

## COUNCIL SUPPLEMENTARY ASSESSMENT REPORT

<b>Panel Reference</b>	<b>2017SNH072</b>
<b>DA Number</b>	<b>DA326/17</b>
<b>LGA</b>	<b>North Sydney</b>
<b>Proposed Development</b>	<b>Construction of 5-storey health facility with lower ground level parking for 11 cars, demolition of ancillary buildings to permit vehicle driveway, earthworks, associated landscaping, conservation works to Carpenter House</b>
<b>Street Address</b>	<b>25 Shirley Road, Wollstonecraft</b>
<b>Applicant/Owner</b>	<b>Tresillian Family Care Centres</b>
<b>Date of DA lodgement</b>	<b>18 September 2017</b>
<b>Number of Submissions</b>	<b>Original DA 131; Amended DA 103; Total Unique Submissions 189</b>
<b>Recommendation</b>	<b>Refusal</b>
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	<b>Private infrastructure and community facilities over \$5 million</b>
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• North Sydney Local Environmental Plan 2013</li> <li>• Rural Fires Act 1997</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy No. 55 – Contaminated Lands</li> <li>• Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</li> <li>• Integrated Development</li> <li>• North Sydney Development Control Plan 2013</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<b>1. Drawings (Amended DA), Shadow Diagrams &amp; Landscape Plan 2. Applicant's Response to Panel's Deferral by Willow Tree Planning dated 8/8/18 and Legal advice from Mills Oakley 3. View impact analysis 4. Traffic, Transport &amp; Parking Assessment Report by The Transport Planning Partnership dated 1/9/17 &amp; 29/3/18 5. Arborist report addendum by RainTree 6. Draft conditions of consent (without prejudice)</b>
<b>Report prepared by</b>	<b>David Hoy, Team Leader Assessments</b>
<b>Report date</b>	<b>26 October 2018</b>

### 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? **Yes**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? **Yes**  
*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**  
*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

### Conditions

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

## SUPPLEMENTARY REPORT

### Attachments:

1. Drawings (Amended DA), Shadow Diagrams & Landscape Plan
2. Amended SEE and Applicant's response to Panel's Deferral
3. View Impact Analysis
4. Traffic, Transport & Parking Reports
5. Arborist report addendum
6. Draft Conditions of Consent

**ADDRESS/WARD:** 25 Shirley Road, Wollstonecraft

**APPLICATION No:** DA 326/17

**PROPOSAL:** Construction of 5-storey health facility with lower ground level parking for 12 cars, demolition of ancillary buildings to permit vehicle driveway, earthworks, associated landscaping, and conservation works to Carpenter House

**PLANS REF:** Drawings numbered DA100, DA101, DA102, DA103, DA104, DA105, DA106, DA200, DA201, DA202, DA203, DA300, DA301, DA302, DA303, DA905 & DA900, dated 8 August 2018, drawn by Team 2 Architects and received 16 August 2018

**APPLICANT:** Tresillian Family Care Centres

**DATE OF REPORT:** 31 October 2018

**DATE LODGED:** 18 September 2017

**FIRST REPORTED:** 11 July 2018

**AMENDED DA:** 10 August 2018

**SUBMISSIONS:** Original DA 131; Amended DA 103; Total Unique 189

**RECOMMENDATION:** Refusal

## EXECUTIVE SUMMARY

This development application is an amended proposal which seeks Council's approval for construction of a 5-storey health facility with lower ground level parking for 12 cars, demolition of ancillary buildings to permit vehicle driveway, earthworks, associated landscaping, and conservation works to Carpenter House.

**The application is reported to Sydney North Planning Panel for determination as it is for private infrastructure and community facilities over \$5 million.**

**Council previously reported the development application to the Panel in July 2018 seeking endorsement for a refusal due to grounds of excessive height, unsatisfactory built form and overshadowing impacts. This Supplementary Report provides an assessment of the amended design. The report is to be read in conjunction with Council's Assessment Report to the Sydney North Planning Panel at its meeting on 11 July 2018.**

The Panel considered the original proposal at its meeting on 11 July 2018 and resolved to defer the application. The proposal was considered to be an over-development of the site, particularly with regard to the built form, scale and location of the proposed building. The Panel deferred the proposal to enable amendments to be prepared to address the following:

- 1. The reduction of the overall height of the proposed building by sinking the building down one level so that the parapet height is no greater than RL61.3 and the top of the upper most level is no greater than RL64.3. This amendment must retain the existing, recessed design of the upper level.*
- 2. Increased southern side set back to the building at parapet level (Level2/3) to provide for a minimum setback of 6m from the southern side boundary where it adjoins No.24 Tryon Avenue.*

The applicant lodged an amended proposal on 10 August 2018 in response to the Panel's Deferral. The amended design incorporates amendments generally in line with the Panel's requests and incorporates changes to reduce in the height of the new building by 1 storey; additional excavation to accommodate the car parking at a lower level on the site, to facilitate the reduction at upper floors and an increased to the southern side setback from 3m to 6m. Other changes include an extension to the building footprint towards the east (rear); provision of 1 additional parking space in car park (total 12 spaces); and provision of an additional lift (total 2 lifts) to facilitate pedestrian access to the revised entry foyer and pathway.

Notification of the original proposal resulted in one-hundred and thirty-one (131) submissions including three (3) submissions in support.

Notification of the amended proposal resulted in one hundred and three (103) submissions resulting in one hundred and eight-nine (189) unique submissions, raising concerns about traffic and parking, construction impacts, solar access, bushfire safety, noise and air pollution, view impacts, privacy, heritage impacts, tree removal, impacts on child care centre, and drainage, flooding and erosion. The assessment has considered these concerns as well as the performance of the application against the applicable planning requirements.

The amended development proposal has reduced impacts to adjoining land, with a reduction in overshadowing impacts to properties in Tryon Avenue. This has been achieved through a reduction in the overall parapet wall height of the development and an increase in the minimum setback from the southern boundary to 6 metres.

The site is zoned SP2 Infrastructure and provides for health services facilities which would include hospitals, residential aged care facilities or other similar institutional scaled development. However, the height of the proposed facility exceeds a reasonable anticipated building height, is incompatible and is not in harmony with the built form of adjoining properties and is excessive for site, noting considering the substantial fall of land to the south-east and the proximity of adjoining residential development.

The proposed development as amended does not allow for at least 3 hours' midwinter solar access to the primary internal and outdoor spaces of adjoining dwellings. Midwinter solar access to living and outdoor areas between 9am and 3pm is reduced to 1 ¾ hours for Unit 11 and 12 of 24 Tryon Road which is a substantial and unreasonable impact.

View impacts arising from the amended proposal also remain substantial. The view impacts on units at No. 29B Shirley Road arising from the development continue to be devastating and unsatisfactory. Whilst the retention of existing views to properties to the immediate north of the proposed building would not be reasonable in all instances, due to the siting and orientation of adjoining residential flats, the applicant's submission that other reasonable development of the site, including two storey developments, would likely result in similar loss of views is not accepted.

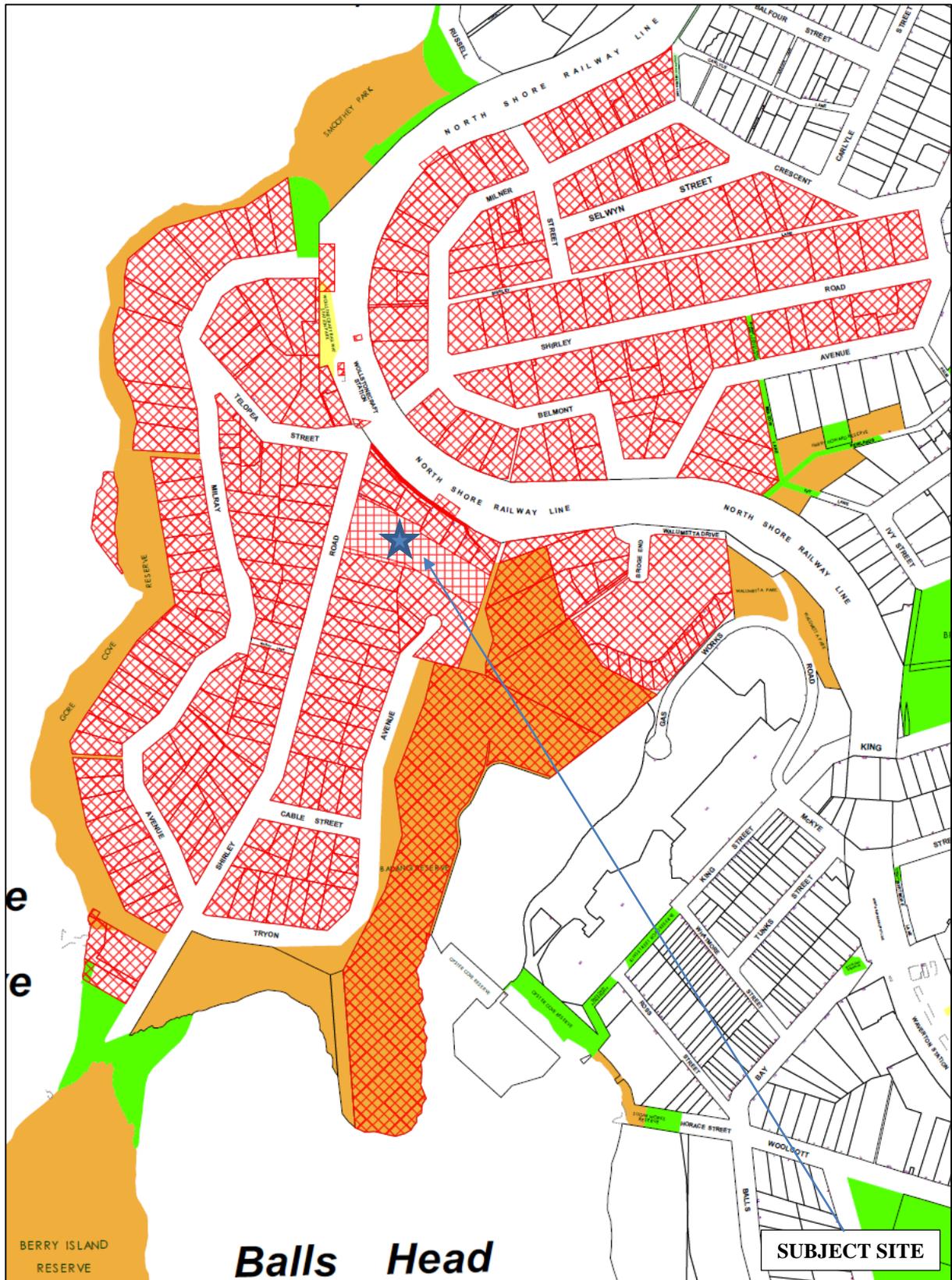
It is considered that a more reasonable design could achieve greater view sharing between properties through an alternative building design that is placed closer to Carpenter House and which incorporates the Guthrie Centre child care service within a single purpose designed facility.

It is acknowledged that the amended proposal has addressed the Panel's reasons for deferral. On balance however, the development proposal as assessed would result in significant an adverse impact on adjoining land and remains unable to be supported. The height form and scale of the building also remains inconsistent with the desired built form anticipated for the site.

The amended development application is unsatisfactory in the circumstances and is recommended for **refusal** due to the substantial amenity impacts arising from the bulk, height and form of the proposed building.

In the event that Panel determines to approve the application, draft conditions of consent have been prepared for the Panel's consideration.

**LOCATION MAP**



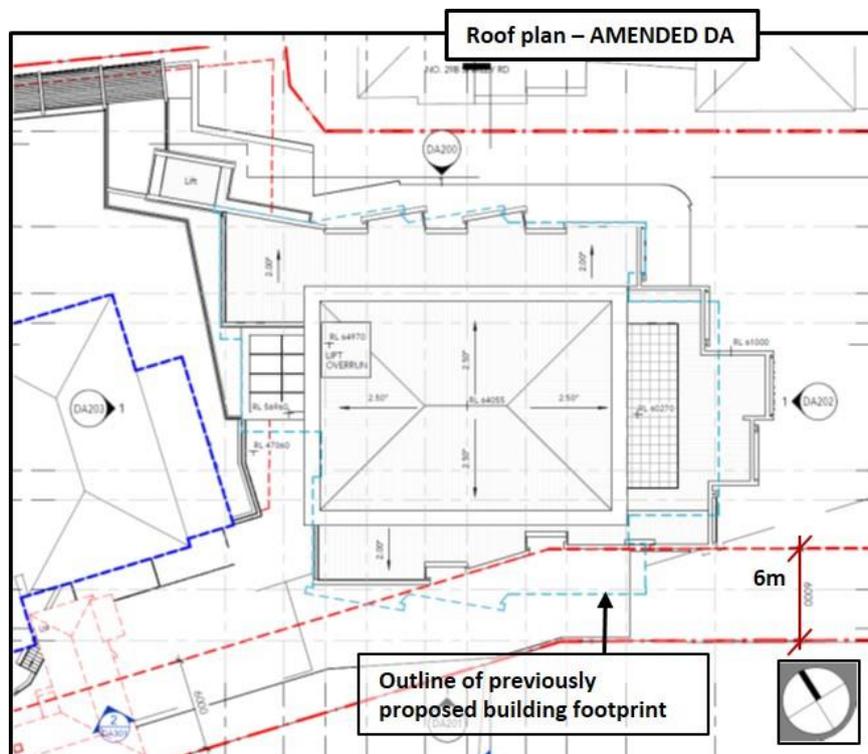
## DESCRIPTION OF AMENDED PROPOSAL

The development application is an amended proposal which seeks approval for construction of 5-storey health services facility with lower ground level parking for 12 cars, demolition of ancillary buildings to permit vehicle driveway, earthworks, associated landscaping, and conservation works to Carpenter House.

Drawings of the amended proposal are provided in **Attachment 1** to this report. Key amendments are identified as follows:

- Reduction in the height of the new building by approximately 1 storey;
- Accommodation of the Lower Ground floor parking level within an excavated part of the site and amended driveway;
- Increased southern side setback from 3m to 6m;
- Increase in building footprint to the rear (east);
- Provision of 1 additional space in car park (total 12 spaces); and
- An additional lift (total 2 lifts).

Extracts from the amended drawings are provided in **Figure 1**, showing the outline of the originally proposed building envelope, in plan and elevation, relative to the amended development.



*Figure 1 – Amended building footprint, original building footprint shown dotted blue.*



Figure 2 – Amended North elevation

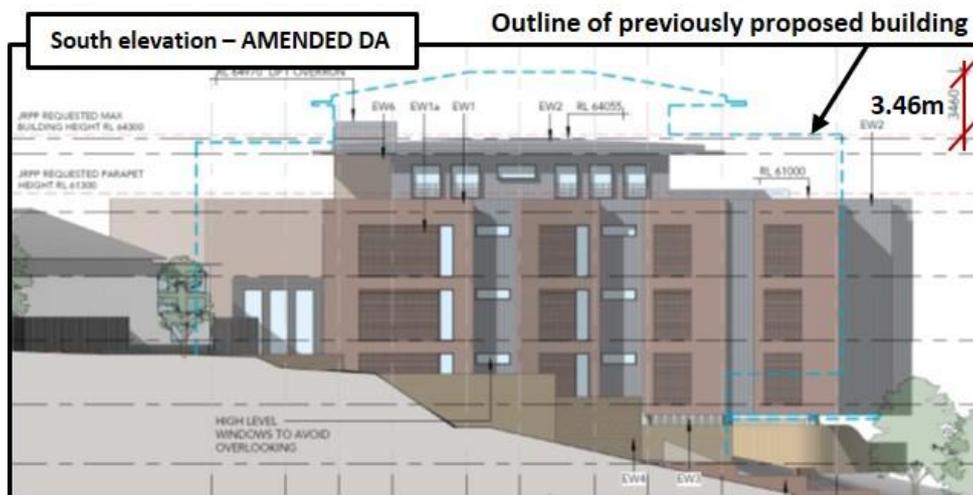


Figure 3 – Amended South elevation

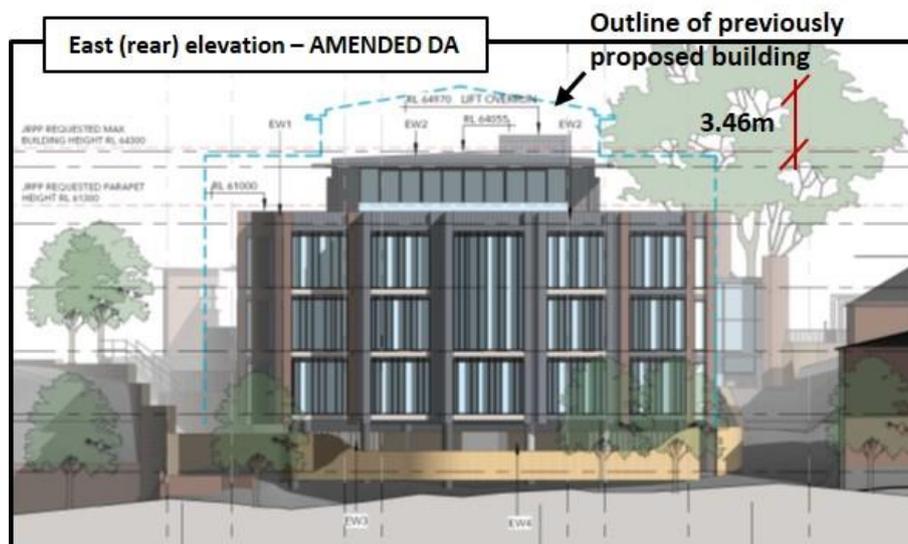


Figure 4 – Amended East (rear) elevation

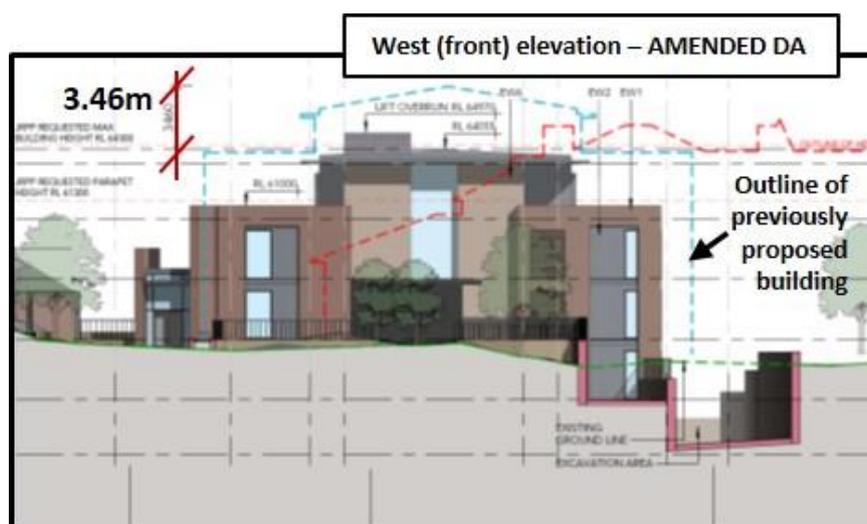


Figure 5 – Amended West elevation

The facilities within the health services building (as amended) remain generally the same as the original proposal although differently configured, including a total of **14 x nursery rooms** with ensuites, raised boardwalk at Lower Ground level, and lounge, play and administration areas.

The health services facility will provide day and residential programs in early parenting, new-parents support, and post-natal health and wellbeing. (No change is proposed to an existing child care centre currently operating out of the Guthrie building within the site.)

Operational particular		Proposed operations
Hours of operation	Day services	7am-6pm Monday to Friday
	Residential services	24 hours, 7 days per week
	Child care services (existing)	7am-6pm Monday to Friday
Services & capacity	Day services	6 clients / day
	Parenting programs	10 parents (+ children) held twice per week
	Child care services (existing)	42 children
	Residential services	14 beds
Staffing (up to 17 staff)	Day services	<ul style="list-style-type: none"> <li>Nursing Unit Manager</li> <li>Registered nurses with child &amp; family post-graduate certification</li> </ul>
	Child care services (existing)	<ul style="list-style-type: none"> <li>Director</li> <li>Staff as per legislated ratios &amp; qualifications</li> <li>Part-time qualified cook</li> </ul>
	Residential services (4-night/5-day in-patients)	<ul style="list-style-type: none"> <li>Nursing Unit Manager</li> <li>Registered nurses with child &amp; family post-graduate certification</li> <li>Director Psychology &amp; Social Work</li> </ul>
Deliveries	Variety of suppliers for food, linen, stationary, equipment & cleaning products	7am-8am daily

## STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013

- Zoning – SP2 Infrastructure (Health Services Facility)
- Item of Heritage – Yes (I1108)
- In Vicinity of Item of Heritage – Yes (No's. 42 & 46 Shirley Road)
- Conservation Area – Yes (Wollstonecraft conservation area CA25)

Rural Fires Act 1997

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy No. 55 – Contaminated Lands

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

SEPP (Educational Establishments & Child Care Facilities) 2017

Integrated Development

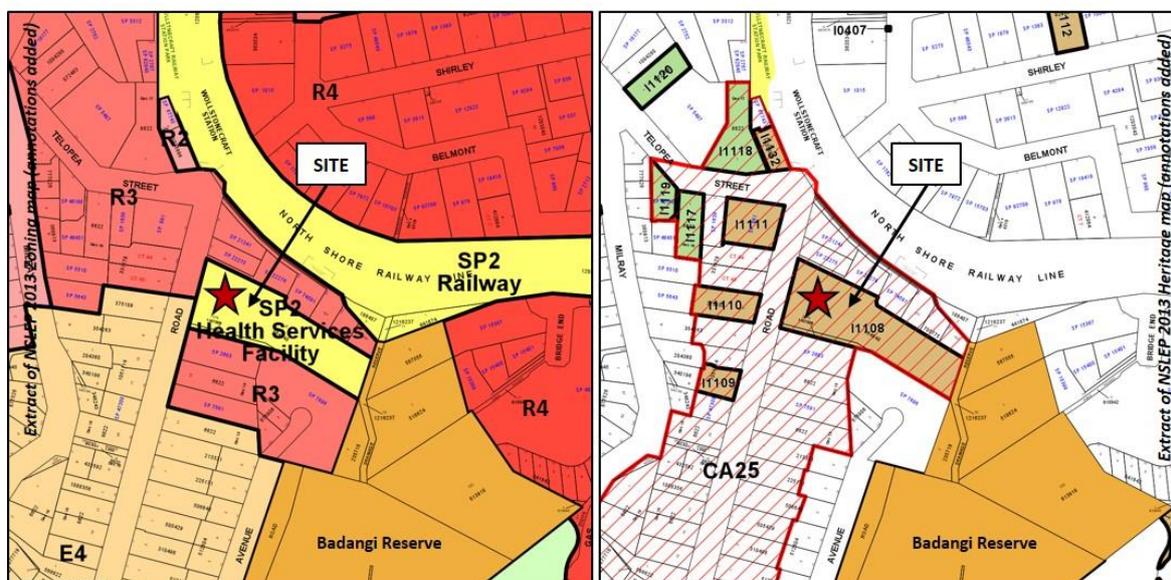
North Sydney Development Control Plan 2013

## POLICY CONTROLS

NSDCP 2013

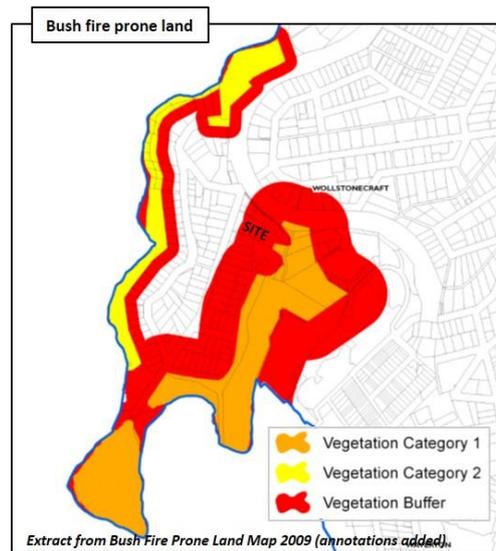
## DESCRIPTION OF LOCALITY

The site is identified as Lot B DP 964648 and Lot 7376 DP 1167508, and known as 25 Shirley Road, Wollstonecraft. The site is zoned **SP2 Infrastructure (Health Services Facility)** under North Sydney LEP 2013. The site is immediately adjoined to the north and south by R3 Medium Density zone and E4 Environmental Living zone to the west on the opposite side of Shirley Road. The east-adjointing Reserve is zoned E2. Further to the north is North Shore Rail line zoned SP2 Infrastructure (Railway). The property is a local heritage item and within Wollstonecraft conservation area (CA25) under North Sydney LEP 2013 (**Figure 3**).



**Figure 6 – Site is zoned SP2 Infrastructure (Health Services Facility) and is a heritage item**

The site is within bush fire prone land as identified in North Sydney Council's Bush Fire Prone Land Map 2009 (**Figure 7**) and subject to the provisions of the *Rural Fires Act 1997*.

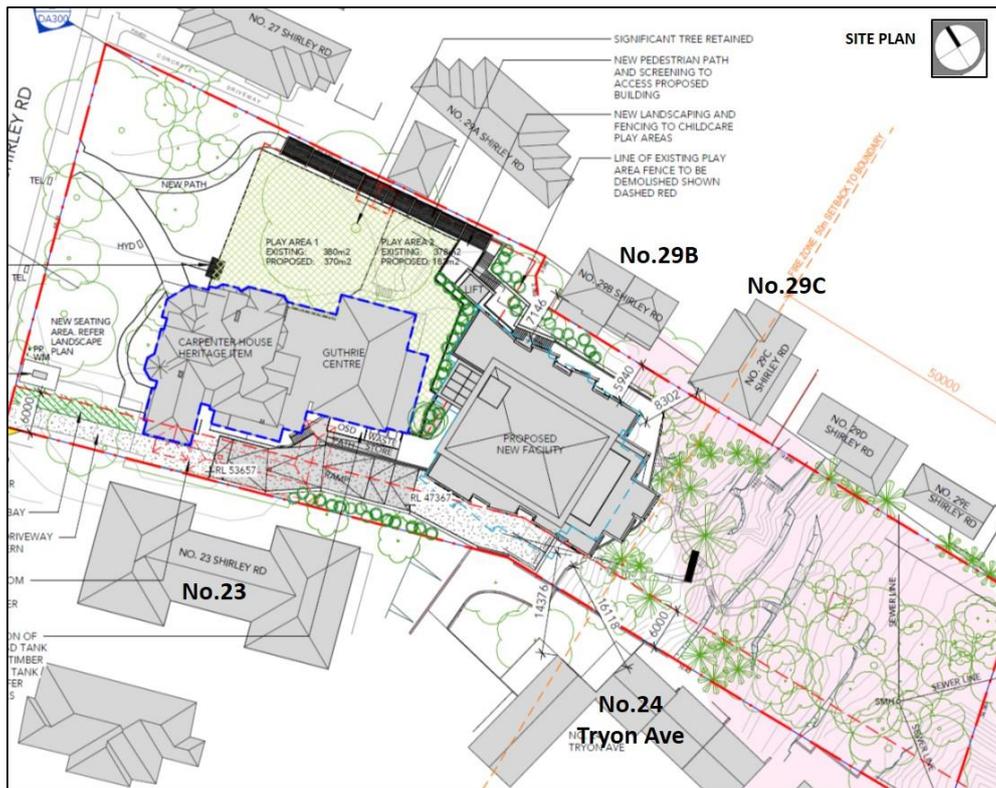


**Figure 7** – Site is within bush fire prone land

The site is located on the eastern side of Shirley Road and has a frontage of 56.5m and falls to the east where its rear boundary adjoins Badangi Reserve (**Figure 8**). The highest RL of the site from Shirley Road is RL55.33, falling some 26.03m to the rear of the site where the ground level is RL29.30. The site has a total area of **6,006m<sup>2</sup>**.



**Figure 8** – Site location map



**Figure 9 – Proposed building to be located behind Carpenter House & Guthrie Centre on rear lawn (former tennis court)**

The site is occupied by two buildings known as “Carpenter House” (with ancillary buildings) and “Guthrie Centre” located forward on lot within a landscaped front garden setting, and a rear lawn (former tennis court) beyond which the land is densely vegetated and drops steeply to the east. Existing vehicular access is via a single driveway on the southern side of the street frontage at Shirley Road, leading to an open car stand for stacked parking of up to three cars.

“Carpenter House” contains a family care centre with services for early parenting involving day visits, residential stays and education programs, and “Guthrie Centre” contains a child care centre for 42 children. Existing services are provided by Tresillian. It is understood the current proposal has come about due to the closure of Tresillian’s Willoughby facility.



**Figure 10– Carpenter House**



**Figure 11– Ancillary wing to Carpenter House**



*Figure 12– Guthrie (child care) Centre playground*



*Figure 13– Eastern (Rear) lawn area and earth wall (former tennis court)*

The surrounding area is predominantly residential. The site is immediately adjoined by detached dwellings, residential flat buildings and townhouses in a medium density context of modest height (**Figure 14**). Wollstonecraft railway station is located approximately 210m (3 minutes') walk to the site.



*Figure 14 – Adjoining residential flats development*



*Figure 15 – Adjoining townhouse development in Tryon Road*

## RELEVANT HISTORY

18 September 2017	DA326/17 lodged
26 February 2018	Briefing to Sydney North Planning Panel
12 April 2018	Amended drawings received by Council
<b>11 July 2018</b>	<b>Sydney North Planning Panel public meeting</b> <b>Matter deferred</b> (see below)
10 & 24 August 2018	Amended DA received by Council
24 Aug – 24 Sept 2018	Notification of amended DA

### Record of Deferral by Sydney North Planning Panel – 11 July 2018

*The Panel considers the proposal before it an over-development of the site, particularly the scale, form and location of the proposed building.*

*The Panel is aware that amended plans removing a level of the proposed building have been submitted to Council and applicant wishes the Panel to consider this proposed amended in any determination.*

*However, in so doing, the Panel remains of the view that even with the removal of the upper floor the resulting built form is unacceptable. The scale of the proposal remains out of character with the existing and future anticipated scale of development in the surrounding area.*

*The Panel therefore defers the determination of the proposal so that amended plans can be prepared to address these issues, as follows:*

1. *The reduction of the overall height of the proposed building by sinking the building down one level so that the parapet height is no greater than RL61.3 and the top of the upper most level is no greater than RL64.3. This amendment must retain the existing, recessed design of the upper level.*
2. *Increased southern side set back to the building at parapet level (Level2/3) to provide for a minimum setback of 6m from the southern side boundary where it adjoins No.24 Tryon Avenue.*

*Amended plans shall be submitted to Council addressing these issues within four weeks. Amended plans will need to be exhibited as per Council's procedures. Council to provide a supplementary report within four weeks after the completion of the exhibition of amended plans.*

### **Amended DA – 24 August 2018**

An amended DA was received by Council on 24 August 2018. An extract from the *Additional Information Response* by Willow Tree Planning (**Attachment 2**) is provided below summarising key design responses to the issues raised by the Panel.

<b>Issue</b>	<b>Design Response</b>
<i>1. The reduction of the overall height of the proposed building by sinking the building down one level so that the parapet height is no greater than <b>RL61.3</b> and the top of the upper most level is no greater than <b>RL64.3</b>. This amendment must retain the existing, recessed design of the upper level.</i>	<i>“The overall height of the building (measured from the ridgeline) has been dropped down by 3.46m, being the equivalent of one (1) storey. As a result, the parapet exhibits a maximum height of <b>RL61.000</b> and the building exhibits an overall maximum height of <b>RL64.055</b>.”</i> <i>“The recessed design of the upper level of the building has been retained, such that the upper level is set back from the main building volume.”</i>
<i>2. Increased southern side set back to the building at parapet level (Level2/3) to provide for a minimum setback of <b>6m</b> from the southern side boundary where it adjoins No.24 Tryon Avenue</i>	<i>“Setbacks have been increased such that Levels 2 and 3 of the building are now setback <b>6m</b> from the southern side boundary where it adjoins No. 24 Tyron Avenue”</i>

**This Supplementary Report provides an assessment of the amended design. The report is to be read in conjunction with Council's Assessment Report to the Sydney North Planning Panel at its meeting on 11 July 2018.**

### **REFERRALS**

The following referral advice on the amended development proposal were received:

#### **NSW Rural Fire Services**

The site is identified as bushfire prone land. As such, the development application is Integrated Development requiring concurrence of Rural Fire Service (RFS) pursuant to section 100B of the *Rural Fires Act*. The NSW Rural Fire Services has issued a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997'

The proposed development includes for the following bushfire protection strategies:

- Provision and maintenance of minimum 50m wide Asset Protection Zone to the east;
- Landscaped gardens to be maintained in accordance with Appendix 5 of *Planning for Bushfire Protection 2006* and NSW Rural Fire Services' *Specifications for Asset Protection Zones*;
- Construction to comply with sections 3 & 5 of AS3959;
- Existing Sydney Water reticulated service to be extended into the site with hydrants installed in accordance with AS2419.1-2005; and
- Evacuation Plan to be prepared in accordance with AS3745-2002 including emergency protocols.

The development will be required to meet relevant requirements of RFS's *Planning for Bush Fire Protection* guidelines, with any bushfire mitigation controls to be integrated wholly within the site and not reliant on Council land (via **condition**).

### **Roads & Maritime Services**

The NSW RMS has raised no objections to the amended proposal. It is noted that the development does not required concurrence of the RMS and is not considered to be Traffic Generating Development under the relevant provisions of SEPP (Infrastructure) 2007.

### **Heritage**

The amended application was referred to Council's Conservation Planner who has assessed the amended proposal in terms of Part 5 Clause 5.10 (Heritage Conservation) of the North Sydney LEP 2013 and Section 13 (Heritage and Conservation) of the North Sydney DCP 2013, and provided the following comments:

#### ***1. Heritage Assessment and Recommendations***

*An assessment of the proposed revised plans has been undertaken in relation to Clause 5.10 Heritage conservation of NSLEP 2013, and Section 13 Heritage and Conservation of NSDCP 2013 as follows:*

#### ***13.4 Development in the vicinity if heritage items***

*The visual impact of the proposed development on Carpenter House and on the character of the Wollstonecraft heritage conservation area will be reduced by lowering the overall height of the new building, but the impact of the revised proposal remains predominantly the same in that whilst the new work is clearly discernible, its bulk, scale and form is out of character in its locality.*

*The proposed development has a minimal impact on the heritage significance of the items in the immediate vicinity of the subject site being:*

*I1109 36 Shirley Road  
I1110 42 Shirley Road  
I1111 46 Shirley Road*

*because the new building does not have a direct frontage to Shirley Road and sits behind Carpenter House. **The revisions to the proposed development will benefit the reduced visual impacts from bulk and scale.***

### 13.5.2 Form, massing, scale

*The revision involves a reduction in the overall height of the building to be no higher than the ridge line of the existing buildings by sinking it down and flattening the roof pitch of the recessed upper level where a lift overrun will sit in the north-western corner. The revised plans also include an increase in the southern side setbacks. The overall character and materiality of the revised building is largely the same as the earlier design.*

### 10.10.7 Uncharacteristic elements

*The form, massing and scale of the development is uncharacteristic within the Wollstonecraft heritage conservation area.*

## **2. Conclusion**

***On balance, the reduced bulk and scale are a positive refinement to the earlier design and improve the relationship between the new building and the existing buildings, in particular, Carpenter House. The deep setback from Shirley Road and the increased side setback of the new building keep it 'tucked' behind Carpenter House, ensuring its impact on the public domain is minimal. The proposal is acceptable on heritage grounds subject to [previously recommended] conditions:***

*A heritage maintenance sinking fund is also recommended, to make adequate provision for the ongoing and essential maintenance of the heritage item.*

Planner's comment: It is noted that, although the proposed new building is not characteristic within the Wollstonecraft Conservation Area, the proposal is assessed to be satisfactory on heritage grounds. More detailed discussion on "character" is provided further below in this report.

## **Landscape**

The amended application was referred to Council's Environmental Landscape Development Officer who has provided the following advice and recommended conditions of any consent:

*On P16 of the Quoye & Associates Landscape Heritage Report, James comments that the 'tennis court forms part of the early twentieth century garden and does not contribute to the institutional parkland' and is assessed as having Moderate significance. Hence, the development has a negative heritage impact. In addition, there will also be the loss of the rockeries below the tennis court.*

*The boardwalk deck is located off the car parking level. There is little active encouragement to enter the lower gardens from the areas where the visitors will be staying. I anticipate that the lower gardens will remain in poor maintenance and their heritage significance further degraded. Should the development be approved, however, the conditions below will allow for the upgrading of the lower gardens and their on-going maintenance.*

*The addendum to the Arborist's report provides recommendations to ensure the longevity of the historic Oak tree (Tree 21) as recommended by condition below.*

*To ensure the longevity of the historic Norfolk Island Pine (Tree 39), the arborist has recommended that the stair access be constructed in a light weight material suspended above ground with no cut, fill or major soil alterations within the Tree Protection Zone. This is recommended by condition.*

*The tree fern species has been satisfactorily amended on the August 2018 Landscape Plan to utilise *Cyathea australis* not *Cyathea cooperii* to be consistent with the North Sydney Plants of Port Jackson Catchment.*

*Due to the proposed removal of 27 trees (3 of which are dead) on site and the proposed replacement with only 8 new trees, it is recommended that the Landscape Plan be amended to include additional indigenous tree planting on the lower portion of the site, away from the historic gardens adjacent to the bushland.*

*No Vegetation Management Plan has been submitted for the landscape areas adjacent to the bushland as requested by Council's Bushland Management Co-ordinator. A condition is recommended below for the provision of a Landscape Management Plan that addresses both this and maintenance of the historic landscape gardens.*

**Planner's comment:** The new building is proposed to occupy an area previously used as a tennis court. This area is not significant for its contribution to the 'institutional parkland' use of the site and is thus the most appropriate area for development.

While the tennis court level may historically have been used for active recreation, there is a lack of compelling evidence for such active use of the lower bushland levels of the site. Beyond the tennis court, the land drops steeply to the rear and is covered by dense vegetation. The proposed development would maintain this area as a passive garden setting and bushland buffer to adjoining properties.

The lower garden remains visually connected to users of the Tresillian facility through full height glazing on the rear elevation. The boardwalk will offer an outdoor space for users to enjoy the lower garden. The intensity of use of the lower gardens is not expected to be high and is intended to be a retreat for those who seek it, with lift access and via a relatively small and open parking area.

In relation to tree impacts, Council's Landscape Development Officer has provided construction monitoring conditions to ensure appropriate management during construction activities. Several concerns were raised in submissions about impacts to trees on adjoining land. It is considered that these impacts can be adequately addressed by conditions of consent noting the recommendations of the submitted arboricultural assessment.

### **Development Engineer**

The amended proposal was referred to Council's Development Engineer who has checked the new amended plans against the previous set of plans and driveway ramps are complying with Australian Standards and there are no additional issues. The conditions recommended, including in relation to construction traffic management, geotechnical matters, and stormwater management and design previously remain relevant.

### **Bushland management**

The application was referred to Council's Bushland Management Team (GD) who advised:

*I have reviewed the relevant parts of the supplied documents and cannot see any direct impacts from the development with regard to bushland management in Badangi Reserve.*

*Whilst they are not seeking to landscape the rear portion of the block, I think this is a missed opportunity and Badangi Reserve would benefit from the applicant preparing a Vegetation Management Plan that seeks to transition the rear portion of the block from a mostly weedy/exotic mix of plants to a more native-dominated and structurally diverse bush habitat garden. This could be achieved without harming heritage plantings and with consideration for bushfire management. Stormwater management could also be integrated in to this VMP more cohesively with the design of an ephemeral creekline connecting to the Badangi Reserve creek.*

**Planner’s comment:** The applicant, in Additional Information Response document prepared by Willow Tree Planning dated 6/4/18 has indicated that the preparation of a Vegetation Management Plan for the rear of the site (within the Asset Protection Zone) may be included as a **condition** of consent.

### Traffic

The amended application, including *Traffic, Transport & Parking Assessment Report* prepared by The Transport Planning Partnership Pty Ltd (TTPP) dated 8/8/18 (**Attachment 4**), was referred to Council’s Traffic & Transport Operations Manager who has provided the following advice:

#### **Parking Provision**

*Based on the additional information and the survey of the similar facility in Willoughby and the existing child care centre, the parking requirements are as follows:*

<b>Component</b>	<b>Parking Requirement</b>	<b>Parking Provision</b>	<b>Shortfall</b>
<i>Family Care Facility</i>	10	8	-2
<i>Child Care Facility – Staff and visitors</i>	6 (3 staff, 3 visitors)	4	-2
<i>Child Care Facility set down area</i> <i>Based on rates for other local child care facilities (1 space/ 7 children)</i>	6	7 (currently on-street)	+1
<b>Total</b>	22	19	-3

*There are currently 7 spaces of 1/4P 7.30-9.30am 4.30-6.30pm Mon-Fri on Shirley Road adjacent to 25 Shirley Road which was likely installed to provide a set down area for the existing child care centre. This is a generous allocation of on-street parking compared to other child care centres in the LGA. For new child care centres, Council typically requires the set-down area to be provided off-street. A child care centre of this size would typically require 6 spaces of set-down area.*

*Based on the parking survey for the Willoughby Tresillian Centre and the existing child care centre at 25 Shirley Road provided in the 29 March 2018 TTPP report, peak parking demand for the family care facility does not appear to coincide with the peak parking demand for the child care centre. Therefore, to make the most efficient use of the off-street parking whilst minimising impacts on the on-street parking, it is recommended that the on-street set down area in front of 25 Shirley Road be reduced from 7 spaces to 2 spaces, and that 4 off-street parking spaces are designated as a set down area for the child care centre between 7.30am-9.30am and 4.30pm-6.30pm.*

#### **Queuing**

*Comments were sought as to whether the pinch point mid-way along the driveway would cause queuing issues and result in parents double parking on the street. AS recommends a minimum width of 5.5 metres when there are more than 30 vehicle movements per hour and otherwise on long driveways recommends a passing bay every 30 metres. Assuming a peak arrival rate of 0.7 vehicle trips per hour (RMS Guide to Traffic Generating Developments). Assuming average speed of 10km/h on driveway, it would take approximately 6 seconds for a vehicle to pass the pinch point. Based on Poisson Distribution Analysis, the likelihood of a vehicle having to wait for another vehicle is less than 1 percent, which is considered acceptable.*

*Should this development be approved it is recommended that the following conditions be included as conditions of consent:*

- 1. That a **Demolition and Construction Management Program** be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of a Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.*
- 2. That a **Green Travel Plan for the site be developed** and submitted to Council for approval prior to issue of the Occupation Certificate. The Green Travel Plan shall highlight to staff and clients the available public and sustainable transport options for travelling to the site. The Green Travel plan should also include specific and measurable targets for reducing car trips to and from the site, and include resources and mechanisms for implementation, monitoring, review and continual improvement of the travel plan.*
- 3. That all aspects of the **bicycle storage and parking facilities** comply with AS2890.3 and a minimum of 2 bicycle parking spaces be provided within the site.*
- 4. That all aspects of the **off-street parking comply** with AS2890.1*
- 5. That it be noted that **no resident parking permits** will be provided for occupants (residential, visitor or staff) of this development in accordance with Council's Resident Parking Policy.*
- 6. That the existing **"1/4P 7.30am-9.30am 4.30pm-6.30pm Mon-Fri"** parking zone on Shirley Road in front of be **reduced from 7 spaces to 3 spaces; and 4 of the off-street parking spaces be designated as 1/4P 7.30am-9.30am 4.30pm-6.30pm Mon-Fri. The changes to the on-street parking require approval of the North Sydney Traffic Committee.***
- 7. Any traffic signals to control traffic flow on the driveway should give priority to vehicles entering from Shirley Road. The traffic signal phasing should be designed such that there is no queuing onto Shirley Road.*

Planner's comment: The recommended removal of 4 of the 7 on-street drop-off & pick-up spaces for the child care centre, and allocation of 7 of 12 spaces within the proposed building basement is not supported in this case for the following reasons:

- The proposed car park driveway is constrained by a pinch-point requiring waiting/queuing for oncoming traffic to clear, which would be inefficient and impractical during peak pick-up/drop-off periods leading to likely conflict between the vehicle movements associated with the Child Care and Tresillian uses;
- Additional movements at peak times in the driveway would result in unreasonable impact to neighbours associated with vehicles idling in the driveway;

- Only minor changes to the Child Care Centre's outdoor play spaces are proposed, with the application being, in most part, related to Carpenter House and the provision of the new health services facility;
- The proposed 12 off street car parking spaces are proposed to provide for the new health services facilities, rather than the existing Child Care Centre, the capacity and operations of which are not proposed to be changed under this application; and
- The allocation of 7 of the spaces within the new facility to the Child Care Centre would leave only 5 spaces for use in association with the health services facility, being a shortfall of 5 spaces.

In relation to car parking provision, the proposed basement level car park can facilitate the daily parking requirements for the proposed new Tresillian service facility, a service which is currently provided on site, and would not adversely affect the car parking allocation for the child care centre.

The requirements of the Child Care Centre are adequately met by the existing set down spaces at the Shirley Road frontage. It is not recommended that these existing spaces be reduced. Should the application be approved a condition is recommended to ensure some parking provision is provided within the building basement for the child care facility and to require the operators to seek a review of parking and drop of conditions associated with the Guthrie Child Care centre within 12 months of commencement of operation of the new Tresillian facility.

## NOTIFICATION & SUBMISSIONS – AMENDED PROPOSAL

The owners of adjoining properties and the **All Precincts** were notified of the amended development application for a 30-day period, between **24 August & 24 September 2018**, in accordance with Section A4 of NSDCP 2013 and the Integrated Development provisions.

The notification of the amended proposal resulted in **one hundred and three (103) submissions in addition to the previous one hundred and thirty-one (131) submission received in response to the original proposal resulting in one hundred and eight-nine (189) unique submissions.** The issues contained in the submissions identified issues summarised as follows:

- Overdevelopment (site at capacity)
- Traffic & parking
- Character (residential area)
- Bulk and scale
- Sense of enclosure
- Construction traffic, safety, duration & impacts
- Solar access
- Bushfire evacuation safety
- Noise
- View Impacts
- Privacy Impacts
- Light spill
- Heritage
- Tree Impact and Removal
- Air and light pollution from vehicles
- Odour from bins
- Loss of outdoor space for child care centre
- Drainage, flooding, erosion
- Hours of Operation
- Site not in hospital or commercial precinct
- Construction phase impacts on child care centre
- No increase in capacity of the service on Lower North Shore
- Driveway use, noise & pollution
- E4 zone demands high level of residential amenity

## CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* are assessed in this report as against relevant instruments and policies.

### **SEPP 55 and Contaminated Land Management Issues**

The provisions of SEPP 55 require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The submitted *Preliminary Site Investigation* by EI Australia dated 30/1/17 indicates that the eastern portion of the site in the area of proposed earthworks has not previously been developed, comprising grassed and bushland areas. Given the residential, and health and child care history of the site, there is unlikely to be any issues of soil contamination that would require remediation.

### **SREP (Sydney Harbour Catchment) 2005**

The site falls within the Sydney Harbour Catchment Boundary Area to which the Policy applies. The site is on the periphery, however outside of the Foreshores & Waterways Area as defined in the Sydney Harbour Catchment Map (Sheet 2) in the SREP.

It is nonetheless noted that the proposed building will be visible from Balls Head Bay, however, will be set back some 370m from the shoreline with intervening public bushland (Badangi Reserve). In this regard, the visual qualities of Sydney Harbour will be generally maintained as the development will be significantly set back from the foreshore.

### **SEPP (Infrastructure) 2007**

#### ***Health services facilities***

Part 3 Division 10 of the SEPP provides for health services facilities. The provisions generally relate to development of health services facilities by or on behalf of a public authority, and do not refer to private health services facilities as is proposed. The prevailing environmental planning instrument is therefore North Sydney LEP 2013.

#### ***Development adjacent to rail corridor***

Consideration has been given to Clause 87 of the Infrastructure SEPP in relation to the impact of rail noise or vibration on non-rail development. The submitted *Acoustic Assessment* by Acoustic Logic dated 21/6/17 provides an assessment of traffic and rail noise intrusion into the proposed development and concludes that the development can comply with the requirements of the SEPP and other relevant standards. **Conditions** of any approval may be imposed to ensure the implementation of mitigation measures recommended in the Acoustic Assessment.

#### ***Traffic generating development***

The proposed Health Services Facility with parking for less than 200 vehicles, is not identified as Traffic Generating Development under the Infrastructure SEPP. As such, Clause 104 of the SEPP does not apply.

### **SEPP (Educational Establishments & Child Care Facilities) 2017**

The proposed development includes landscape works that will reduce the existing outdoor play area of the Guthrie child care centre by 155m<sup>2</sup>, from 758m<sup>2</sup> to 603m<sup>2</sup>.

The proposed provision of 603m<sup>2</sup> exceeds the minimum requirement of 294m<sup>2</sup> (at least 7m<sup>2</sup> unencumbered outdoor space per child x 42 children) for the subject centre, in accordance with Clauses 107 & 108 of the *Education and Care Services National Regulations*.

## **NORTH SYDNEY LEP 2013**

### **1. Permissibility within the zone**

The site is zoned **SP2 Infrastructure (Health Services Facility)** under the provisions of the North Sydney Local Environmental Plan 2013 (NSLEP 2013). The proposal is characterised as *health services facility* as defined in the LEP, being:

*health services facility* means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following:

- (a) a medical centre,
- (b) community health service facilities,
- (c) health consulting rooms,
- (d) patient transport facilities, including helipads and ambulance facilities,
- (e) hospital

Development for the purposes of *health services facility* is permissible with the consent of Council. Demolition is permissible with consent pursuant to Clause 2.7 of the LEP.

### **2. Zone Objectives**

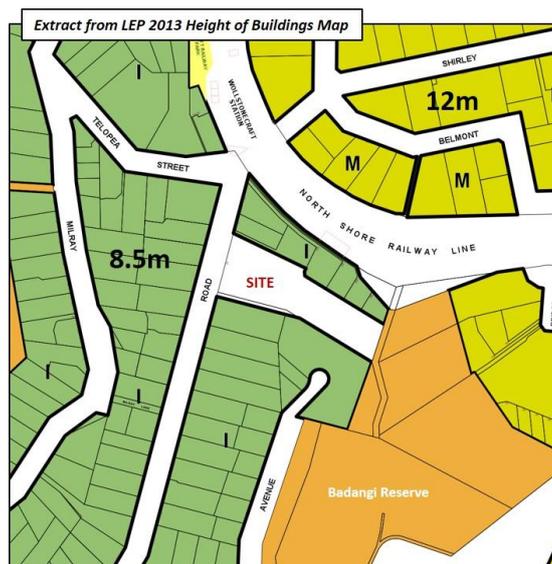
Clauses 2.3 and the Land Use Table contained in NSLEP 2013 provide for the objectives of the **SP2 Infrastructure (Health Services Facility)** zone. It is considered that the proposed development satisfies the provisions as it will provide for infrastructure and related uses for the nominated purpose on the LEP Map.

### **3. Development standards**

The site is not subject to floor space ratio or height of buildings controls, or any other relevant development standards contained in Part 4 of NSLEP 2013.

#### **Height of Buildings (Clause 4.3)**

It is noted that the Height of Buildings Map does not prescribe a maximum height limit to the subject site and that a height control of 8.5m applies to the properties immediately surrounding the site (**Figure 9**).

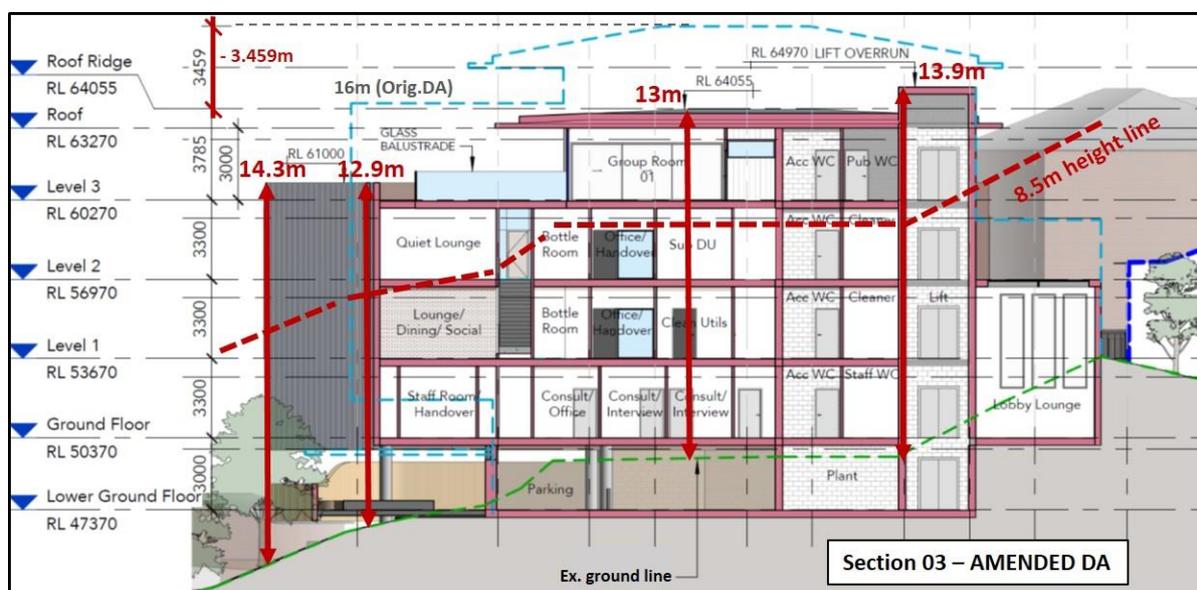


**Figure 16 – Site is not subject to a maximum building height**

The proposed development is subject to the requirements of Clause 4.3 of NSLEP 2013 which requires that proposed development be considered against the objectives for the height standard as well as any maximum building height stipulated on the Height of Buildings Map.

The site is coloured white on the LEP Height of Buildings Map, however, is not bounded by a thick black line (for which a maximum height within a range of 0-20m would generally be prescribed) (Figure 16).

The height of the amended development above existing ground levels is measured at 14.3m at the rear parapet, 12.9m at the main parapet, 13m to the top of roof, and 13.9m at the lift overrun as indicated in Figure 17. The maximum building height occurs at the eastern elevation of the building where existing site levels fall away steeply towards the rear.



**Figure 17 – Proposed building height (8.5m line applicable to adjoining zones)**

The amended application has been lowered by one building level, with parapet and roof levels to achieve the maximum heights sought by the Panel in the Record of Deferral. The amended proposal achieves heights at the building parapet as and ridge as follows:

	Max. height (SNPP)	Proposed
Parapet height	RL61.3	<b>RL61.000</b>
Top of the upper most level	RL64.3	<b>RL64.055</b>

It is noted that Section B3.3.7 P1 of NSDCP 2013 provides that the height of buildings in the SP2 zone is not to exceed the height stipulated in Clause 4.3 of NSLEP 2013. As there is no applicable maximum height of building standard for the site identified in the relevant Map in the LEP, the proposed development satisfies the DCP provision.

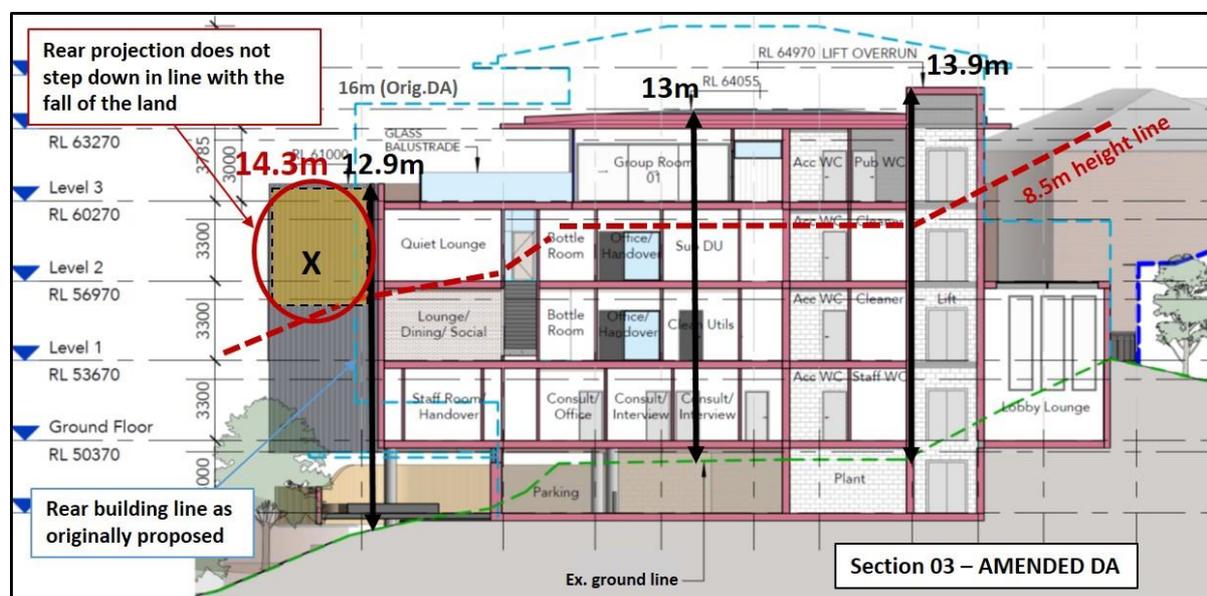
**Objectives of the Height Standard**

The height of the proposed building has been assessed on merit, taking into consideration the surrounding built form context. The height of the amended proposal has been assessed against the objectives of **Clause 4.3(1) of the LEP** in relation to height of buildings, as follows:

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*

The amended development is set down within the site with the modified lower ground floor parking area and building lobby having been located below or partly below existing ground levels. The eastern parts of the building however project out the rear lower portions of the site to the east. The amended building remains dominant on the site, and despite the reductions in the parapet height and recessed top floor, the building remains a dominant presence in the topography.

The centre rearmost portion of the building, extends the building east beyond the rear building line as originally proposed. This element has height of 14.3m to the parapet (**Figure 18**). Due to the impacts on view loss and the relationship with internal areas it is this part of the building is not supported.



**Figure 18 – Building section showing existing ground levels.**

The rearmost extension of the building (beyond the original rear building line indicated by the light dashed blue line in **Figure 18**) contravenes para. (a) of LEP Clause 4.3 and DCP character statement, Section C10.10.6 P4, which identifies as characteristic “*reduced height and scale to rear*”. These non-compliances result in overbearing and other amenity impacts on adjoining dwellings.

***(b) to promote the retention and, if appropriate, sharing of existing views,***

A detailed assessment of view impacts has been carried out and is provided below in the **Views** section in this report. The proposal is considered to result in severe and devastating impacts to views of adjoining properties to the north, particularly Unit No. 3 & No. 6 of 29B Shirley Roads.

However, the view impacts arising from the development are not a direct result of the apportionment of height across the subject site, but rather the placement of the proposed building and the orientation of existing residential buildings on adjoining land.

The applicant’s submission suggests that the impact to views from adjoining properties is consistent with that which would arise from a reasonable development, noting that any 8.5m high or 3-storey development would result in material impacts on the views/outlook of the affected units. Whilst this position is not supported on view grounds, this is not due a breach in the building height objectives.

***(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,***

A detailed assessment of view impacts is provided below in the **Solar Access** section in this report. The proposal continues to result in material impacts and unsatisfactory shadowing impacts adjoining properties during midwinter.

The applicant’s submission is that shadow impacts are in large part due to the fall of the land such that a building that is 8.5m high or 3-storey development would result in similar shadow impacts and noting that the development exceeds the minimum southern side required by DCP Section B3.3.6 P3.

However, compliance with a minimum side setback cannot in all instances ensure that a reasonable level of solar access is maintained to adjoining properties. The proposal continues to have a significant overshadowing impact and accordingly cannot be said to achieve the objectives for building height.

***(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings***

The proposed does not result in any privacy impacts by reason of the proposed building height. The proposed side setbacks from the northern & southern boundaries comply with the minimum 3m requirement in DCP Section B3.3.6 P5. The uppermost level side windows will be set back at least 8.5m & 11m from the southern & northern boundaries, respectively. Furthermore, the Group Rooms associated with these side windows have their primary orientation to the rear balcony which will be set back 10m & 12.5m from the southern & northern side boundaries. The setbacks are adequate to maintain a reasonable level of privacy.

**(e) to ensure compatibility between development, particularly at zone boundaries,**

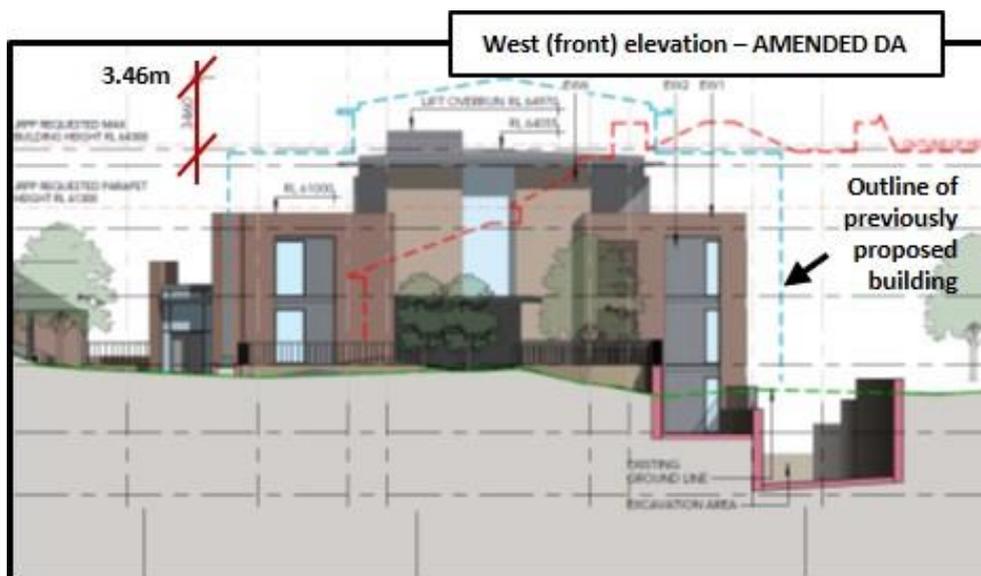
The amended proposal has been assessed under the planning principles for compatibility in the urban environment as established in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, discussed as follows:

***Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites***

The amended development gives rise to physical impacts on adjoining residential development. However, the impacts have been reduced by amendments to the height and setbacks of the building. The impacts on surrounding properties arise from the bulk and scale of the building. Whilst the building has been lowered at the building parapet by sinking the building a floor into the site and increasing the southern side setback the physical impacts to the adjoining townhouses to the south remain substantial.

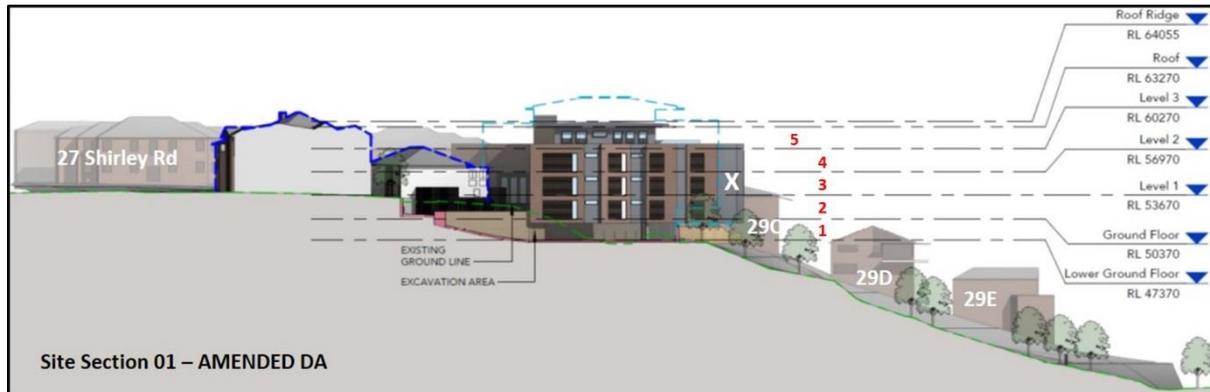
***Is the proposal's appearance in harmony with the buildings around it and the character of the street?***

The new building, as amended, will sit behind, separated from and below Carpenter House and significantly set back from Shirley Road. The presentation of Carpenter House within a garden setting will be maintained. The western elevation of the new building (**Figure 19**) will be partially visible from Shirley Road, legible as a relatively low-scale (part 2- & 3-storey) building behind Carpenter House, across and through the foliage of the front garden, set back some 60m from the front boundary.



***Figure 19 – 2- & 3-storey scale at the western elevation, set back from Carpenter House***

The proposed new building has been lowered by a level and set back 5.94m & 6m from the northern & southern side boundaries, respectively. The building however would appear much larger in scale than surrounding buildings due to its “Institutional” built form, that is reflective of its design for residential overnight care, based around essential internal amenities such as nursing stations, stores, circulation spaces, fire services and meeting spaces. The increased side setbacks have been achieved in order to address building massing and articulation of the building, however the built form remains monolithic and ‘box-like’ in its form as indicated in the elevation views. The impacts of such a built form is exacerbated by topographical differences between the site and adjoining land.

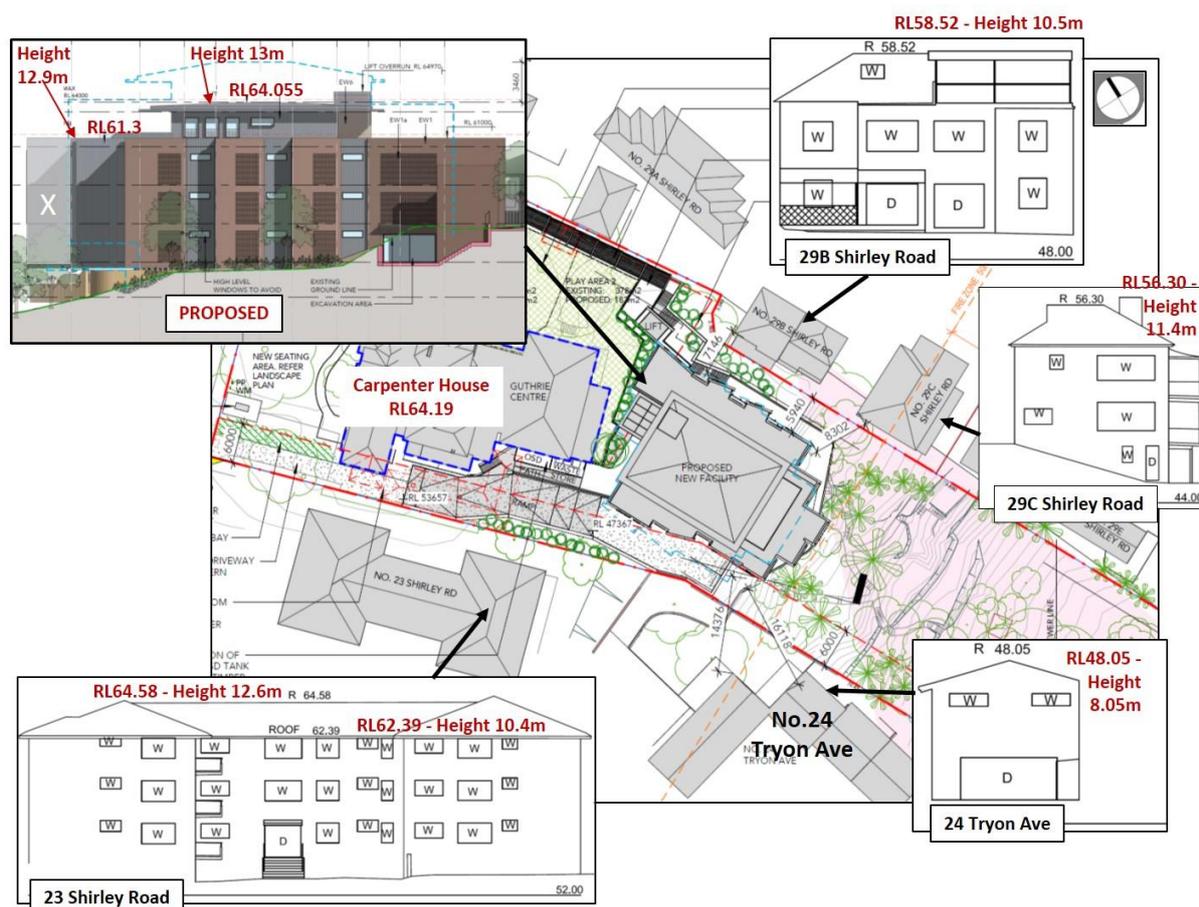


*Figure 20 – Scale of proposed development relative to neighbours*



*Figure 21 – Scale of proposed development relative to neighbours*

The proposed building heights of 12.9m and 13m at the main parapet and roof level, respectively, are similar to the height of the residential flat building at No.23 Shirley Road adjoining to the southwest but is 5.55m above the flat building at No.29B Shirley Road (**Figure 22**).



**Figure 22 – Proposed height compared to buildings on adjoining properties. Original proposal shown dotted blue as indicated**

The 8.05m high buildings at No.24 Tryon Avenue to the southeast of the site is not typical of surrounding buildings and does not reflect the characteristic height of other buildings adjoining the site. The townhouses at 24 Tryon Road are also located some 8m below the subject site.

It is considered that the amended proposal would continue to have a significant impact on the No.24 Tryon Avenue.

The SP2 Infrastructure zone provides that development including a hospital building, residential aged care facility or other similar institutional scaled development is reasonably anticipated for the site. In considering whether the form and scale of the building is acceptable, consideration has been given to other forms of development that are reasonably anticipated for the land and which reflects the zoning as SP2 Infrastructure and the identified special purpose for *Health Services Facilities*.

Whilst the form of subject proposal is broadly consistent with an ‘Institutional’ scale of development, the height of the proposed facility at four storeys to the parapet on the south is excessive for the fall of land to the south-east and the proximity of adjoining development. A more reasonable built form would consist of a maximum 3 storey wall height along the southern elevation, a minimum side setback of 6 metres and potentially a pitch roof form in place of the proposed parapet wall. Consideration could also be given to a more stepped scheme which sits lower on the site and places the build of new work closer to Carpenter House.

In the circumstances, the amended proposal exceeds a reasonable anticipated building height, is incompatible and is not in harmony with the built form of adjoining properties. A more sensitive design which achieves the requirements of the Tresillian service could reasonably be achieved in a different form.

**(f) to encourage an *appropriate scale and density of development that is in accordance with, and promotes the character of, an area.***

The new health services building is larger in scale compared to surrounding characteristic buildings. The scale and density of development is generally consistent with that anticipated from a hospital building or other similar health services facility. Such development is permitted by the SP2 zoning of the site.

In addressing the scale and density of the proposal, consideration has been given to the NSW Land & Environment Court planning principles for **height and bulk** as established in *Veloshin v Randwick Council [2007] NSWLEC 428*. The planning principle outlines the following relevant considerations for assessing the appropriateness of bulk and scale:

- *Are the impacts consistent with impacts that may be reasonably expected under the controls?*
- *How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?*
- *How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?*
- *Does the area have a predominant existing character and are the planning controls likely to maintain it? Does the proposal fit into the existing character of the area?*
- *Does the area have a predominant existing character and are the planning controls likely to maintain it? Does the proposal fit into the existing character of the area?*
- *Is the proposal consistent with the bulk and character intended by the planning controls?*

The controls contained within Council's DCP do not provide a clear guidance on what is anticipated on the site. The development has been considered against the existing built form & character of the area and on an objective view of impacts to adjoining properties. The amended proposal continues to result in significant impact and is inconsistent with the bulk & scale of surrounding development.

Whilst an Institutional built form may reasonably be anticipated in the context of the site, the siting, built form, height and design of the proposal is unsympathetic to the location of adjacent residential development, does not reflect the desired built form or scale of development for the site. The impact of the proposed health services facility could reasonably and substantially be reduced by siting a different built form closer to Carpenter House which incorporates the Guthrie Centre building and consolidates the built form on the site.

The design of the new health services building does not respond appropriately to the existing site context, in particular, characteristic building height within Wollstonecraft peninsula, proximity of adjoining dwellings, and the fall of the land, contrary to Objective O3 of Section B3.1.1 Context and Objective O1 of Section B3.3.1 in North Sydney DCP 2013.

The new building is incompatible with adjoining land and the locality, as the new building is significantly greater in height than surrounding buildings and presents an overbearing bulk and scale to adjoining development.

#### **4. Development Near Zone Boundaries**

The site is within 25m of R3 Medium Density Residential and E4 Environmental Living zones under NSLEP 2013; therefore, Clause 5.3 applies. The proposal however does not rely on the adjoining zone to carry out development that would be permissible within those zones. As such, no further assessment under this provision is relevant or necessary

## 5. Heritage conservation

The site is a local heritage item (Item I1108 “Carpenter House”) within Wollstonecraft conservation area, and in the vicinity of heritage items at No’s.42 & 46 Shirley Road.

The application is accompanied by a Conservation Management Strategy, Heritage Impact Statement and Landscape Heritage Report, in accordance with Clause 5.10 of NSLEP 2013.

As discussed earlier in the **Heritage Referral** section of this report, Council’s Conservation Planner has assessed the proposal in relation to the relevant heritage conservation provisions in Clause 5.10 of NSLEP 2013 advised that the proposal is acceptable on heritage grounds.

## 6. Bushfire hazard reduction

It is noted that Clause 5.11 of the LEP allows bushfire hazard reduction work authorised by the *Rural Fires Act 1997* to be carried out on any land without development consent.

## 7. Earthworks

The amended development proposal is generally sited in the area of an existing terraced level of the site (former tennis court), however, will involve earthworks in the area of the embankment to some 6m in depth at the western end, as indicated in the submitted *Geotechnical Assessment* by EI Australia dated 1/1/17.

The amended proposal involves sinking the building into an excavated area centrally located within the site, and an amended driveway along the southern side boundary.

The amended application has been assessed in relation to the objectives and relevant provisions in Clause 6.10(1) & (2) and found to be satisfactory. The deeper excavation associated with the amended design does not change the findings contained in Council’s Assessment Report on the original proposal in relation to earthworks.

The additional excavations will not result in loss of any additional garden stonework, the prevailing fall of the land toward the rear of the site and associated drainage patterns will be maintained, and the stability of the subject and adjoining land can be maintained subject to measures outlined in the *Geotechnical Assessment* and via **conditions**.

Earthworks are permissible with consent, pursuant to Clause 6.10 of the LEP. The development has been assessed in relation to the objectives and relevant provisions in Clause 6.10(1) & (2) and found to be satisfactory

## 8. Vehicle access

The proposed development will require reconstruction or replacement of an existing driveway, road shoulder, and kerb and guttering. Development for the purposes of a driveway and vehicular crossing within a road reserve associated with a permissible use in an adjoining zone may be carried out with consent, pursuant to Clause 6.13 of the LEP.

## NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

### DCP Section B3 Non-Residential Development in Residential zones

The proposal is assessed against relevant provisions in section **B3** of the DCP relating to **non-residential developments Residential zones**, and section **C10 & C10.10** being the Character Statement for the **Wollstonecraft Conservation Area** within the Waverton / Wollstonecraft Planning Area.

The subject site, zoned SP2 Infrastructure, adjoins **R3 Medium Density Residential** and **E4 Environmental Living** zones. **Section B3.1.2(b) of the DCP** provides that development in SP2 zone is to be assessed as against the most restrictive requirements for non-residential development in residential zones.

In this case, the extent of connection of the site with the E4 zone is for a minor portion of the frontage along Shirley Road; as such, it is considered that the most relevant adjoining zone is **R3 Medium Density Residential** which adjoins the site along all boundaries and for the most part of the Shirley Road frontage. Accordingly, the provisions of the R3 Medium Density Residential are considered most relevant and applicable in this context.

#### **Assessment of Amended proposal**

The amended proposal has been considered against the relevant provisions of the North Sydney DPC 2013. This supplementary report, however must be read in conjunction with the preceding assessment report.

#### **FORM, MASSING & SCALE**

**Section B3.1.2(b)** of NSDCP 2013 provides that development in SP2 zone is to be assessed as against the most restrictive requirements for non-residential development in residential zones. The subject site, zoned SP2 Infrastructure, adjoins R3 Medium Density Residential and E4 Environmental Living zones. A maximum height limit of 8.5m applies in both these zones. The proposed building heights of 14.3m (rear parapet), 12.9m (main parapet), 13m (top of roof) and 13.9m (lift overrun), exceed 8.5m.

The height restriction of 8.5m as applied via the DCP is assessed in accordance with Clause 4.15(3A)(b) of the EP&A Act:

- (3A) Development control plans If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority: ...*  
*(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards – is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, ...*

The form massing & scale of the proposed development has been considered in detail under the relevant discussions above, against the objectives for height under Clause 4.3 of the LEP. The proposal is inconsistent with the objectives of **Section B3.3.7 of the North Sydney DCP 2013** in relation to form, massing and scale and is incompatible with the context of the site and surrounding areas.

## VIEW IMPACTS

*Section B3.2.8 O4* of the DCP seeks to encourage view sharing as a means of ensuring equitable access to views from dwellings, whilst recognising development may take place in accordance with other provisions of the DCP and LEP. An assessment of view impacts arising from the amended proposal is contained provided by way of photomontages in **Attachment 3**. A summary of the impacts is outlined as follows:

### *Identification of view impacts*

An assessment of the view impacts utilising the planning principles adopted by the NSW Land & Environment court in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 has been carried out on the amended proposal.

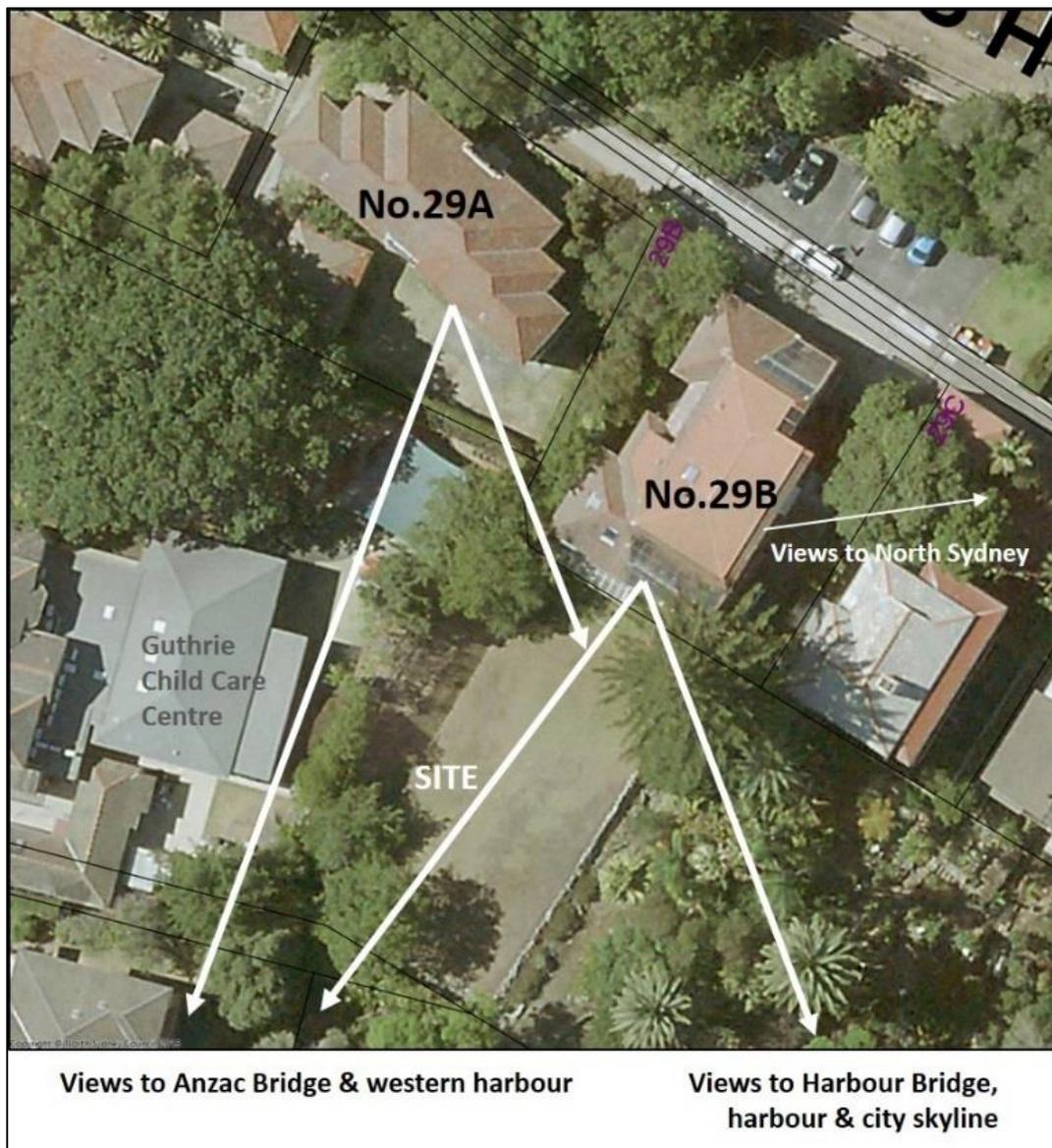
The extent of impacts arising from the amended proposal is assessed to be generally comparable to the impacts arising from the original proposal, with the exception of some additional water and water/land view impacts arising from the projection of the eastern edge of the building (beyond Gridline 11 on the submitted plans).

#### *(i) Assessment of views to be affected*

The views from neighbouring properties comprise views of the Anzac Bridge, Pyrmont skyline, district views of Sydney Harbour to the west, Sydney Harbour Bridge, and city skyline.

#### *(ii) From where are the views obtained*

The most affected views are from the living and sun rooms, bedrooms and kitchens of adjoining apartment units located at No's. 29A & 29B Shirley Road (Figure 23).



**Figure 23 – Sight lines from No's. 29A & 29B Shirley Road across the site to Sydney harbour**

**(iii) Extent of impact**

The assessment of impact has had regard for the revised view impact diagrams submitted by the applicant and the amendments to the proposed scheme. The view impact analysis is broadly consistent with the previous conclusions that impacts to neighbouring units range from a minor, to severe and devastating impact for adjoining units. The view impact summarized as follows:

### Unit 3 – 29A Shirley Road

The amended development will continue to result in the loss of views to part of the Anzac Bridge (including a pylon and cables), and part of the Pymont skyline. The view is obtained at an angle from a standing position through the kitchen window, across the side boundaries of the subject site and through gaps in vegetation. A direct and immediate outlook to the landscaped open space associated with the Guthrie Child Care Centre within the site will, however, be maintained.

On balance, the overall view impact from Unit 3, 29A Shirley Road is assessed to be moderate, noting that the view impacted upon includes part of an iconic element (Anzac Bridge) which will be completely obscured and the view lost is the only view from the unit; and on the other hand, the harbour view affected is distant and partial, and obtained from a kitchen window at an oblique angle and across side boundaries of the subject site.

### Unit 4 – 29A Shirley Road

The development will result in the loss of views to part of the Anzac Bridge (including a pylon and cables). The view is obtained at an angle from a standing position in the 2<sup>nd</sup> bedroom of Unit 4, across the side boundaries of the subject site and through gaps in vegetation. A direct and immediate outlook to the open space associated with the Guthrie Child Care Centre within the site will, however, be maintained.

The proposed development will not impact on views from the living room, which include part of the arch of the Harbour Bridge and North Sydney skyline. The outlook from the kitchen toward the Guthrie Child Care Centre will be largely maintained.

**On balance, the overall view impact on Unit 4, 29A Shirley Road is assessed to be minor** given that the view lost is from a bedroom looking across side boundaries, while views from the living room, including parts of the Harbour Bridge and North Sydney skyline, and views from the main bedroom, will not be affected by the proposed development.

### Unit 3 – 29B Shirley Road

The development will result in the loss of views to part of the Anzac Bridge (including both pylons and cables) as viewed in a standing position in the living room, and loss of district views from the main bedroom. The views are obtained across the side boundaries of the subject site and above vegetation.



*Figure 24: View impact analysis for Unit 3 29B Shirley Road*

The view impact on Unit 3, 29B Shirley Road is assessed to be **devastating** given that the views lost are from the living/sunroom and main bedroom, and they are the only and primary outlook of the dwelling. There is very little left by way of view outlook from the primary living areas of this unit as a result of the amended development.

### Unit 4 – 29B Shirley Road

The development will result in the loss of views to the western harbour, including land/water interface and skyline (**Figure 135**). The views are from a standing position in the living room and main bedroom, across the side boundaries of the subject site and above and/or through vegetation.



*Figure 25: View Impact Analysis Unit 4 29B Shirley Road.*

The view impact on Unit 4, 29B Shirley Road is assessed to be **devastating** given that the views lost are from the living/sunroom and main bedroom, and they are the only and primary outlook of the dwelling. There is very little left by way of view outlook from the primary living areas of this unit as a result of the proposed development, and none at all from the main bedroom. A detailed consideration of the “reasonableness” of the view impacts is undertaken below.

### Unit 6 – 29B Shirley Road

**Views lost** from the unit from standing positions looking in a south westerly direction on the primary balcony and from the master bedroom are identified as:

- Anzac Bridge pylon and cables;
- Part of Balls Head and wharf structure; and
- District views of western harbour, including land/water interface

**Views retained** from the unit are identified as:

- Sydney CBD skyline views from the main bedroom;
- Views of the Sydney CBD skyline from the southern end of the main balcony;
- Harbour Bridge and city and North Sydney skyline views from the living/dining room, second balcony and kitchen.



**Figure 26: View Impact Analysis Unit 6 29B Shirley Road.**



*Figure 27: View Impact Analysis Unit 6 29B Shirley Road.*

**On balance, the overall view impact on Unit 6, 29B Shirley Road is assessed to be severe** given that harbour views are lost from the main balcony, however noting that views of iconic buildings and skylines, and district panoramas, are retained as viewed from the open plan living/dining/kitchen areas.

*(iv) Reasonableness of proposal that is causing the view impact*

In summary, the view impacts of the proposed development are as follows:

Unit	Location	View impact	View lines
Unit 3, 29A Shirley Road	1 <sup>st</sup> floor	Moderate	Across the side boundaries of the subject site
Unit 4, 29A Shirley Road	1 <sup>st</sup> floor	Minor	
Unit 3, 29B Shirley Road	1 <sup>st</sup> floor	Devastating	
Unit 4, 29B Shirley Road	1 <sup>st</sup> floor	Devastating	
Unit 6, 29B Shirley Road	2 <sup>nd</sup> floor	Severe	

The view impacts on the units in No.29B Shirley Road arising from the development are considered to be **unreasonable**, as it is considered that a more skilful design could provide the applicant with the same development potential and amenity as well as reduce the impact on the views of neighbours.

While it is not suggested that the proposed building should comply in entirety with the maximum building height of 8.5m applicable to adjoining sites, or that such compliance would result in the full retention of the views that would be lost, it is considered that a redistribution of massing away from the northern and eastern edges of the building could provide for a more equitable access to views and outlook. At the least, a reduction in height and/or increased setback in this location

would provide the most severely affected Units 3 & 4 of No.29B Shirley Road with improved remnant outlook to the sky and relief from a singular view to the northern wall of the building as currently proposed.

It is considered that the development in its current form does not satisfy DCP Section B3.2.8 objective O4 which seeks to encourage view sharing as a means of ensuring equitable access to views from dwellings, whilst recognising development may take place in accordance with the other provisions of this DCP and the LEP.

The applicant's submission that a reduced-height building in this location would result in similar impact is not considered to be a reasonable basis to support the current form, particularly when significant modification which lowers the built form would significantly reduce impacts to adjoining properties.

### **View Impact Summary**

The view impacts on units 3 & 6 of No.29B Shirley Road arising from the development continue to be **significant and unsatisfactory** having regard for the severe and devastating impacts of the development on private residential views.

It remains Council's assessment that the view impacts arising from the proposed development would result in devastating impacts to adjoining residences at 29B Shirley Road. Council however notes that the Panel Deferral did not identify view loss concerns as the basis for amendment and reductions sought to the proposed development.

### ***Applicant's submission – View Loss Impacts***

The applicant's submission in support of the amended proposal submits that the proposal is worthy for support on the following grounds:

- There is no reasonable alternative location to site the building, given the Bushfire Asset Protection Zone to the east, the existing Child Care Centre to the west and the need to conserve the heritage significance of Carpenter House.
- Tresillian Family Care have considered demolition of the Guthrie Centre child care facility to enable a consolidated facility on the site, but this has been found to be unfeasible.
- An extract from the *Additional Information Response* by Willow Tree Planning (refer to **Attachment 2**) is provided:

*“Relocating the building to the site of the existing Guthrie Centre would result in the complete removal of the 52-place childcare centre, which is Council-approved. The practical and commercial complexities of this would be significant, and the full extent cannot be determined at this stage in time ...*

*Owing to the limited footprint of the existing Guthrie Centre building, the resultant building would be in the order of 7-8 storeys to accommodate the proposed Tresillian requirements as well as the new childcare centre, car parking, support and other services.*

*Additionally, Tresillian reviewed funding for this option over time. The reality for Tresillian is however that the funding stream is not available to be able to masterplan in the same way as larger infrastructure developers.”*

- The proposed side setbacks of 5.94m & 10m from the northern boundary comply with the minimum side setback of 3m provided for in DCP Section B3.3.6 P3.
- The proposed site coverage of approximately 22% (1,342m<sup>2</sup>) and landscape area of approximately 65% (3,899m<sup>2</sup>) comply with the maximum site coverage of 50% and minimum landscape area of 50% in DCP Sections B3.4.4 & B3.4.5 applicable to surrounding R3 medium density residential housing.

### ***Planner's Comment***

The proposed new health services building gives rise to unacceptable impacts on views and outlook from adjoining dwellings.

Notwithstanding the reductions in height achieved by the amended proposal and the applicant's submission, the view impacts arising from the amended proposal are assessed as substantial, unreasonable and inconsistent with Council's provisions for height and view impacts. The view impacts on units 3 & 6 at No. 29B Shirley Road arising from the development continue to be devastating and unsatisfactory.

Whilst the retention of existing views to properties to the immediate north of the proposed building would not be reasonable in all instances, due to the siting and orientation of adjoining residential flats, the applicant's submission that other reasonable development of the site, including two storey developments, would likely result in similar loss of views is not accepted.

It is considered that a more reasonable design could achieve greater view sharing between properties through an alternative building design that is placed closer to Carpenter House and which incorporates the Guthrie Centre child care service within a single purpose designed facility.

The proposed new health services building gives rise to devastating impacts on the outlook and views of neighbouring dwellings, as assessed under *Tenacity Consulting v Warringah* [2004] NSWLEC 140 and in accordance with Provision P4 in Section B3.2.8 Views of North Sydney DCP 2013.

The affected dwellings are left with very little by way of outlook which could be reasonably alleviated. The development does not allow for equitable access to views, contrary to Objective O4 of Section B3.2.8 in North Sydney DCP 2013.

The proposed new building has unacceptable adverse impacts on residential amenity, contrary to Objective O2 of Section B3.1.1 General Objectives in North Sydney DCP 2013 and cannot be supported by the Assessing Planner.

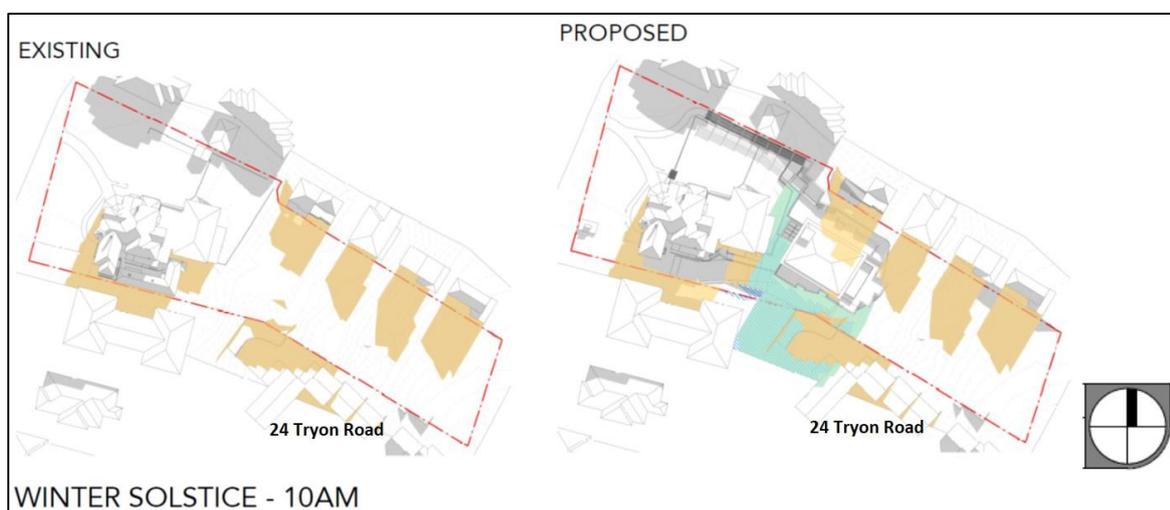
## SOLAR ACCESS

Section B3.2.9 P1 provides that developments should be designed and sited to provide for a minimum of 3 hours' midwinter solar access between the hours of 9.00am and 3.00pm to, relevantly, the windows of main internal living areas, and principal private open space areas located on any adjoining residential properties.

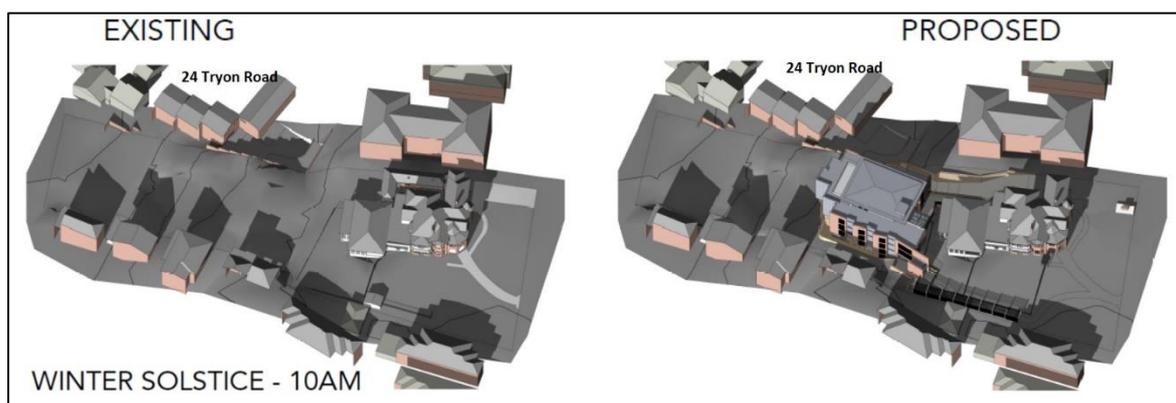
### *Identification of shadow impacts*

An assessment of the shadow impacts of the proposal on the affected dwellings at No.24 Tryon Avenue, utilising the principles established by the Land and Environment Court in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082, has been carried out on the amended proposal.

The original and amended development proposals do not satisfy the minimum requirements to provide a minimum 3 hours solar access to the private open space and windows of adjoining residential premises during midwinter. Existing and proposed shadow diagrams detailing the likely impacts arising from the original proposal are provided in **Attachment 1**. A summary of the most significant impacts can be noted in the following extracts from the submitted amended shadow diagrams detailing the 10pm & 2pm impacts during midwinter (Figures 28 to 31).



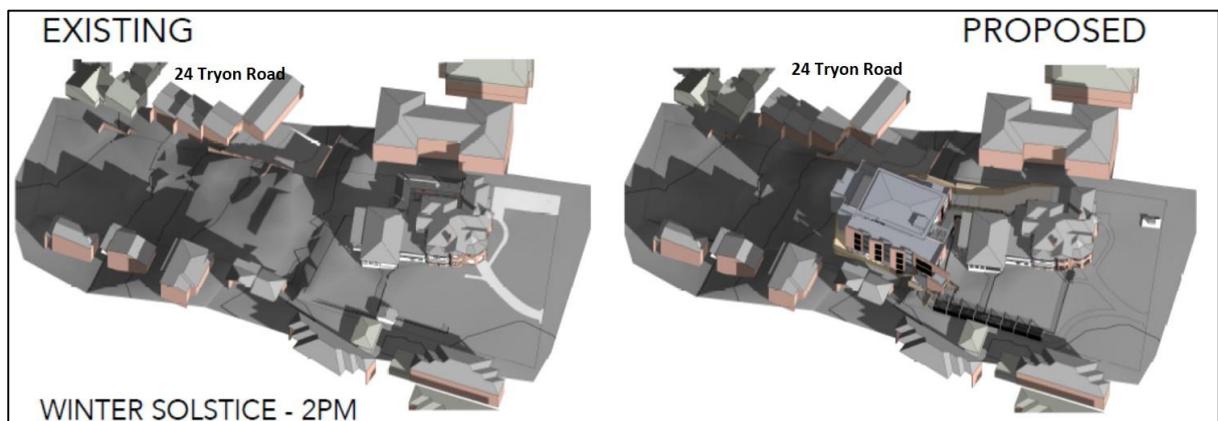
**Figure 28: Existing & proposed shadows site plan 10am 21 June**



**Figure 29: Existing & proposed shadows 3D 10am 21 June**



**Figure 30: Existing & proposed shadows site plan 2pm 21 June**

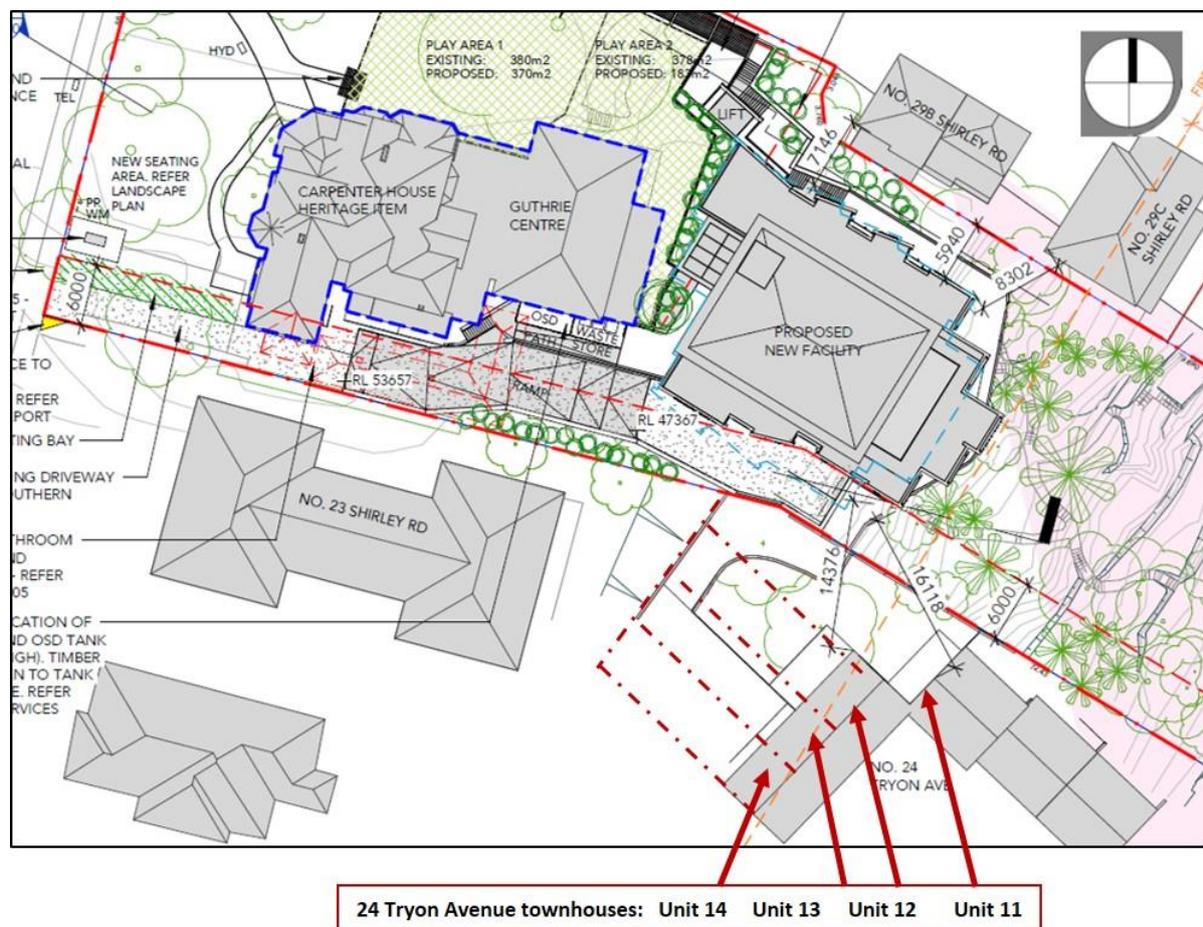


**Figure 29: Existing & proposed shadows 3D 2pm 21 June**

The extent of impacts arising from the amended proposal is assessed to be generally comparable to the impacts arising from the original proposal. The previous conclusions on the extent of impacts on neighbouring residences remain the same, identified in the following table.

Townhouse	Impact	Indoor living space		Outdoor space	
		Sunlight retained	Compliance (min.3 hours*)	Sunlight retained	Compliance (min.3 hours*)
Unit 11	Severe	1 ¼ hours	No	2 ½ hours	No
Unit 12	Severe	1 ¾ hours	No	1 ¾ hours	No
Unit 13	Moderate	2 ¼ hours	No	3 ¼ hours	Yes
Unit 14	Moderate	2 ¼ hours	No	3 ½ hours	Yes
* midwinter between 9am & 3pm per DCP Section B3.2.9 P1					

The location and site configuration for adjoining townhouses at 24 Tryon Road is shown in figure 32 below with the amended 6.0 metre setback line shown dotted red and the separation between the proposed building and the nearest adjoining townhouses noted.



**Figure 32: Site location and configuration for adjoining townhouses at 24 Tryon Road**

### ***Overshadowing by fences, roof overhangs and changes in level***

The shadow impacts arising from the proposed development is in large part attributable to the steep drop of the land to the southeast of the site. The rear private open spaces of shadow-affected townhouses at No.24 Tryon Avenue are located some 8.7m below the area of the site proposed to be occupied by the proposed new building.

The comparative shadow diagrams submitted with the original application (Attachment 5 in the original Council Assessment Report) show that the shadows cast by a 3-storey building are comparable to a 5-storey building. Even with an increased side setback of 6m and a lowering of the building by one level as currently proposed, the shadow impacts remain similar to the original proposal, due in large part to the steep drop to the properties in No.24 Tryon Avenue.

### ***Design***

According to the principles established by the Land and Environment Court in *The Benevolent Society v Waverley Council*, overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines.

Having regard to the context of the site within a medium density neighbourhood and the steep drop in topography, it is considered that the amended proposal has not sufficiently reduced the bulk and scale of the building to maintain reasonable solar amenity to the adjoining townhouses at 24 Tryon Road. The reduction of direct solar access to the private open spaces of Unit Nos. 11 and 12 are particularly severe with impacts between 10am to 2pm at mid-winter reducing solar access to less than 3 hours at this time of year.

The proposed development does not allow for at least 3 hours' midwinter solar access to the primary internal and outdoor spaces of adjoining dwellings, contrary to **Provision P1** in **Section B3.2.9 Solar access** of North Sydney DCP 2013. Midwinter solar access to living and outdoor areas between 9am and 3pm is reduced to 1 ¾ hours for Unit 11 and 12 of 24 Tryon Road which is a substantial and unreasonable impact.

Solar access to the most affected dwellings are compromised by existing topography, and the proposed additional impacts are not considered reasonable, given that there is reasonable scope to achieve a building which meets the needs of uses on the site with substantially reduced shadow impacts.

The development does not satisfy **Objective O1** of **Section B3.2.9** in North Sydney DCP 2013 which seeks to ensure that dwellings on adjoining and neighbouring sites have reasonable access to sunlight and daylight.

The proposed new building has unacceptable adverse impacts on residential amenity, contrary to **Objective O2** of **Section B3.1.1 General Objectives** in North Sydney DCP 2013. While meeting the requirements of the Panel's deferral, the proposal cannot be supported by the assessing planner.

## LANDSCAPING

The amended application does not require any additional tree removal, which has been assessed to be acceptable in Council's Assessment Report in relation to the original DA. The amended landscape plan incorporates additional plantings adjacent to the northern boundary and amended landscape treatment along the amended driveway.

The amended driveway has necessitated deletion of a previously proposed perimeter tree row along the southern boundary. However, the deletion of these trees does not result in any material adverse impacts on the outlook of units in No.23 Shirley Road, which will maintain existing outlook to Carpenter House.

The amended driveway has been designed to allow for retention of an 8m high NZ Christmas Tree growing in the south-adjointing property at No.23 Shirley Road, adjacent to the common boundary (**Figure 33**). This tree is identified as T35 in the submitted Arboricultural Addendum Report by Rain Tree Consulting dated 6 August 2018. The arborist report finds that the proposed development would have negligible impact on the tree, subject to implementation of the recommended tree protection measures achievable (via **condition**).



## **SUBMITTERS CONCERNS**

The issues raised in the submissions are addressed below.

### **(a) Traffic & parking**

Comment: The proposed parking provision generally complies with Section B10 of North Sydney DCP 2013. The submitted traffic reports account for child care centre operations, existing car spaces, projected staff and visitor demands. The reports are satisfactory to Council's Transport & Traffic Operations Manager, subject to conditions.

Parking demand can be reasonably managed in consideration of the family day care services being by appointment only, peak parking demand for the family care facility will not generally coincide with the peak parking demand for the child care centre. The proposed on-site car park provides opportunity to reduce on-street child care centre parking zone and reallocation of spaces to general parking, subject to approval by North Sydney Traffic Committee. The installation of a roundabout at the intersection of Shirley Road and Telopea Street would also be subject to separate Traffic Committee approval.

The existing driveway location will be retained, as will existing sightlines and separation distance of some 93m to the intersection between Shirley Road and Telopea Street. The existing road network is capable of servicing the increase in traffic associated with the 11-space car park.

The site is public transport accessible for staff and visitors, and a Green Travel Plan (to be approved by Council) would be required to be implemented. The plan would need to include specific and measurable targets for reducing car trips to and from the site, and include resources and mechanisms for implementation, monitoring, review and continual improvement of the travel plan.

### **(b) Character**

Comment: This matter is dealt with in detail in the preceding report. The proposed development is inconsistent with the existing and desired future character for the site.

### **(c) Application of Height Standard**

Comment: This matter is dealt with in detail in the preceding report. The height of the proposed development is excessive on merit, and the impacts arising from the height and siting of the building is considered to be material in the recommendation for refusal.

Whilst the site is not subject to a numerical height standard, the proposal does not meet with the objectives of the height standard and would result in significant and detrimental overshadowing and view impacts.

### **(d) Bulk and scale; Sense of enclosure**

Comment: See comments throughout the preceding report.

**(e) Construction traffic, safety, duration and impacts**

Comment: The child care centre building and play areas are oriented to the northern side boundary, while the new driveway and site access will be along the southern boundary.

Construction traffic management may be dealt with via conditions of any consent. Conditions of consent will require adherence to relevant State government environmental standards and criteria, including in relation to noise and dust suppression.

**(f) Solar access**

Comment: The amended proposal has been considered against the DCP provisions for solar access and the principles established by the Land and Environment Court in *The Benevolent Society v Waverley Council*, which identifies that overshadowing arising out of poor design is not acceptable.

Having regard to the context of the site within a medium density neighbourhood and the steep drop in topography, it is considered that reasonable efforts have been made to reduce the bulk and scale of the building. However, the amended proposal does not allow for at least 3 hours' midwinter solar access to the primary internal and outdoor spaces of adjoining dwellings, contrary to **Provision P1** in **Section B3.2.9 Solar access** of North Sydney DCP 2013. Midwinter solar access to living and outdoor areas between 9am and 3pm is reduced to 1 ¾ hours for Unit 11 and 12 of 24 Tryon Road which is a substantial and unreasonable impact.

Solar access to the most affected dwellings are compromised by existing topography, and the proposed additional impacts are not considered reasonable, given that there is reasonable scope to achieve a building which meets the needs of uses on the site with substantially reduced shadow impacts.

**(g) Bushfire evacuation safety**

Comment: The application can comply with bushfire safety requirements. The Rural Fire Service has provided terms of any approval. The development will not create any impediment to emergency vehicle access to Wollstonecraft peninsula.

**(h) Noise & pollution**

Comment: Windows to nursery rooms will be closed when occupied. The development can comply with relevant noise standards, including for mechanical plant and equipment. Conditions are recommended by Council's Environmental Health Manager. The use of the driveway servicing the basement car park is not likely to result in unreasonable noise impacts. Deliveries and waste collection would be restricted by conditions of any consent.

**(i) Views / outlook**

Comment: The view impacts on the units in No.29B Shirley Road arising from the development continue to be **unsatisfactory** having regard for the devastating impact of the development on private residential views.

The bin store and OSD tank will be screened by a timber batten screen and perimeter landscaping.

**(j) Privacy**

Comment: The offset placement of windows on the side elevation will provide for primary sightlines to the rear and not directly overlook adjoining dwellings. Other side windows are ensuite, highlight and ground floor windows to administration areas with no unreasonable privacy impacts. The lower ground level boardwalk at the rear has been adequately cut back at the corners, and the balcony on Level 3 set back to maintain privacy separation to adjoining dwellings.

**(k) Light spill**

Comment: Windows on the upper levels on the side elevation are offset windows that do not face directly across the side boundaries, or are small ensuite windows. The windows to the ground level administration areas will not cause unreasonable light spill as they are located at ground level, set back from the boundary and screened by vegetation and fencing. The entry arbour will provide for screening so as not give rise to unreasonable glare. Conditions are recommended to regulate outdoor lighting to relevant standards, including driveway and basement lighting.

**(l) Heritage**

Comment: The demolition of ancillary wings and buildings is assessed to be satisfactory and consistent with the hierarchy of significance of structures within the site. Carpenter House will be restored, and its landscaped curtilage, including significant oak tree, retained.

**(m) Tree Impacts & Removal**

Comment: The majority of trees proposed to be removed are assessed to have low landscape value and their removal will be adequately compensated by replacement plantings of local native trees. The landscaped arbour and perimeter plantings will provide adequate privacy screening. The highly significant oak tree adjacent the northern boundary of the site will be retained.

Appropriate construction monitoring of trees to be retained both within the site and on adjoining land can be addressed by conditions of consent. Impacts to the tree on the boundary with No. 23 Shirley Road associated with the proposed driveway design have been specifically addressed in the consulting arborist report.

**(n) Air and light pollution from vehicles**

Comment: Headlights of vehicles will be directed along the proposed driveway parallel to the side boundary and not to any residence. Pollution will be ameliorated by perimeter plantings along the side boundary. Outdoor lighting impacts are addressed by the attached conditions.

**(o) Support for development**

Comment: It is considered that the ongoing operation of the site as a Tresillian health service is in keeping with the current and historical use of the site and there is a clear need for the facility. However, the additional facilities should provide an appropriate response to the site context and constraints.

**(p) Odour from bins**

Comment: The waste storage area has been located away from the side boundary on the northern side of the driveway.

**(q) Child care centre**

Comment: The provision of outdoor space to the child care centre will continue to exceed the minimum requirements for outdoor space. There is no evidence of an oversupply of child care centres in the area.

**(r) Drainage, flooding, erosion**

Comment: The development includes an on-site stormwater detention tank. The concept stormwater management and design is generally satisfactory to Council's Development Engineer.

**(s) Options**

Comment: Heritage-listed Carpenter House is not able to provide for the proposed health care facilities to modern standards, including fire compliance and accessibility. It is not considered feasible to accommodate the proposed health services within Carpenter House.

Relocation of the child care centre to the tennis court is not currently an available option as there is a legal agreement in place (since 2001) between Council and Tresillian to operate a long day care centre for at least 40 children until March 2021. A longer and narrower building which encroaches into the Bush Fire Protection Zone at the rear of the site is not practical and is unlikely to be supported by NSW Rural Fire Service threat analysis for a sensitive land use.

The option of designing a purpose designed facility which provides for the site's existing child care centre as well as future Tresillian services should be developed. A comparison of the marginal cost of additional earthworks as against the benefit of redistributing floor space to the excavated levels (and thus reducing the height and bulk of the building, and associated impacts) has not been undertaken.

## **CONCLUSION**

The development application has been assessed against the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013.

Notification of the original proposal resulted in one-hundred and thirty-one (131) submissions including three (3) submissions in support.

Notification of the amended proposal resulted in one hundred and three (103) further submissions resulting in one hundred and eight-nine (189) unique submissions raising concerns about traffic and parking, construction impacts, solar access, bushfire safety, noise and air pollution, view impacts, privacy, heritage impacts, tree removal, impacts on child care centre, and drainage, flooding and erosion. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

The amended development proposal has reduced impacts to adjoining land, with a reduction in overshadowing impacts to properties in Tryon Avenue. This has been achieved through a reduction

in the overall parapet wall height of the development and an increase in the minimum setback from the southern boundary to 6 metres.

The site is zoned SP2 Infrastructure and provides for health services facilities which would include hospitals, residential aged care facilities or other similar institutional scaled development. However, the height of the proposed facility exceeds a reasonable anticipated building height, is incompatible and is not in harmony with the built form of adjoining properties and is excessive for site, noting considering the substantial fall of land to the south-east and the proximity of adjoining residential development.

The proposed development does not allow for at least 3 hours' midwinter solar access to the primary internal and outdoor spaces of adjoining dwellings. Midwinter solar access to living and outdoor areas between 9am and 3pm is reduced to 1 ¾ hours for Unit 11 and 12 of 24 Tryon Road which is a substantial and unreasonable impact.

View impacts arising from the amended proposal also remain substantial. The view impacts on units at No. 29B Shirley Road arising from the development continue to be devastating and unsatisfactory. Whilst the retention of existing views to properties to the immediate north of the proposed building would not be reasonable in all instances, due to the siting and orientation of adjoining residential flats, the applicant's submission that other reasonable development of the site, including two storey development, would likely result in similar loss of views is not accepted.

It is considered that a more reasonable design could achieve greater view sharing between properties through an alternative building design that is placed closer to Carpenter House and which incorporates the Guthrie Centre child care service within a single purpose designed facility.

It is acknowledged that the amended proposal has addressed the Panel's reasons for deferral. On balance however, the amended proposal would continue to result in significant and adverse impacts on adjoining land. The height form and scale of the building also remains inconsistent with the desired built form anticipated for the site. While the proposal responds to a clear community need, in its current form it does not meet the statutory considerations to protect and mitigate development impacts, and as such is not supported by the assessing planner.

The amended development application is unsatisfactory in the circumstances and is recommended for **refusal** due to the substantial amenity impacts arising from the bulk, height and form of the proposed building.

## **RECOMMENDATION**

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

- A. THAT the Sydney North Planning Panel**, as the consent authority, **refuse** Development Application No. **326/17** for a 5-storey health services facility with lower ground level parking, demolition of ancillary buildings to permit vehicle driveway, earthworks, associated landscaping, and conservation works to Carpenter House, on land described as **25 Shirley Road, Wollstonecraft**, for the following reasons:

1. **The height, form, massing and scale of the proposed new health services building is unsatisfactory.**
  - (a) The proposed **height and bulk** of the new health services building is inappropriate within its context. The proposed rear parapet is unreasonable having regard for the siting of the proposal building and impacts on views and solar access of adjoining properties.
  - (b) The proposal is unsatisfactory with regard to the aims of the North Sydney LEP 2013 expressed at Clause 1.2 (2)(a), (b)(i) & (ii) & (d)(ii) of LEP 2013
  - (c) The proposal is inconsistent with the Objectives for the SP2 (Infrastructure) zone as they relate to the nominated use of the land for *Health Service Facility*. The proposal is inconsistent with zone objective at point 2.
  - (d) The height of the proposed development is inconsistent with the existing and desire future height character for the site and does not satisfy Objectives (a), (b), (c), (e) & (f) under Clause 4.3 (Height of Buildings) of NSLEP 2013.
  - (e) The size of the new building is significantly larger than and inconsistent with surrounding buildings, contrary to **Objective O1** of **Section B3.3.7 Form, massing & scale** in North Sydney DCP 2013.
  
2. **The setbacks of the proposed new health services building are inadequate.**
  - (a) The proposed setbacks do not adequately control the bulk and scale of the new health services building, contrary to **Objective O2** of **Section B3.3.6 Setbacks** in North Sydney DCP 2013.
  - (b) The provision of inadequate setbacks, particularly at the parapet level, results in unacceptable shadow, view and overbearing impacts on adjoining dwellings, contrary to **Objective O4** of **Section B3.3.6** in North Sydney DCP 2013.
  
3. **The proposed new health services building provides for an unsatisfactory response to the site context.**
  - (a) The design of the new health services building does not respond appropriately to the existing **site context**, in particular, characteristic building height within Wollstonecraft peninsula, proximity of adjoining dwellings, and the fall of the land, contrary to **Objective O3** of **Section B3.1.1 Context** and **Objective O1** of **Section B3.3.1** in North Sydney DCP 2013.
  - (b) The new building is **incompatible with adjoining land and the locality**, as the new building is significantly greater in height than surrounding buildings and presents an overbearing bulk and scale to adjoining development.
  - (c) The site is not suitable for the proposed development which is overscaled for the site and its context.
  
4. **The proposed new health services building gives rise to unacceptable impacts on views and outlook from adjoining dwellings.**
  - (a) The proposed new health services building gives rise to devastating impacts on the outlook and views of neighbouring dwellings, as assessed under *Tenacity Consulting v Warringah [2004] NSWLEC 140* and in accordance with **Provision P4** in **Section B3.2.8 Views** of North Sydney DCP 2013.

- (b) The affected dwellings are left with very little by way of outlook which could be reasonably alleviated by a redistribution of useable floor space and massing. The development does not allow for equitable access to views, contrary to **Objective O4** of **Section B3.2.8** in North Sydney DCP 2013.
- (c) The proposed new building has unacceptable adverse impacts on residential amenity, contrary to **Objective O2** of **Section B3.1.1 General Objectives** in North Sydney DCP 2013.

**5. The proposed new health services building gives rise to unacceptable shadow impacts on adjoining dwellings.**

- (a) The proposed new health services building gives rise to severe midwinter shadow impacts on neighbouring dwellings, as assessed under *The Benevolent Society v Waverley Council [2010] NSWLEC 1082*.
- (b) The proposed development does not allow for at least 3 hours' midwinter solar access to the primary internal and outdoor spaces of adjoining dwellings, contrary to **Provision P1** in **Section B3.2.9 Solar access** of North Sydney DCP 2013. Midwinter solar access to living and outdoor areas between 9am and 3pm is reduced to 1 ¾ hours for Unit 11 and 12 of 24 Tryon Road which is a substantial and unreasonable impact.
- (c) Solar access to the most affected dwellings are compromised by existing topography, and the proposed additional impacts are not considered reasonable, given that there is reasonable scope to modulate the massing of the building to reduce the shadow impacts.
- (d) The development does not satisfy **Objective O1** of **Section B3.2.9** in North Sydney DCP 2013 which seeks to ensure that dwellings on adjoining and neighbouring sites have reasonable access to sunlight and daylight.
- (e) The proposed new building has unacceptable adverse impacts on residential amenity, contrary to **Objective O2** of **Section B3.1.1 General Objectives** in North Sydney DCP 2013.

**6. Approval of the development in its current form would be contrary to the public interest.**

- (a) The development is not consistent with the objectives of the controls for non-residential development in residential zones in North Sydney DCP 2013.
- (b) The development does not satisfy built form objectives and provisions in North Sydney DCP 2013.
- (c) The development does not satisfy residential amenity objectives and provisions in North Sydney DCP 2013.