driveway width is to comply with the table in the DCP. Greater widths will only be considered where it is required by RMS or Australian Standards relating to off-street parking and pedestrian safety.	Driveway width is suitable for the proposed use.	YES
8 Long driveways (greater than 30m) are to be avoided. Where they are unavoidable, driveways over 30m long are to be provided with a passing bay.	Driveway length is less than 30m.	N/A
9 Vehicles must be able to enter and leave the site in a forward direction.	YES	YES
10 Vehicle entries and service areas are to be set back or recessed from the main facade line and integrated into the overall facade design, so as not to dominate the building elevation.	YES	YES
11 Vehicle entries, walls and ceilings are to be finished with high quality materials, finishes and detailing, similar to the external facades of the building.	YES	YES
12 Service ducts, pipes and storage facilities must not be visible from the street	YES	YES
13 External security doors may be provided where necessary. Security doors are to be of high quality material and detail and must blend into the building facade.	No security doors proposed on facade.	YES

14 For driveways on sloping sites, where high retaining walls are required on both sides of the driveway, one wall is to be no higher than 1.2m. Where greater level change is required, the retaining wall should be stepped back and softened by landscaping. High solid walls should be relieved by i) change in colour or finish; ii) recessing; and/ or iii) exposed brick or block work.	N/A	N/A
Part 22.3 Basement Car Parking		
A logical and efficient structural grid must be provided to the basement car park areas.	YES	YES
The minimum height between floor level and an overhead obstruction is to be 2.2m, except for the following: i) 2.5m for parking area for people with a disability; ii) 2.6m for residential waste collection and manoeuvring area; and iii) 4.5m for commercial waste collection and manoeuvring area.	Sufficient clearance height has been provided.	YES
Where natural ventilation is not possible, a ventilation system for the basement car park is to be provided and designed in accordance with <i>AS1668.2 The use of ventilation and air conditioning in buildings - Ventilation design for indoor air contaminant control</i> . Monitoring of CO2 and variable speed fans are to be provided with any basement car park mechanical ventilation systems.	YES	YES
Basements must be fully tanked to prevent unnecessary subsurface or groundwater extraction	A fully tanked basement is proposed.	YES
Unimpeded access to visitor parking and waste and recycling rooms located within a secure basement parking must be maintained.	Unimpeded access to visitor parking and waste and recycling room is provided.	YES
Where ventilation grilles or screening devices are provided they are to be recessed and integrated into the overall facade and landscape design of the development.	The basement is mechanically ventilated, therefore ventilation grilles are not proposed.	N/A
Vehicle access ways to basement car parking must not be located in direct proximity to doors or windows of habitable rooms.	YES	YES
Where visitor parking is not separated from residential parking by a barrier, a light colour palette is to be used for the interior of the car park and lines of sight are to be open and avoid concealment and entrapment areas.	N/A	N/A
Part 22.4: Visitor Parking		
This section applies where visitor parking is required by this DCP. 1 Where visitor parking is required by this DCP, the spaces are to be provided on site and clearly marked. 2 Visitor parking located behind a security grille require an intercom system to gain entry. 3 At least one visitor parking space it to be accessible, designed in accordance with <i>AS2890.6</i> .	N/A	N/A
Part 22.5: Parking For People With A Disability		
1 Accessible car parking spaces are to be level and have a continuous path of travel to the building's principal entrance or lift. 2 Accessible car parking spaces are to be identified by a sign incorporating the international symbol specified in <i>AS1428</i> and be designed in accordance with the	One accessible car space has been provided near the lift.	YES

<p>provisions of AS2890.6.</p> <p>3 Appropriate international symbols for the disabled must be displayed/used where appropriate to assist in direction to ramps, lifts etc.</p> <p>4 Car parking spaces for residential development (excluding single dwellings) are to be designed in accordance with the requirements of the <i>Livable Housing Guidelines</i> as stated within Part 6 Multi-Dwelling Housing, Part 7 Residential Flat Buildings and Part 8 Mixed Development.</p> <p>5 Provision of accessible car parking for non-residential development is to comply with the minimum rates specified in part 22.5 of the DCP, rounded up to the nearest whole number.</p> <p>6 For other land uses/facilities, the minimum number of spaces should be at least 1%, unless supported by a merit assessment.</p>		
Part 22.6: Pedestrian Movement Within Car Parks		
<p>Marked pedestrian pathways, with clear sight lines and appropriate energy efficient lighting must be provided in all car parks. See <i>Austrroads Guide to Traffic Management Part 11 - Parking</i>.</p> <p>2 Pedestrian pathways, entrances, stairway and lift areas must be clearly visible, conveniently located, well lit and have minimal conflict with vehicular traffic.</p> <p>3 All pathways and ramps within car parks must conform to the minimum dimensional requirements set out in AS1428.1.</p> <p>4 All pedestrian path surfaces within car parks are to be stable, even and constructed of slip resistant material.</p>	Capable of compliance subject to standard conditions.	YES
Part 22.7: Bicycle Parking And Facilities		
<p>Bicycle parking and storage facilities are to be designed in accordance with AS2890.3 to ensure:</p> <p>i) both wheels and frames can be locked to the device without damaging the bike;</p> <p>ii) easy access from a bicycle lane or roadway with appropriate signage;</p> <p>iii) access paths have a minimum width of 1.5m to accommodate a person pushing a bicycle, and adequate sight lines for safety.</p>	Bicycle parking is not required for residential care facilities.	N/A

Part 23 – General Building Design and Sustainability		
23.1: Social Impact		
Control	Proposal	Compliance
Proposals must consider the impacts of the development on nearby residents and users of the site.	The proposed facility is unlikely to have a significant social impact.	YES
<p>A Social Impact Statement will be required in the case of proposals which are likely to have a significant social impact because they are likely:</p> <p>i) To contribute to social inequity;</p> <p>ii) To increase risk to public safety; or</p> <p>iii) To threaten the existing sense of community identity or cohesiveness.</p>	The proposed use is not identified as one that is likely to require the preparation of an SIS.	YES
23.2: Green Buildings		

This section applies to all buildings that are not required to comply with BASIX standards. All new non-residential development with a floor area of between 2000m ² and 5000m ² must achieve a 4 star Green Star rating.	The Green Star Pathway Report advises that a 4 star rating is achievable.	YES
23.3: Sustainability of building materials		
Development proposals must consider the following in the selection of building materials: i) recycled or recyclable materials with low embodied energy; ii) materials that come from renewable sources; iii) materials that generate a lower environmental cost over time; iv) materials with a low life cycle cost and/or high durability; v) production methods with a low environmental impact.	Could be achieved by condition	YES
Where the use of timber is proposed, only FSC, AFS or PEFC certified timbers may be specified for construction or finishing. Medium Density Fibreboard (MDF) and particleboard must not be specified as a construction material for the development.	Compliance with this requirement could only be determined at CC stage.	N/A
The use of alternatives to PVC piping is highly encouraged including Colorbond (above ground only), and HDPE where appropriate.	Compliance with this requirement could only be determined at CC stage.	N/A
The use of construction materials and chemicals with toxic components must be avoided, to facilitate recycling and reduce pollution.	Compliance with this requirement could only be determined at CC stage.	N/A
Structures must be designed with physical, rather than chemical, termite measures. This can be achieved by: i) appropriate materials and construction design; ii) physical barriers; iii) suspended floor systems.	The proposed building is predominantly of masonry construction.	YES
Low Volatile Organic Compounds (VOC) are to be used throughout the building interior (carpets, paints, adhesives, sealants and all other finishes), and low emission building materials are to be used across the site.	Compliance with this requirement could only be determined at CC stage.	N/A
Avoid the use of ozone depleting products and materials, or products and materials manufactured using ozone depleting substances.	Compliance with this requirement could only be determined at CC stage.	N/A
Avoid materials likely to contribute to poor internal air quality, such as those generating formaldehyde, or those that may create a breathing hazard in the event of fire, such as polyurethane.	Compliance with this requirement could only be determined at CC stage.	N/A
The requirements below apply only to non-residential development: i) use heavy weight building materials, such as concrete, as thermal mass on roofs and/or walls. Where lighter weight materials are used they are to be well insulated. ii) encourage the use of photovoltaic cells which can be mounted as panels, or used as an integrated building cladding or sun shading. iii) use light coloured internal finishes to improve internal reflections and minimise lighting use.	YES	YES
Part 23.4: Materials and Finishes		
External walls must be constructed of high quality and durable materials and finishes.	The selected materials are high quality and durable.	YES

Reuse or recycling of existing local materials such as sandstone and brick is encouraged.	This control is a preference, not a requirement.	N/A
Large, unbroken expanses of any single material and finish (rendered or not) to building facades must be avoided.	YES	YES
New development is to avoid extensive use of highly reflective or gloss materials on the exterior of buildings.	YES	YES
For buildings of 3 storeys and above, a large expanse of sandstone or face brick is not to be used on the upper levels of the buildings.	N/A	N/A
The exterior finish material (eg. sandstone or brick) must be integral to the overall building façade design and must not appear to be cosmetic.	YES	YES
Highly contrasting coloured bricks are to be restricted to use on building elements such as sills, window heads, string courses and to assist in the division of the building into bays.	The use of highly contrasting coloured bricks is not proposed.	YES
For buildings of 3 storeys and above, lightweight materials and finishes (eg. timber and copper/steel) are encouraged for the upper levels of buildings to assist in minimising the bulk and scale of the building.	N/A	
When louvres are used, they are to be an integral element in the building façade design.	Louvres as a wall element are not proposed.	N/A
Where building cladding is used, consider dual purpose solutions. For example, use of photovoltaic cells mounted on panels used for cladding.	The walls of the building are a masonry material, not cladding.	N/A
Where additions and alterations are proposed, external materials and finishes must complement the existing building.	N/A	N/A
The selection of a colour scheme for new development and in the restoration of existing facades must comply with the following guidelines: i) Base colours for major areas of building façade are to be light in tone (eg. earth tone) with minimal colour intensity (or hue) eg. Off white or grey colours. Larger expanses of bold colour, black and white must be avoided, as these detract from the prominence of other façade details. Contrasting tints, tones and shades are to be restricted to small areas. ii) Highlight colours to window and door mouldings, string courses, parapet details and the like, are to be in sufficient contrast to the base colour. Strong colours to large sections of the building must be avoided. Details should be finished in a matt to semi gloss range. Trim colours for window frames and awning fascias are to be a darker contrast to base and highlight colours. Window frames should be finished in either a semi gloss or full gloss.	YES	YES
Part 23.5 Roof Terraces and Podiums		
The proposal does not incorporate a roof terrace or podium.	The roof terrace has a minimum setback of >20m from No. 18 Trafalgar Avenue plus screening vegetation.	YES
Part 23.6: Building services		
All applicants must consult with service providers such as energy, electricity, gas, water, telephone and fire.	Standard conditions of consent require consultation with service providers.	YES

Services and structures required by the providers are to be located within basements, or concealed within the facade, with appropriate access. Where this is not possible, the proposal must demonstrate an alternative method of minimising street impact, such as screening with landscape or built elements. Particular care should be taken in mixed use precincts to ensure substations and fire hydrants are not visible from the primary street and principal active street frontages.	The proposed substation is proposed to be screened by landscaping.	YES
Ventilation stacks are to be concealed within the building. Where they exhaust at street level (eg. from basements) they should be integrated within the design of the site.	YES	YES
All new developments designed to allow for commercial uses must include an internal ventilation shaft to ensure future alterations do not place the shaft in an unsuitable location.	N/A	N/A
With the exception of dwelling houses, all buildings must accommodate proposed or future air conditioning units within the basement or on rooftops, with provision of associated vertical/ horizontal stacks to all sections of the building.	The air conditioning units are in plant rooms inside the roof space.	YES
Air conditioning units located within basements must be screened and have adequate ventilation.	N/A	N/A
Air conditioning units located on the roof will only be permitted where they are well screened, integrated into the building form and do not result in adverse noise impacts on neighbouring occupants.	The plant rooms are located inside the roof and well integrated into the building form.	YES
Part 23.7: Waste Management		
General 1. All waste and recycling facilities must comply with the BCA and all relevant Australian Standards. 2 All waste and recycling storage containers must be stored within the boundary of the subject site. 3 All putrescible and non-putrescible waste materials stored in any waste and recycling room or at centralised collection points must be contained in approved rigid containers supplied by the Council. 4 During the design of the development, waste must be minimised by: i) using recycled materials, selecting materials that reduce waste or do not require disposal, or can be reused or recycled in the future; and ii) designing with minimal site disturbance by avoiding unnecessary excavation or fill. 5 No compaction equipment is to be used for any sized bin.	Compliance with the BCA and Australian Standards is a prescribed condition of the Environmental Planning and Assessment Act.	YES
Storage room 6 Sufficient space must be provided within the premises for the storage and manoeuvring of the number of bins required to store the volume of waste and recycling materials. 7 Sufficient space must be provided to adequately house any additional equipment to handle or manage the waste generated. 8 For buildings exceeding four (4) storeys which contain a residential component; where a chute system is proposed, a fully enclosed waste and recycling materials compartment must be provided within each	YES	YES

storey of the building. The facility must be designed to contain the waste chute hopper and the number of recycling storage bins equivalent to 2 x 240 litre bins for every 4 units per storey.		
<p>Access to collection point</p> <p>9 The location of the waste and recycling room must be conveniently accessible and have unimpeded access for both occupants and collection service operators. In the event that the proposed development is protected by a security system and/or locked gates, the waste and recycling room/s must have unimpeded access for the collection service providers. Where security gates are provided to the development, gates must be accessible by Council's master key.</p> <p>10 The waste and recycling collection point must be located on a level surface away from gradients and vehicle ramps, with the path of travel being free from any floor obstructions such as steps to allow for the transfer of wheelie bins to and from the storage room to the collection vehicle.</p> <p>11 The vehicle access road leading to and from the collection point in a waste and recycling room must have a minimum finished floor to ceiling height of 2.6m for residential waste rooms and 4.5m for commercial waste rooms for the entire length of travel within the building. This clearance is to be kept free of any overhead conduits, ducting, services or other obstructions.</p> <p>12 The Waste Management Plan (WMP) must describe how the waste management system is to be managed and who is responsible for each stage of the process.</p>	Waste is to be collected from the basement by a private contractor.	YES
<p>Construction of waste and recycling rooms</p> <p>13 The floor of any waste and recycling room must be:</p> <ul style="list-style-type: none"> i) constructed of either concrete which is at least 75mm thick; or other equivalent material; and ii) graded and drained to a floor waste which is connected to the sewer. <p>14 The walls of any waste room, recycling room and waste service compartment are to be constructed of solid impervious material and shall be cement rendered internally to a smooth even surface coved at all intersections.</p> <p>15 All waste and recycling rooms must be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock. This does not include waste and recycling service compartments located on residential floors of multi occupancy dwellings.</p> <p>Note: This control is to aid in cleaning of the area.</p> <p>16 A close-fitting and self-closing door that can be opened from within the room must be fitted to all waste and recycling rooms.</p> <p>17 In the event that Council permits the installation of a roller shutter door (under special circumstance only), a sign must be erected in a conspicuous position drawing attention to the fact the door must be kept closed at all times when not in use.</p> <p>18 All waste and recycling rooms must be constructed to prevent the entry of vermin (eg. no gaps under access doors etc).</p>	Proposal is capable of complying with these provisions through conditions of consent.	YES

<p>19 All waste and recycling rooms must be ventilated by either:</p> <p>i) mechanical ventilation system exhausting at a rate of 5L/s per m² of floor area, with a minimum rate of 100L/s; or</p> <p>ii) permanent, unobstructed natural ventilation openings direct to the building exterior, not less than one-twentieth (1/20th) of the floor area.</p> <p>20 Meters and piping are not to be located in the waste and recycling room.</p> <p>21 All waste and recycling rooms must be provided with artificial light controlled by switches located both outside and inside the rooms.</p> <p>22 Clearly printed "NO STANDING" signs must be affixed to the external face of each waste and recycling room.</p> <p>23 Clearly printed signage must be affixed in all communal waste collection and storage areas, specifying which materials are acceptable in the recycling system and identifying the location of waste and recycling storage areas, as well as waste and recycling service compartments.</p> <p>24 Waste management systems must not be visible from outside the building. Where this is unavoidable and Council is in agreement, it must be designed to be consistent with the overall appearance of the development.</p>		
<p>Residential Buildings</p> <p>25 Centralised waste collection points are required in the following circumstances:</p> <p>i) Attached dwellings where the number exceeds four dwellings in total; and</p> <p>ii) Where site characteristics (e.g. steep sites, narrow street frontage) make access to the street difficult for individual unit holders and where placement of bins on the street frontage is assessed as dangerous for either the public or service personnel,</p>	N/A	N/A
<p>Medium / High Density Housing</p> <p>This section applies to attached dwellings where the number exceeds four dwellings in total (eg. residential flat building, multi-dwelling housing) where basement parking is provided.</p> <p>37 Number of containers to comply with the table in design control 37.</p> <p>38 All new dwellings must be designed so as to allow the internal accommodation of one receptacle to collect waste and another to collect recycling, each with the capacity to store one day's worth of materials.</p> <p>39 Centralised waste and recycling rooms must be provided in the basement that has sufficient capacity to store all waste and recycling likely to be generated in the entire building in a week.</p> <p>40 The full path of travel to and from the waste and recycling room is to be designed to allow a 6m rigid vehicle, weighing GVM 7 tonnes, to enter and exit the development in a forward direction.</p> <p>41 The maximum grade of any access road leading to a waste and recycling room must be not more than 1:5 (20%). The turning area at the base of any ramp must be sufficient to allow for the manoeuvre of a 6.0m rigid</p>	N/A	N/A

<p>vehicle to exit the building in a forward direction.</p> <p>42 The minimum floor to ceiling height within the vehicle accessway leading to and from the waste and recycling room(s) must be 2.6m for the entire length of travel required within the development.</p> <p>43 Noise attenuation measures are required to ensure that the use of, and collection from, the waste and recycling room do not give rise to "offensive noise" as defined under the <i>Protection of the Environment Operations Act 1997</i>.</p> <p>44 An area is to be nominated for on-site communal composting.</p>		
Part 23.8: General Acoustic Privacy		
Development is to be designed to minimise the impact of external noise sources (eg busy roads, railways, swimming pools, heavy vehicle entries) on the internal and external spaces used by occupants.	The site is not subject to significant external noise sources.	N/A
Balconies and other external building elements are to be designed and located to minimise infiltration and reflection of noise onto the facade.	N/A	N/A
Buildings must be designed to minimise noise transmission by, but not limited to: i) careful siting and orientation of the building; ii) locating bedrooms away from both internal and external noise generators of a development, eg by using storage or circulation areas as a buffer or grouping room uses according to the noise level generated.	YES	YES
Measures such as mounding or high solid fencing will only be permitted where they are compatible with the streetscape.	No mounding or high solid fencing is proposed.	YES
When designing and siting active open space areas (eg BBQ areas, swimming pools, communal areas etc) regard must be paid to potential noise impacts on adjacent rooms and buildings, such as bedrooms.	The use of the courtyards will be controlled by staff, therefore unacceptable impacts on adjacent bedrooms within the facility are unlikely.	YES
The noise level from air conditioning systems is not to exceed the Laeq 15 minute by 5dBA measured at any bedroom window.	If approval of the application were recommended compliance with this control could be achieved by condition.	YES
Part 23.9: General Visual Privacy		
<p>1. Private open spaces and principal living spaces of the proposed dwelling/s and adjacent dwellings are to be protected from direct or unreasonable overlooking from all new residential and non-residential developments. Siting and design measures to achieve this include:</p> <p>i) use of distance or slope; ii) appropriate dwelling layout; iii) off-setting windows in relation to adjacent windows; iv) use of obscure glass or highlight windows; v) screening devices such as fences, louvres, translucent screens, perforated panels, trellises and courtyard walls; vi) using louvres/screen panels to windows and balconies; vii) using solid or semi-transparent balustrades or</p>	The proposal utilises window location, window sill height, privacy screening, setbacks and landscaping to protect adjacent dwelling-houses from direct or unreasonable overlooking.	YES

<p>screens to balconies or terraces;</p> <p>viii) off setting balconies in relation to adjacent balconies;</p> <p>ix) using recessed balconies and/or vertical fins between adjacent private balconies;</p> <p>x) using deep sills with planter boxes or incorporating planter boxes into walls or balustrades</p> <p>xi) providing vegetation as a screen between spaces;</p> <p>xii) utilising pergolas or shading devices to limit overlooking of lower building levels or communal and private open space.</p>		
<p>2 For low density residential development first floor decks, balconies and roof top terraces are not permitted where they unreasonably overlook or would directly overlook principal living spaces or private open space and the impact cannot be adequately mitigated.</p>	<p>The proposal is not low density residential development, however it does not incorporate roof terraces, balconies or decks that would directly overlook principal living spaces or private open space.</p>	<p>YES</p>
<p>3 Continuous transparent balustrades are not permitted to balconies or terraces for the lower 3 storeys.</p>	<p>N/A</p>	<p>N/A</p>
<p>Part 23.10: Construction, demolition and disposal</p>		
<p><i>Environmental Site Management Plan</i></p> <p>1 Site disturbance during construction or demolition must be minimised by:</p> <p>i) avoiding excavation beyond the building area;</p> <p>ii) restricting machinery and vehicle movement to the building footprint and access corridor;</p> <p>iii) locating service lines close to the building or within previously excavated areas where possible;</p> <p>iv) locating storage areas to areas outside the tree protection zones of trees to be retained.</p> <p>2 An environmental site management plan showing tree protection areas, machinery usage zones, storage areas, site sheds and location of stormwater pollution barriers is to be submitted with the application as per Councils DA Guide.</p>	<p>An adequate Environmental Site Management Plan has been provided.</p>	<p>YES</p>
<p><i>Waste Management Control</i></p> <p>3 A Waste Management Plan (WMP) must be submitted with the application, in accordance with 23R.8 of the DCP. Evidence such as weighbridge dockets, copies of invoices or some other form of written evidence will be required to be submitted to Council on completion of the development to verify the quantities and destination of waste and recycling materials generated during works (either demolition and or construction).</p> <p>4 Provide source separation facilities on building sites so that different waste streams may be easily separated during construction and demolition to encourage the reuse and recycling of materials.</p>	<p>An adequate waste management plan has been submitted.</p>	<p>YES</p>
<p><i>Stormwater Quality Control During Construction</i></p> <p>5 Manage soil, water and materials on construction sites to prevent erosion, sedimentation and pollution of waterbodies and the natural environment.</p> <p>6 Manage the quality and quantity of post-construction stormwater runoff from the site to protect downstream ecological communities, to prevent altered nutrient regimes and to reduce litter entering the waterways.</p> <p>7 Control erosion and sedimentation by:</p>	<p>Compliance with these controls could be achieved by a condition of consent.</p>	<p>YES</p>

<p>i) minimising the extent of disturbance; ii) rapidly stabilising the disturbed areas; iii) diverting clean runoff around work areas; and iv) trapping eroded sediment as close to the source as is practical.</p> <p>8 Provide for appropriate management of wastes, chemicals and fuel through:</p> <p>i) Appropriate storage and handling to prevent discharge of pollutants to waterways; ii) On-site containment of waste water from construction activities; iii) Appropriate storage and disposal of waste materials; and iv) Appropriate management and disposal of waste water.</p>		
<p>Erosion and sediment control</p> <p>9 All activities that have the potential to pollute must comply with the requirements of the Protection of the Environment Operations Act</p> <p>10 All development applications must be accompanied by an 'Erosion and Sediment Control Plan' (ESCP) that describes the measures undertaken at development sites to minimise land disturbance and to control sediment pollution. The ESCP shall be prepared in accordance with "Managing Urban Stormwater, Soil and Construction, 2006 (Landcom)".</p> <p>11 Disturbance to existing vegetation should be minimised when installing controls, especially along watercourses, on highly erosive lands and in high-conservation-value areas.</p> <p>12 Where land disturbance activities occur in riparian zones (Category 1 and 2) or watercourses, a separate Vegetation Management Plan may be required. This plan is to cover all disturbed lands within the riparian zone. It should address revegetation, bush regeneration and weed control. It should ensure that previously stored topsoil is respread over disturbed lands and the litter layer is restored. Any imported topsoil must be weed free.</p> <p>13 All disturbed areas should be rehabilitated as soon as possible after excavation or completion of the construction period. This includes, but may not be limited to:</p> <p>i) restoration of all surfaces to their original condition (or as specified); ii) re-establishment of surface stability with suitable cover to achieve a permanent C-factor of less than 0.1 (equivalent to 60 per cent ground cover) within 20 working days from the start of works.</p> <p>14 Disturbance to existing vegetation should be minimised when installing controls, especially along watercourses, on highly erosive lands and in biodiversity significant areas.</p>	<p>An erosion and sediment control plan has been provided. Compliance with these controls could be achieved by a condition of consent.</p>	<p>YES</p>
<p>24 Water Management</p>		
<p>This Part facilitates development in achieving the requirements of the clauses titled 'Stormwater and water sensitive urban design' in KLEP 2015 and KLEP (Local Centres) 2012</p>	<p>Refer to Development Engineer comments</p>	<p>YES</p>

25 Notification		
Notification is required to be undertaken in accordance with the provisions in this part of the DCP	The application has been notified in accordance with the requirements of the DCP. The submissions received are addressed above.	YES

Non-compliances with the Local Centres Development Controls Plan

Part 19: Heritage items and heritage conservation areas

An assessment of the proposal against these provisions has been carried out by Council's Heritage Advisor (**Attachment F**). Numerous non-compliances with the design controls and objectives have been identified. Council's Heritage Advisor has formed the opinion that the proposal will have an unacceptable impact on the heritage significance of the heritage conservation area and adjacent heritage items.

Part 21.1 Earthworks and slope

Cut and fill for landscaping purposes is restricted to a maximum of 600mm. Proposed excavation for Courtyard 3 and access pathways directly adjacent to the building (i.e. rooms 13 to 19 in Stage 1) will exceed 600mm to accommodate access requirements and does not impact upon retained trees, accordingly the objectives of the control are achieved.

Ku-ring-gai Contributions Plan 2010

If the application were to be approved a development contribution would not be payable as the proponent is a 'social housing provider'.

LIKELY IMPACTS

The development is likely to have detrimental impacts on the heritage significance of The Grove Heritage Conservation Area, Clanville Heritage Conservation Area and the heritage items No. 11 The Grove Roseville, No. 17 The Grove Roseville and No. 18 Trafalgar Avenue, Roseville.

SUITABILITY OF THE SITE

The site is not suitable for the proposed development as it will have unacceptable impacts on the heritage significance of:

- i. The Grove Heritage Conservation Area;
- ii. Clanville Heritage Conservation Area; and
- iii. The heritage items No. 11 The Grove Roseville, No. 17 The Grove Roseville and No. 18 Trafalgar Avenue Roseville.

The proposal does not comply with the objectives of clause 5.10 'Heritage conservation' of Ku-ring-gai LEP (Local Centres) 2012.

PUBLIC INTEREST

The proposal is not considered to be in the public interest as is not consistent with the planning controls, will have unacceptable environmental impacts and is not a suitable form of development for the site.

CONCLUSION

Having regard to the provisions of section 4.15 of the Environmental Planning and Assessment Act 1979, the proposed development is considered to be unsatisfactory. Therefore, it is recommended

that the application be refused.

RECOMMENDATION

PURSUANT TO SECTION 4.16(1)(b) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

THAT the Sydney North Planning Panel, as the consent authority, refuse development consent to DA0014/17 for, demolition of existing structures and staged construction of a residential aged care facility comprising 101 beds, basement car parking and associated landscaping works under the provisions of SEPP (Housing for Seniors or People with a Disability) 2004' on land at 12, 14 and 16 Trafalgar Avenue, Roseville for the following reasons:

- 1. The proposal does not comply with the location and access to facilities requirements in clause 26 of SEPP (Housing for Seniors or People with a Disability) 2004 and the variation to these requirements does not satisfy the provisions of clause 4.6 'Exceptions to development standards' of Ku-ring-gai Local Environmental Plan (Local Centres) 2012.**

Particulars:

- i. The subject site is not located within 400m of the services specified in clause 26 (1).
- ii. The subject site is not located within 400m of a public transport service that would provide residents access to the services specified in clause 26 (1).
- iii. The variation to the development standard does not satisfy clause 4.6 (4) (a) (ii) as the development will not be in the public interest as it is not consistent with the third objective of the zone in which the development is proposed to be carried out.

- 2. The Proposal will have adverse impacts on The Grove Heritage Conservation Area and the heritage items, No. 11 The Grove Roseville, No. 17 The Grove Roseville and No. 18 Trafalgar Avenue Roseville.**

Particulars

- i. The proposal does not satisfy the Ku-ring-gai Local Environmental Plan (Local Centres) 2012 clause 5.10(1)(b) as the proposal would have an adverse impact on the heritage significance of The Grove Heritage Conservation Area.
- ii. The proposed amalgamation of the existing allotments would result in the loss of allotments that date from a key period of significance for the conservation area.
- iii. The typology, scale, form, architectural character and landscaping of the proposed development are not compatible with the character of The Grove Heritage Conservation Area.
- iv. The proposal does not have a satisfactory relationship to the properties that both adjoin the subject site and are located within The Grove Heritage Conservation Area.
- v. The proposed development is contrary to the following controls of Ku-ring-gai Local Centres Development Control Plan: 19A.1.1, 19A1.2, 19B.1.1, 19B.1.2, 19C.3.3, 19C.3.5, 19C.4.2, 19C.4.3, 19C.4.5, 19C.4.8, 19C.4.16, 19C.5.1, 19C.5.4, 19C.5.8, 19C.5.16, 19C.5.17, 19C.5.19, 19C.7.1, 19C.7.2, 19C.7.3, 19C.8.4, 19D.1.1, 19D.1.2, 19D.1.4, 19D.1.5, 19D.1.6, 19D.2.1, 19D.3.1, 19D.4.1, 19D.4.3, 19D.4.4 and 19D.4.5.

- 3. The proposed development would adversely affect the heritage significance of adjacent heritage items and of the Clanville Heritage Conservation Area as the proposed development is not compatible with the positive characteristics of the existing setting.**

Particulars

- i. The proposal does not satisfy clause 5.10(1)(b) of the Ku-ring-gai Local Environmental Plan (Local Centres) 2012 as the setting of heritage items and heritage conservation area in the vicinity of the subject site will be adversely affected.

- ii. The introduction of unsympathetic elements into the setting of heritage items and heritage conservation areas is contrary to: clauses 19F.1.2, 19F.2.1 and 19F.3.1 of the Ku-ring-gai Local Centres Development Control Plan.

<small>5</small> Jonathan Goodwill Executive Assessment Officer	Corrie Swanepoel Manager Development Assessment
Michael Miocic Director Development & Regulation	

ATTACHMENTS

Attachment A – Pre DA report for meeting held 6/08/2015 (2018/272274)
Attachment B – Assessment letter dated 8/06/2017 (2017/156991)
Attachment C – Assessment letter dated 15/03/2018 (2018/069630)
Attachment D – Applicant's clause 4.6 variation request to clause 26 'Location and Access to Facilities' (2017/015062)
Attachment E – Applicant's clause 4.6 variation request to clause 40 'Height in zones where residential flat buildings are not permitted' (2017/015064)
Attachment F - Heritage Advisor comments (2018/239848)
Attachment G – KOPWA Services Statement (2018/250474)
Attachment H – Location Sketch (2018/262309)
Attachment I - Zoning Extracts (2018/262360)
Attachment J – Plans and Elevations (2018/170256)