

COUNCIL ASSESSMENT REPORT

Panel Reference	2017SNH074
DA Number	359/17
LGA	North Sydney
Proposed Development	Alterations and additions to hospital including a 2 storey extension to the existing ward block, with two levels of clinical accommodation, an additional building of 2 levels, a landscaped courtyard between the buildings and two lower levels of car parking
Street Address	35 Rocklands Road Wollstonecraft
Applicant/Owner	Keith Lapthorne, St Vincent's Healthcare Ltd
Date of DA lodgement	6 October 2017
Number of Submissions	19 to original plans and 28 to amended plans received 16 May 2018
Recommendation	Deferred Commencement Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	CIV > \$5M - Private infrastructure and community facilities
List of all relevant s4.15(1)(a) matters	<p>North Sydney LEP 2013</p> <ul style="list-style-type: none"> • Zoning – SP2 Infrastructure - Health Care Facility • Item of Heritage – No • In Vicinity of Item of Heritage – Yes • Conservation Area – No <p>SEPP 55 - Contaminated Lands SREP (Sydney Harbour Catchment) 2005</p> <ul style="list-style-type: none"> • North Sydney DCP 2013
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Conditions • Plans • Clause 4.6 request
Report prepared by	Geoff Mossemeneer, Executive Planner, North Sydney Council
Report date	4 September 2018

Summary of s4.15 matters

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

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

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

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

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

EXECUTIVE SUMMARY

DA359/17 was lodged on 6 October 2017 for a 4 storey extension to the existing ward block, with three levels of clinical accommodation and two lower levels of car parking, with a plant room to service the proposed addition. Nineteen submissions were received against the proposal following notification of the application. Council's Design Excellence Panel considered the proposal at its meeting of 12 December 2017 and did not support the proposal. The applicant was advised on 19 December 2017 that Council could not support the proposal on the basis of height, design, view impacts and noise impacts from the carpark and the applicant was invited to withdraw the application. The applicant did not wish to withdraw but agreed to amend the proposal. Amended plans were received on 16 May 2018.

This amended development application is now for alterations and additions to the hospital including a 2 storey extension to the existing ward block, with two levels of clinical accommodation, an additional building of 2 levels, a landscaped courtyard between the buildings and two lower levels of car parking.

The Council's notification of the amended proposal attracted twenty-eight (28) submissions; the concerns raised include: traffic; parking; overshadowing; overlooking; view loss; overdevelopment; breach of height control; site cover; light spillage; noise and need for the facility.

The proposed development has been assessed with respect to the objects and relevant Sections of the EP&A Act, as well as the objectives, merit based outcomes, development standards and prescriptive controls of various State Environmental Planning Policies, the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013.

The applicant has submitted a Clause 4.6 request with regard to the height of the proposal exceeding the current height control of 12m by a maximum of 3.9m. The request is considered to be well founded under the circumstances.

A view assessment revealed that the proposal will block significant views to at least two apartments. The view is blocked by a building that is compliant with the 12m height control. It is unlikely that the same development potential that would meet the needs of the Hospital could be provided with a more skilful design to retain the view.

There are a number of concerns with the proposal that need to be satisfactorily resolved with regard to amenity issues. These concerns can be addressed with a lowering of the parapets of both buildings; additional 2m setback of the Executive building from the northern boundary; additional privacy screening to windows opposite apartment buildings and terrace edges; provision of screening on eastern edge of carpark below the courtyard; light spillage being addressed.

Following assessment of the amended plans, the development application is recommended for a deferred commencement **approval**.

DESCRIPTION OF PROPOSAL

The proposed development works now comprise a 2 storey extension to the existing ward block, with two levels of clinical accommodation, an additional building of 2 levels, a landscaped courtyard between the buildings and two lower levels of car parking, with a plant room to service the proposed addition.

Ground Floor

The proposal includes the extension of the existing car parking area to replace the car parking spaces that will be lost to the new plant rooms on the Lower Ground Floor.

Level 1 - Mater Palliative Care Service

The Mater Palliative Care Service will be located on Level 1 of the proposed 2 storey extension and provide patient accommodation for 10 single bed rooms, as well as a reception area, gymnasium and spa, TV room and lounge area, hairdresser, and dining and day room.

Level 2 - Day Surgery Unit and Ambulatory Care Service

The Mater will extend its existing Day Surgery Unit and establish a new Ambulatory Care Service on Level 2 of the proposed Palliative Care building.

Level 1 - Executive Offices

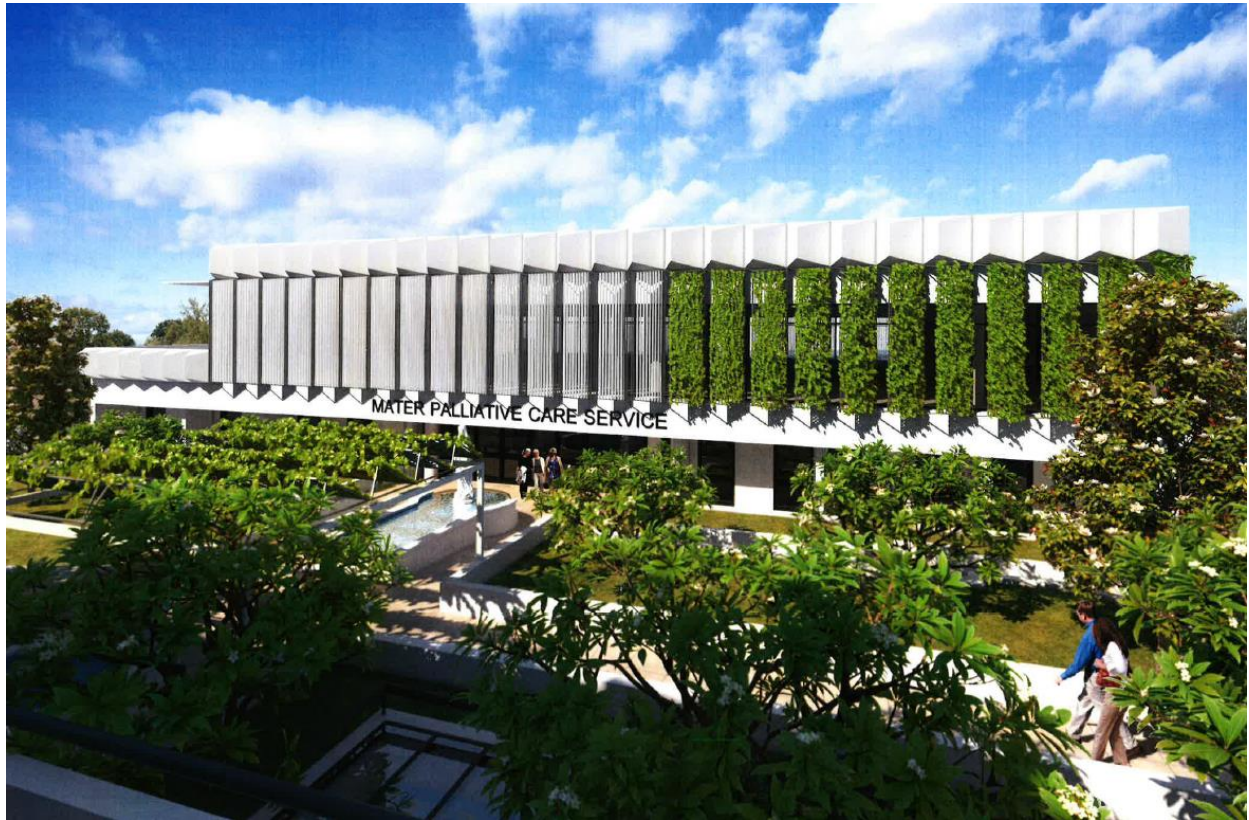
The new building will bridge over the existing carpark and access road and provide offices and meeting areas on its lower level for the Hospital Executive which will be relocated from accommodation in the existing Hospital. This in turn will allow expansion of the existing patient admission and waiting areas on the Ground Floor of the Hospital.

Level 2 - Consulting Suites

The specialist consulting suites, which were previously proposed to be located on the top floor of the Palliative Care building, are now located on the top floor of the Executive building. The suites will be leased exclusively to the specialist consultants required for palliative care including gerontologists, geriatricians, oncologists, neurologists and palliative medicine physicians.



Location of proposed works (coloured)



North Elevation of Mater Palliative Care Service from internal courtyard



South elevation of consulting from internal courtyard

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – SP2 Infrastructure - Health Care Facility
- Item of Heritage - No
- In Vicinity of Item of Heritage - Yes
- Conservation Area - No

Environmental Planning & Assessment Act 1979

SEPP 55 - Contaminated Lands

SREP (2005)

Local Development

POLICY CONTROLS

North Sydney DCP 2013

- Part B Section 3 Non Residential Development in Residential Zones
- Part C Section 10 Wollstonecraft/Waverton Planning Area (Section 10.2 The Upper Slopes)

CONSENT AUTHORITY

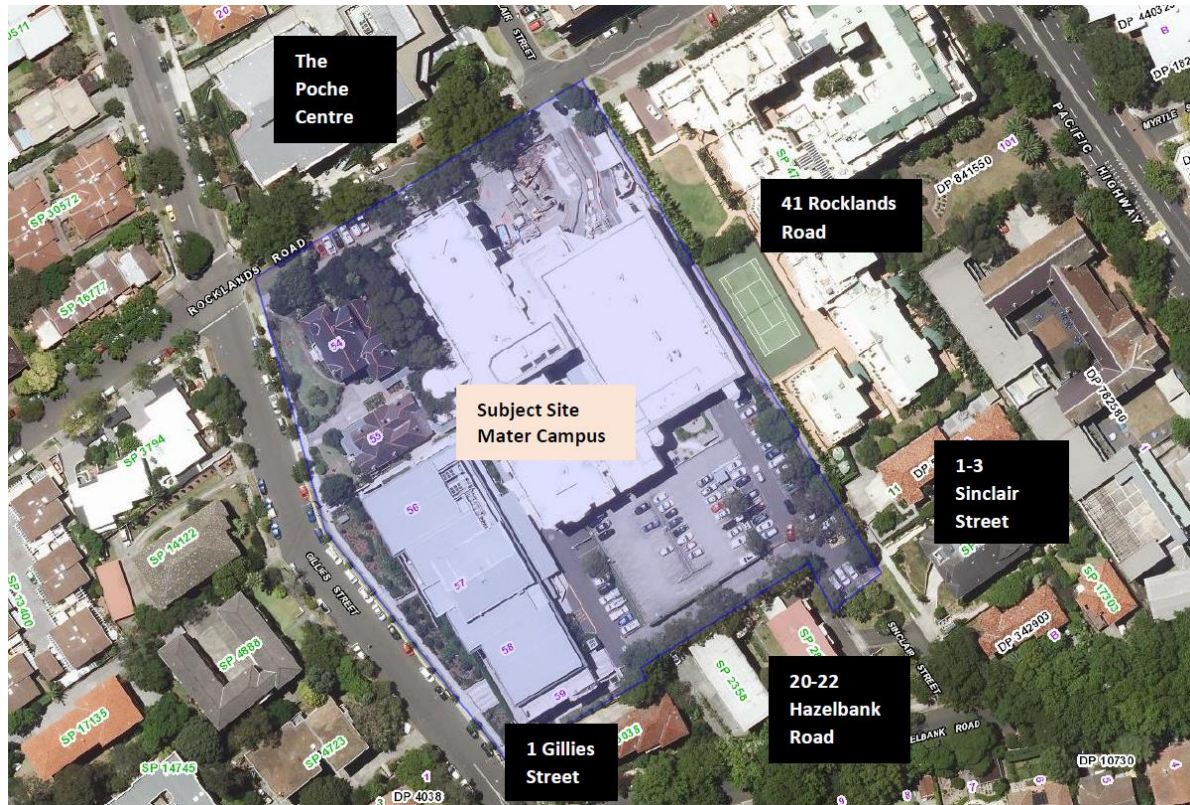
As this proposal has a Capital Investment Value (CIV) of greater than \$5million for private infrastructure and community facilities, the consent authority for the development application is the Sydney North Planning Panel,

DESCRIPTION OF LOCALITY

The subject site is known as the Mater Campus and includes the main hospital building at 35 Rocklands Road, the Mater Clinic at 3-9 Gillies Road, and the properties at 11-13 Gillies Street which also make up part of the site and provide health related services to support the hospital use. The legal description of the subject site is Lots 54-60 in DP 826360. The main hospital building at 35 Rocklands Road, located on lot 60, is the subject of this development application.

The site is adjoined to the west and northwest by hospital and healthcare related uses at No's. 3-9, 11 & 13 Gillies Street, and the Poche Centre at No.40 Rocklands Road. The building at No.13 Gillies Street, known as "Claverton", is heritage listed.

The surrounding streets contain a mix of residential development types, such as residential flat buildings at 41 Rocklands Road, 7-17 Sinclair Street, 20-22 Hazelbank Road, 1 Gillies Street, and 4-8 Gillies Street, with attached and detached dwellings along the southern side of Hazelbank Road and in the streets further to the west and south of the site.



RELEVANT HISTORY

The Mater Hospital is a private hospital established on the current site in 1991.

DA434/03 was approved in January 2004 to convert a lower ground courtyard into a Radiation Oncology treatment room.

DA452/05 was approved in November 2005 for the following works:

- Relocation of the existing administration facilities on the first floor, and provision of a new 15 bed ward within the existing hospital floor space;
- Upgrading of the existing maternity ward on level 3. This upgrade involves the construction of a new wing of 160m², attached to the existing maternity wards and comprising 7 x single bed wards. One existing bed is lost at level 3 with the construction of the new wing;
- Rationalisation of 6 x 4 bed wards on ground level. The rationalisation of existing wards means that the total number of maternity beds remains as existing

DA577/06 was approved in March 2007 for the four storey Mater Clinic at 3-9 Gillies Street.

DA405/12 was approved in March 2014 for a 4 storey addition to the hospital, located at the main entrance over the existing loading docks, to provide for a plant room and 3 new levels of wards, operating theatre and special care nurseries.

DA359/17 was lodged on 6 October 2017 for a 4 storey extension to the existing ward block, with three levels of clinical accommodation and two lower levels of car

parking, with a plant room to service the proposed addition. Nineteen submissions were received against the proposal. Council's Design Excellence Panel considered the proposal at its meeting of 12 December 2017 and did not support the proposal. The applicant was advised on 19 December 2017 that Council could not support the proposal on the basis of height, design, view impacts and noise impacts from the carpark and the applicant was invited to withdraw the application. The applicant did not wish to withdraw but agreed to amend the proposal. Amended plans were received on 16 May 2018.

The amended plans are the subject of this assessment report.

A briefing paper outlining the nature of the application, the submissions received and the issues was considered by Council at its meeting of 27 August 2018. Council resolved:

- 1. **THAT** Council note the proposed Development Application.*
- 2. **THAT** Council acknowledges the valuable commitment of the Mater Hospital to our community and the importance of providing palliative care and the ambulatory service.*
- 3. **THAT** Council acknowledges the hard work of the applicant to work with Council and the community for the best possible outcome.*

REFERRALS

Building

The application has not been assessed specifically in terms of compliance with the National Construction Code of Australia (NCCA). It is intended that if approved, Council's standard condition relating to compliance with the NCCA be imposed and should amendments be necessary to any approved plans to ensure compliance with the NCCA, then a Section 4.55 application to modify the consent may be required.

Traffic

Council's Traffic Manager (M Kemp) provided the following comments in relation to the development application:

I have reviewed the Car Parking Survey prepared by Austraffic dated 26 March 2018. The parking survey indicates a maximum average occupancy of 70% across all the hospital carparks. The main hospital carpark has a maximum occupancy of 94%, however the Poche Centre has a maximum occupancy of 70% and parking demand is lowest between 10.30am -1pm when the demand in the main carpark is highest. Therefore, there is capacity for the increase in parking demand associated with the proposed development to be accommodated within the Poche Centre carpark. To ensure the parking supply is most efficiently used, it is recommended that appropriate signage be installed within the main hospital carpark advising that additional parking is available in the Poche Centre carpark. It is also recommended that a Travel Access Guide be prepared for the hospital to highlight to staff, patients and visitors highlight the alternative transport options available travelling to and from the hospital.

There will be an additional 20 spaces provided on site within two levels of parking below the Executive building. The addition of 10 beds, consulting rooms and day surgery rooms would not significantly increase car movements within the carpark.

The proposal will now cover the parking areas so that noise from vehicles should be less than at present.

Engineering/Stormwater Drainage/Geotechnical

Council's Development Engineer (Z Cvetcovic) assessed the proposed development and advised that the proposed development can be supported subject to imposition of a number of standard and site specific conditions relating to damage bonds, dilapidation reports, construction management plan and stormwater management.

Heritage

The works to 35 Rocklands Road Wollstonecraft have been assessed in terms of Clause 50 (Development in the Vicinity of Heritage Items) of the North Sydney LEP 2001 and Section 8.8 (Heritage Items and Conservation Areas) of the North Sydney DCP 2002.

The proposal is considered to be acceptable. It should be noted that the proposal is not located within a conservation area but is in the vicinity of heritage items. There is no physical impact on any of the heritage items in the vicinity.

Landscaping

Council's Landscape Development Officer has provided the following comments:

The subject site has four Spotted Gums (Corymbia maculata) trees that will require removal as well as one dead tree, none of which has a significant contribution to the presentation of the site. There are large trees on Council's verge on the Rocklands Rd frontage where the existing vehicular entry is located plus small street trees located on the Gillies Rd frontage and a variety of trees and palms on the Sinclair St frontage. On the assumption that the Rocklands Rd entry will be used for construction access, a tree bond is recommended for the Rocklands Rd street trees. The Landscape Plan is generally considered to be satisfactory subject to the resolution of the following by a deferred commencement condition:

- *Screen planting to screen the car parks from the Hazelbank St apartments.*
- *The trellis details for the planting on the privacy screens being provided.*
- *Further clarification of trees to be retained and removed as they are not all shown on the Landscape Plan and the locations are inconsistent between the architectural drawings and the survey drawing.*

DESIGN EXCELLENCE PANEL

The original application was referred to Council's Design Excellence Panel at its meeting of 12 December 2017. The Panel commented:

The Panel's comments are based on achieving design excellence and are unrelated to the economic drivers behind the Mater Hospital's proposal. As such, the Panel recommends that consideration be given to reducing the number and extent of consulting rooms, in order to reduce the height of the proposal.

In terms of achieving orderly and well planned development of the Mater Hospital site, particularly in the context of surrounding high density residential development, the Panel is of the view that a 10 and 20-year comprehensive masterplan is required. A masterplan would provide the community with a level of certainty in terms of future development potential, including built form, car parking, access and address, and avoid ad hoc development occurring when building funds are bequeathed or otherwise obtained. The masterplan should also explore the possible acquisition of adjoining properties in order to facilitate longer term expansion.

Given the new wing's potential visual significance when seen from adjoining places, The Panel considers that the quality of finishes and materiality of the addition are crucial. Because the wing is a discrete element within the complex, the architecture does not have to be the same expression, and should also be of a higher design standard than the existing buildings. The addition can be expressed as a separate wing, creating some diversity and interest.

The Panel is concerned with the impacts of the proposal on adjoining dwellings, particularly in relation to view loss, overshadowing, visual impact, and car park related impacts (noise, fume exhaust and headlights). Impacts on harbour views from No.41 Rocklands Road resulting from non-complying building heights are generally not supported. A reduction in the height and/or extent of the building additions would be likely to reduce the impacts on views and outlook and reduce overshadowing of adjoining dwellings. Additional shadow diagrams depicting the shadows cast by a compliant development compared to the proposed development would be useful.

Dwellings at No.3 Sinclair Street which currently have an outlook over and beyond the carpark would be looking directly at a concrete building.

There is potential for overlooking and privacy impacts from the windows at the ends of corridors.

In relation to the carpark extension, the Panel does not support a reduction in landscaping, particularly where existing trees will be adversely affected or removed. In this respect the existing trees are indicated as being retained on the section but are not retained on plan and the Panel considers that the trees cannot be retained with the current carpark design. It is a concern that car parking structures are becoming such a dominant element of the hospital site, where space for future buildings is already constrained.

The stacked car parking should be reduced in size, allowing the structure to be set further back, to ensure the viability of the existing trees, confirmed by an arborist's advice in relation to the proximity of the carparking structure to the trees.

Conclusion

The Panel does not support the development in its current form. An amended design and additional information that addresses the identified issues should be provided for further consideration.

The applicant was advised of the Panel's concerns and responded to the comments in their amended plans.

The amended plans were discussed at the Design Excellence Panel's meeting of 12 June 2018. The Panel commented:

The Panel commends the applicant for taking into consideration previous comments, which has resulted in a reduction in the number and extent of consulting rooms and a reduction in the height of the proposal.

In terms of achieving orderly and well planned development of the Mater Hospital site, particularly in the context of surrounding high density residential development, the Panel remains of the view that a 10 and 20 year comprehensive masterplan is required. A masterplan would provide the community with a level of certainty in terms of future development potential, including built form, car parking, access and address, and avoid ad hoc development occurring when building funds are bequeathed or otherwise obtained. The masterplan should also explore the possible acquisition of adjoining properties in order to facilitate longer term expansion.

The Panel considers that the proposed building design without the living walls (green walls) should be acceptable aesthetically without reliance on the green wall screening. Consideration should be given to water collection from the roof of the buildings for use on the green walls.

The Panel recommends the use of planter boxes on the trafficable roof terraces in order to prevent overlooking of adjoining residential dwellings.

In relation to the safety of the pedestrian pathway it is recommended that a fence or screen be installed in the edge landscaping. Screening should prevent the transmission of noise and light from the carpark to No.41 Rocklands Road.

The Panel considers that the design of the internal garden could provide more options for small groups with a range of small and medium sized areas. Smaller, more intimate spaces, including seats with backs and less seating along main walkways are recommended. The placement of water features in relation to walkways and seating within the garden should be designed with regard to perceptions of safety from the frail, parents with small children, etc. The garden area could be treated as four rooms.

Conclusion

The Panel is generally supportive of the amended proposal, subject to the identified issues being addressed to Council's satisfaction.

External Referrals

The application was forwarded to Roads and Maritime Services in accordance with Clause 104 of the SEPP (Infrastructure) 2007 for consideration and advice. RMS raised no objection.

SUBMISSIONS

The application (original) was notified to surrounding owners and residents and Wollstonecraft/Edward precincts from 20 October until 3 November 2017. Nineteen (19) submissions were received and are summarised as follows:

- Building too large
- Parking and increased traffic
- Need – area already well provided for with hospitals
- Impact on residential amenity on adjoining units
- Overdevelopment of a constrained site

- Only a few beds created
- Larger carpark proposed than demand created
- Insufficient setback carpark
- Further traffic calming required
- Bulk and scale
- Significant breach of height control
- Noise impact from plant
- Overshadowing
- Impact on views (41 Rocklands & 1 & 3 Sinclair)
- Construction impacts
- Excessive site cover
- Consultant rooms should be deleted as they can be located in mixed use zoning and should not be part of hospital
- Parking inadequate for existing
- Dilapidation reports required for all adjoining sites including opposite in Gillies Street
- Removal of trees
- Amenity impacts from lights in carpark
- Green wall needed due to tree removal
- Need increased landscaping
- Upper level should be setback
- Impact of increased height of carpark
- Need for acoustic screens on edge of carpark
- Should return 4 car spaces on Council land back to local park
- Privacy impacts
- Traffic increase with consulting rooms
- No solar panels shown on plans
- Tandem disabled parking not practical
- Commercial viability not a reason to breach controls and impact neighbours
- Hospital should have a master plan

The applicant was advised on 19 December 2017 that Council could not support the proposal on the basis of height, design, view impacts and noise impacts from the carpark and the applicant was invited to withdraw the application. The applicant chose to amend the proposal and amended plans were received on 16 May 2018.

The amended application was notified to surrounding owners and residents and Wollstonecraft/Edward precincts from 25 May until 8 June 2018. A number of submissions were received after 8 June 2018 and are included in the submissions. Nine submissions were received from the Local Member, Felicity Wilson MP, on behalf of constituents. All of those submissions had already been made to Council. Twenty-eight (28) submissions were received and the concerns raised are summarised as follows:

- Building too large
- Inadequate documentation
- Overlooking
- Parking and increased traffic
- Overdevelopment of a constrained site
- Noise impact from plant room
- Construction impacts
- Privacy impacts
- Breach of height control

- Bulk and scale
- Amenity impacts from lights in carpark
- Hospital should have a master plan
- Path and steps need upgrading
- Should return 4 car spaces on Council land back to local park
- Overshadowing
- Impact on views (41 Rocklands)
- Commercial viability not a reason to breach controls and impact neighbours
- Parking inadequate for existing
- Light spillage
- Excessive site cover
- Need – area already well provided for with hospitals
- Impact on residential amenity on adjoining units
- Further traffic calming required

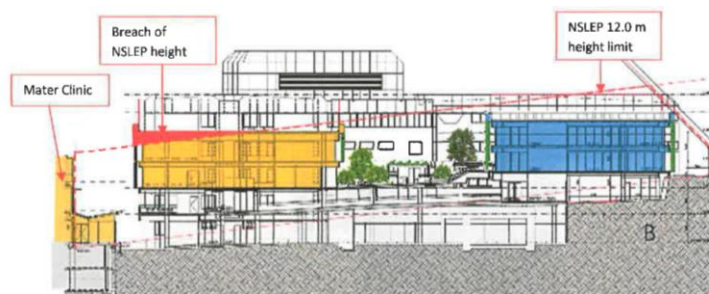
The core of these submissions is similar to those received against the original proposal.

ISSUES

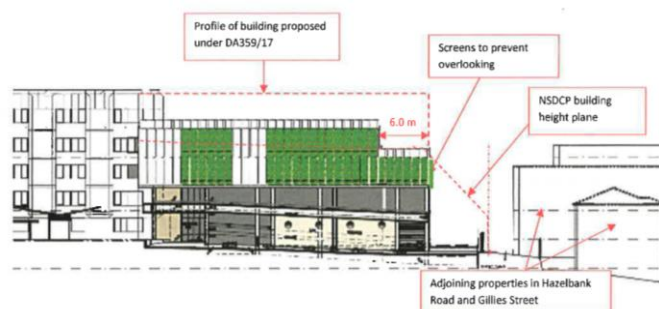
Height Variation and Clause 4.6 Request

The original building proposed in DA 359/17 demonstrated a significant breach in the 12m height control of the current LEP. The current proposal shows the consulting suites removed from Level 3 and relocated into a new building on the northern side of the site which sits within the NSLEP 2013 height control.

It should be noted that even with the removal of a full level there is still a breach of the LEP 12.0m height limit due to the falling terrain.



The top floor of the Palliative Care building has been removed and the setback of Level 2 from the boundary has been increased by an additional 6.0m. Screens have also been added to the East facing windows to prevent overlooking.



A Clause 4.6 request with the amended design has been submitted for assessment (copy attached for the Panel's information).

Impacts on adjacent properties

This includes noise from the Plant room near boundary and any overshadowing. The extent of shadowing has been reduced from the original proposal. Further detailed assessment required to determine the rooms affected and the amount of solar access retained. Conditions could be imposed with regard to any noise impact.

Bulk and Scale

Have regard for scale of surrounding development and separation distances. The height is generally one level below the existing hospital parapet and the height of the walls closest to the neighbours are of similar height of the RFBs that adjoin the site. Although the landscaped courtyard covers the existing carpark and should reduce noise, the courtyard is at a higher level and most neighbours will not get to enjoy it as an outlook. The edges of the structure need to be screened possibly with a landscaped softer edge than indicated on the plans.

Privacy

The assessment must ensure that the window screening facing boundaries is effective. Privacy screening on the terraces is also required. The planters with appropriate plants may be sufficient in they are at least 1500mm high.

View impacts

The proposal is likely to be better than the original proposal but the new 2 storey building closest to 41 Rocklands Road will impact on views from the lower level apartments. A view assessment has been carried out.

Traffic and Parking

There will be an additional 20 spaces provided on site. There has been no objection from Council's Traffic Manager about traffic or parking. The addition of 10 beds, consulting rooms and day surgery rooms would not significantly affect the neighbours with regard to car movements within the carpark.

Master Plan

The applicant acknowledges Council's concern at its failure in the past to lodge a master plan detailing future potential to allow controls for the whole site to be thoroughly considered, developed and supported after Community consultation and confirms its intention to provide a comprehensive master plan. The site is constrained without the acquisition of adjoining properties that will no doubt be expensive because they consist of RFBs. Small internal infills within the site might be possible.

Any significant additions would require a planning proposal to change the controls and further consider the traffic impacts in the surrounding residential area.

The other issues raised by the submitters will be addressed in the assessment report or may be resolved by condition should consent be granted.

CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

NORTH SYDNEY LEP 2013

Permissibility within the zone:

The proposed alterations and additions to the hospital are permissible with consent under the SP2 Infrastructure - Health Care Facility zoning.

Objectives of the zone

The specific objectives of the *SP2 Infrastructure* zone are provided as follows:

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

The proposal satisfies the objectives of the zone.

Clause 4.3 Height of Buildings

The subject site has a maximum permissible building height of 12m pursuant to clause 4.3 of the NSLEP 2013 and the corresponding Height of Buildings (HOB) map. The existing hospital building ranges in height from 17.7m to 23m, including the plant room on the roof. The proposed extensions are below the height of the existing building and generally comply with the 12m height limit for the site except for an exceedance towards the south-eastern parts of the Palliative Care building, due to the sloping nature of the site. The greatest exceedance of the height control by 3.9m occurs along the boundary of the site and the existing Mater Clinic to the South. The Mater Clinic makes up part of the hospital site and therefore the consideration of impacts has been undertaken for the surrounding residential developments only.

A Clause 4.6 request is necessary to consider the variation to the development standard.



Clause 4.4 Floor Space Ratio and Clause 4.5 Calculation of FSR and Site Area

The subject site is not subject to any floor space ratio controls and accordingly the proposal is acceptable in this regard.

Clause 4.6 Exceptions to Development Standards

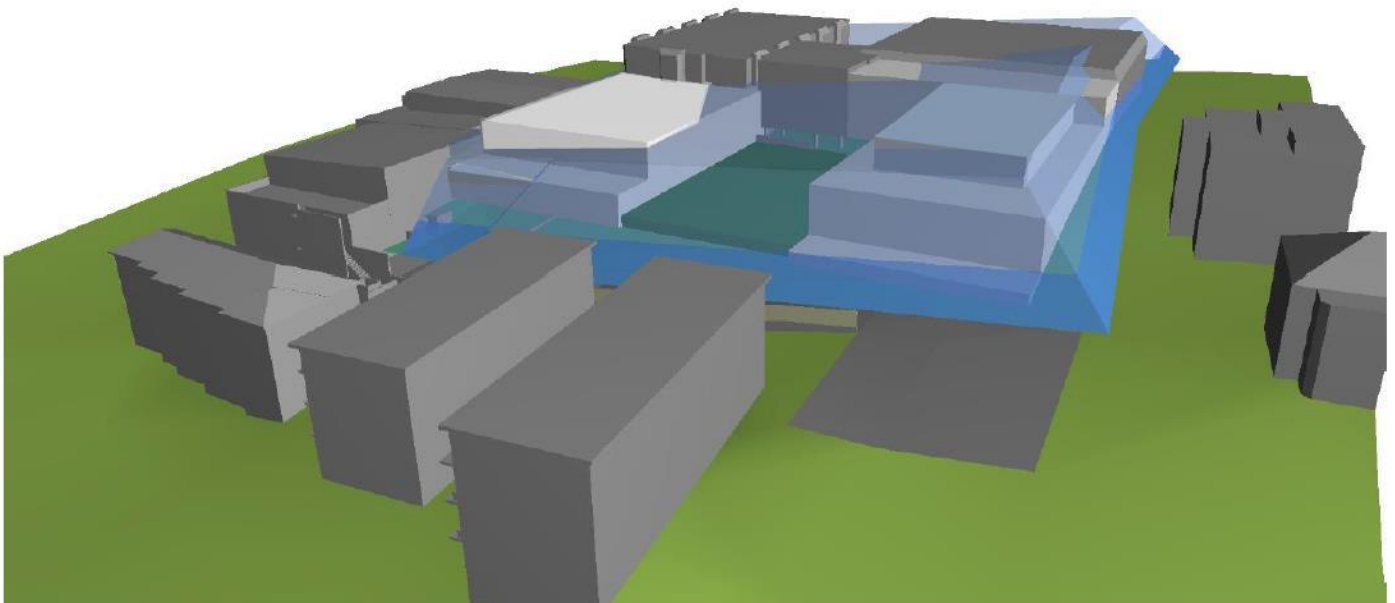
A written request was submitted with the development application in accordance with the provisions of Clause 4.6 - Exceptions to Development Standards of the North Sydney Local Environmental Plan 2013 (NSLEP 2013).

A copy of the request is attached for the Panel's information.

The request seeks a variation to the Height of Building standard, adopted under clause 4.3 of NSLEP 2013.

The Height of Building Map sets a height of 12m for the site.

The extensions to the rear of the main hospital building are proposed to be 2 storeys, which is below the height of the existing building. The height exceedance mainly occurs along the south-eastern corner of the Palliative Care building. Due to the steep decline at this point and the operational medical requirement to match the levels of the existing hospital, the extension will exceed the height limit by a maximum of 3.9 m at the south-eastern corner of the Palliative Care building tapering away to zero at the northern face. The figure below shows the extent of the height exceedance along the eastern boundary of the site.



Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure.

NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

Several key Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which variations to development standards are required to be approached.

WINTEN V NORTH SYDNEY COUNCIL The decision of Justice Lloyd in *Winten v North Sydney Council* established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated.

These principles for assessment and determination of applications to vary development standards are relevant and include:

- Is the planning control in question a development standard;
- What is the underlying object or purpose of the standard;
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act;
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;
- Is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case; and
- Is the objection well founded

WEHBE V PITTWATER [2007] NSW LEC 827. The decision of Justice Preston in *Wehbe V Pittwater [2007] NSW LEC 827* expanded on the findings in *Winten v North Sydney Council* and established the five part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following questions:

- Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives;
- Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary;
- Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that departs from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
- Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.

FOUR2FIVE PTY LTD V ASHFIELD COUNCIL [2015] NSW LEC. More recently in the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an

application under clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater* [2007] NSW LEC 827 and demonstrate the following:

- Compliance with the particular requirements of clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of clause 4.6 the LEP; and
- That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs.

IS THE PLANNING CONTROL IN QUESTION A DEVELOPMENT STANDARD

The planning control in question is clause 4.3 of the NSLEP 2013. Clause 4.3 nominates a maximum Height of Buildings of 12m for the site. The planning control specifies requirements or fixes standards in respect of the development and falls within the definition of a "development standard" such that it is capable of being varied under clause 4.6 of NSLEP 2013.

CONSISTENCY WITH OBJECTIVES OF THE ZONE

The proposed variation to the Height of Building development standard will be in the public interest because it does not prevent the satisfaction of the SP2 - Infrastructure zone objectives.

The SP2 – Infrastructure zone objectives include:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

The land zoning map in the NSLEP 2013 identified the site as SP2 – Health Services Facility, which is defined as *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*. The proposed development complies with the objectives of this zone by providing medical and health related services to the area including: palliative care services, day surgery services, ambulatory services and medical specialist consulting suites.

WHAT IS THE UNDERLYING OBJECTIVE OF THE STANDARD

The proposed development will be in the public interest because it is considered to be consistent with the relevant objectives of the height control.

The objectives of this clause are as follows:

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

- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

These objectives have been assessed and the following observations made:

- (a) The amended plans show that the development has been redesigned to be well below the height of the existing hospital building at 35 Rocklands Road and to better align with the existing pattern of surrounding building heights that conforms to the natural gradient of the land.
- (b) There will be an impact to the views over the hospital campus towards the south due to the proposed addition extending out over the existing carparking area. However, the amended design removes the previously proposed level 3 to ensure that views across the Mater Campus from the north are partly retained for the upper level apartment at 41 Rocklands Road. A reduction in the parapet height by 500mm is recommended to ensure more of the views are retained. Views from the apartments below will be impacted by the building that is closest to the boundary and compliant with the height control. The view from the apartments below could not be retained without a significant loss of floor area. This aspect is discussed in more detail under view impacts.
- (c) A solar access assessment has been undertaken for the revised proposal to determine any impacts to neighbouring properties. During Winter, the principal living areas located in the three blocks of units will receive in excess of the 3 hours of solar access required between the hours of 9:00am and 3:00pm, meeting the solar access requirements prescribed under the DCP. The proposed exceedance of the 12m building height for the south-eastern corner of the proposed buildings would not create any unreasonable additional impact on solar access for the nearest properties or surrounding public domain.
- (d) The closest interface with surrounding residential properties for the Palliative Care building is at the eastern boundary of the site (20 and 22 Hazelbank Road and 1 Gillies Street). The amended proposal has been designed to provide some visual privacy for surrounding residents. Living wall screens have been added to the eastern elevation to soften the appearance of the building and provide a level of privacy to the neighbours from the windows at the ends of the corridors. Further, the proposed building separation, the increased setback to the Ambulatory Care unit on Level 2 and the existing established vegetation along this boundary will assist to limit any potential impact on privacy to the residential developments to the east of the site.
- (e) The nearest building to the east of the site has a setback of approximately 3m from the boundary. There is an existing vehicular access ramp located along the eastern boundary of the site separating the existing hospital carparking area from the surrounding developments. Following consideration of submissions and feedback received from Council the upper level of the Palliative Care building has been setback a further 6m from the boundary of the site reducing the appearance of the development and providing increased separation between the health facility and adjoining residential uses.

- (f) The height and bulk of the proposed development is consistent in size with the surrounding residential flat buildings. The proposed extensions would be in keeping with the character and scale of the other buildings in the surrounding area. There are a number of residential flat buildings with boundaries adjoining the Mater Campus. In addition to these, the Mater Clinic is an existing 4 storey building that runs along the southern boundary of the Mater Campus. The proposed additions to the rear of the existing hospital building at 35 Rocklands Road are well below the height of the existing building and compatible in scale to other developments in the surrounding area. The size, bulk and scale of the amended proposal is considered to be appropriate for the existing character of the area.

IS COMPLIANCE WITH THE DEVELOPMENT STANDARD CONSISTENT WITH THE AIMS OF THE POLICY AND IN PARTICULAR DOES COMPLIANCE WITH THE DEVELOPMENT STANDARD TEND TO HINDER THE ATTAINMENT OF THE OBJECTIVES SPECIFIED IN SECTION 5(A)(i) AND (ii) OF THE EP&A ACT

The aims and objectives of clause 4.6 are as follows:

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

The objects set down in section 5(a)(i) and (ii) are as follows:

"(a) to encourage

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.

(ii) the promotion and co-ordination of the orderly and economic use and development of land..."

The development is generally consistent with the objectives of the EP&A Act, due to:

- The site is located within an established hospital.
- The proposal provides for the orderly and economic use of land.

IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE

Compliance with the development standard is considered unreasonable and unnecessary in the circumstance of the application based on the following:

- The proposal is consistent with the objectives of the development standard.
- The visual impacts associated with the additional height are reasonable.
- The revised proposal substantially increases the amount of landscaping for the site. The underlying structure has been designed to accommodate the varying depths of soil to support in-ground shrubs and medium trees. Living wall screens will be used on the proposed buildings where visual and acoustic privacy is required as well as helping to soften the form and mass of the buildings and settle them into the landscaping. The living walls will also

increase the comfort of the occupants by reducing the heat gain and glare, particularly from the East and West exposures.

IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL

No. The development standard is not a performance based control.

ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

The environmental planning grounds are sufficient to justify the contravening development. These include:

- The proposed height is visually acceptable when viewed from the surrounding locality
- The height is in context with neighbouring sites.
- The overshadowing associated with the height above the 12m standard has a negligible impact on surrounding properties and maintains a compliant level of solar access to residential properties.

IS THERE A PUBLIC BENEFIT OF MAINTAINING THE PLANNING CONTROL STANDARD?

Under Clause 4.6 (5)(b) there must be consideration of the public benefit associated with maintaining the development standard.

There is no public benefit in maintaining the numerical building height development standard in this instance. Maintaining and enforcing the development standard in this case would unreasonably prevent the orderly and economic development of this site for a purpose which benefits the broader community. Some modifications are still considered necessary to the proposal to lower the height that would not result in a loss of floor area.

IS THE OBJECTION WELL FOUNDED?

The proposed variation does not result in any unreasonable or significant adverse environmental impacts. The variation does not affect the redevelopment potential of any adjoining land.

The proposed scale and visual impact of the proposal is acceptable in the locality and provides an appropriate contextual fit. Under the circumstances, the objection is considered well founded.

Heritage

The proposal has been assessed and considered satisfactory on heritage grounds. The large Federation dwelling located at 13 Gillies St is listed as a heritage item and is not in a Conservation Area. No objection is raised to the proposed works, as it is considered that they will have negligible impact upon the heritage significance and curtilage of 13 Gillies St. The existing Mater Hospital building already overscales the dwelling and has removed the suburban context of the dwelling.

SEPP 55 and Contaminated Land Management Issues

The subject site has been considered in light of the Contaminated Lands Management Act and given the extended history on the site being used for a Hospital premises there is unlikely to be any issues of soil contamination arising out of the subject proposal that would require remediation.

SREP (Sydney Harbour Catchment) 2005

The subject site is not within part of North Sydney that is required to be considered pursuant to SREP (Sydney Harbour Catchment) 2005.

DEVELOPMENT CONTROL PLAN 2013

Note, there is no specific section of the DCP which deals with Hospitals or ancillary development within an existing SP2 zoned site. Part B Section 3.0 does make provision for non-conforming uses in SP2 zoned Site (Section 3.1.2).

Section 3.4.4 specifies the controls that apply to developments located on land adjacent to residential zoned land. The subject site is zoned SP2 – Health Services Facility. The surrounding properties that share a boundary with the Mater Campus include:

- 1-3 Sinclair Street;
- 41 Rocklands Road;
- 1 Gillies Street; and
- 20 and 22 Hazelbank Road

These properties are all zoned R4 – High Density Residential and contain existing residential flat buildings.

Therefore, the controls for the R4 zone have been adopted for the purposes of this proposal.

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 3		
	<i>complies</i>	<i>Comments</i>
3.1.1 General Objectives		
O2 does not have adverse impacts on residential amenity or environmental quality; O3 is in context with surrounding development; O4 contributes to the garden setting and lower scale character of North Sydney's Residential neighbourhoods;	Yes	The proposal is not considered to contravene any of the stated objectives of this Section of the DCP. The existing development is no considered to be contextually conforming (O3 and O4) in that the site as existing does not contribute to the garden setting of the surrounding locality. The proposal will have no significant adverse environmental impact nor result in any unacceptable impacts to the majority of adjoining residential properties. There are some impacts that could be improved with further modification to the proposal.

3.2 Environmental criteria		
Topography	Yes	The works will not impact upon the existing landform. The excavation for two levels of parking is restricted to under the existing ground level car park.
Noise	Yes conditioned	The operation is not considered to give rise to additional noise impacts which would unacceptably impact to adjoining residential premises provided appropriate conditions can be imposed with regard to the new plant room. Noise from the car park should be reduced with the car park being covered.
Reflectivity	Yes	All works are within the site with no readily externally visible (to the public street) façade works proposed other than from Sinclair Street. The metal roof is proposed to be colorbond. A condition regarding reflectivity would still be appropriate.
Artificial Illumination	No conditioned	The proposal will alter the current levels of illumination on the site. Spillage of lights from the buildings need to be controlled. Further details and appropriate conditions are required.
Views	No merit assessment	The works will not materially affect views from the public domain but will impact on several apartments at 41 Rocklands Road. See assessment below.
Solar access	Yes	Satisfactory. See detailed comments below.
Visual privacy	Yes conditioned	The proposal will have screens to limit overlooking but further details are required. Additional screening is required on the terrace areas.
3.3 Quality Built Form		
Context	Yes	The works, being located within the site are not considered to materially impact upon the local context.
Streetscape	Yes	The proposed works being located within the site will not affect the streetscape.
Siting	Yes	The works are located adjacent to part of the hospital building in order to provide a direct link at existing floor levels where possible. The Executive building is unable to link directly with the Hospital building due to the levels.
Setbacks	No	The proposed works will generally comply with building setback with a few exceptions. See comments below.
Form, massing & scale	Yes	The proposed works, being located within the site, will not add to the bulk and scale of the hospital. The scale of the buildings is in keeping with the scale of the residential flat buildings adjoining the site.
Entries and Exits	Yes	The proposal does not seek a change to the existing entrances to the site or hospital building (pedestrian and vehicular access will be from the main entry in Rocklands Road.
Colours and materials	Yes	All works associated with this development application being located within the site will have no impact upon the existing Hospital external colours and materials. The colours of the new works are compatible to the hospital colour scheme.
3.4 Quality urban environment		
Accessibility	Yes	The proposal does not seek a change to the access within and/or around the building which is accessible as existing.
Safety and security	Yes	The proposal will make no alteration to the existing security arrangements.
Vehicular Access and Car parking	Yes	There will be an additional 20 spaces provided on site. There has been no objection from Council's Traffic Manager about traffic or parking. The addition of 10 beds, consulting rooms and day surgery rooms would not significantly affect the neighbours with regard to car movements within the carpark
Site Coverage/Landscaped area	No	See detailed comments below
Excavation	Yes	Limited excavation required.
Garbage Storage	Yes	Will use existing garbage facilities of the Hospital
3.5 Efficient use of resources		

Energy efficiency	N/A	<p>The proposal is exempt from the BASIX requirements, pursuant to SEPP (Building Sustainability Index) 2004.</p> <p>There is an opportunity for energy efficient fittings and fixtures throughout.</p>
--------------------------	-----	---

Relevant Planning Area (Waverton/Wollstonecraft Area – The Upper Slopes)

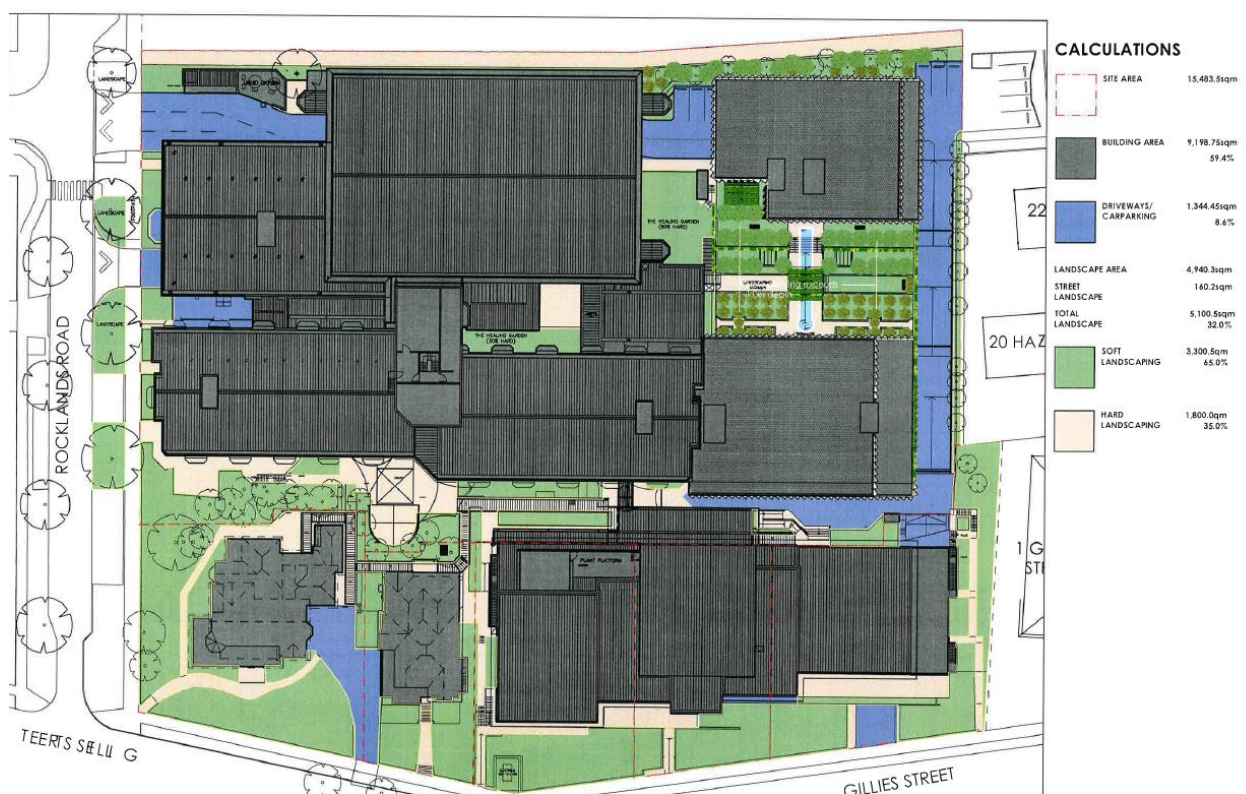
The character statement makes specific mention of the hospital site under Building typology:

Hospital development on the Mater Hospital land or school development on the Bradfield College land is residential in scale, similar to attached dwellings and smaller apartment buildings – with bulk and scale of larger buildings broken down into a number of elements

Site coverage

Section 3.4.4 of the NSDCP 2013 sets out the provisions for site coverage of a development based on the residential zoning and the lot size. For land zoned R4 the maximum site coverage for any development is 45% of the site area, regardless of the lot size.

A Site Analysis Plan has been prepared for the proposal as shown below:



The site analysis shows that 59.4% of the site is covered by building (inclusive of the proposed buildings but not the carpark). The applicant has designated the landscaped courtyard over the parking as soft landscaping. The multi deck carpark where the buildings and landscaping are proposed is defined as site cover. So the

proposal actually increases existing site cover where it covers the current open at ground parking adjacent to the top boundary. The increase in site cover is 370m² or 2.3%. If the consulting building (top adjacent to boundary) was moved completely over the existing multi level carpark, there would no increase in site cover.

The result would be a significantly decreased landscaped courtyard and no benefit other than increased setback to 41 Rocklands Road. The benefit of the landscaped courtyard is to provide a peaceful outlook, solar access and a meeting place for those patients in palliative care. On balance, there would be more merit in allowing the increase in site cover to increase the landscaping on the site. The space between the buildings is also considered beneficial with regard to outlook and shadow impacts for the Hazelbank Road buildings.

The DCP control is for non residential development within residential zones, for uses that are permissible. Hospitals are no longer permissible in the R4 zone and that is why the subject site is zoned SP2 Infrastructure - Health Care Facility. The intent of Section 3 of the DCP is to provide guidance to applicants for the development of non-residential development in residential zones such that the impacts on residential amenity is minimised. To strictly enforce the controls does not necessarily result in the better outcome. If the only benefit is increased setback, this could still be achieved to a lesser extent if the setback or separation with 41 Rocklands Road is an amenity concern.

Landscaped Area

Sections 3.4.5 and 3.4.7 of the NSDCP 2013 set provisions regarding the amount of landscaped area required for a property and provisions for the design of landscaped areas. A minimum landscaped area of 40% is required for the site. Existing landscaped area is well under.

Landscaping will be constructed over the existing carpark area, providing a vegetated courtyard space for the palliative care patients and visitors. The proposed landscaping will be in addition to the existing landscaping onsite. Additional trees are also to be provided along the top boundary (next to 41 Rocklands Road) with the retention of the existing trees. Although the landscaping is over the carpark it will contribute to the landscape setting and provide amenity. With the new landscaped courtyard, the total landscaped space would be increased to 32%.

Solar Access

Council controls require a minimum of 3 hours of solar access for adjoining residential properties, during the winter solstice (21 June) between the hours of 9am and 3pm to:

- a) any solar panels;
- b) the windows of main internal living areas;
- c) principal private open space areas; and
- d) any communal open space areas.

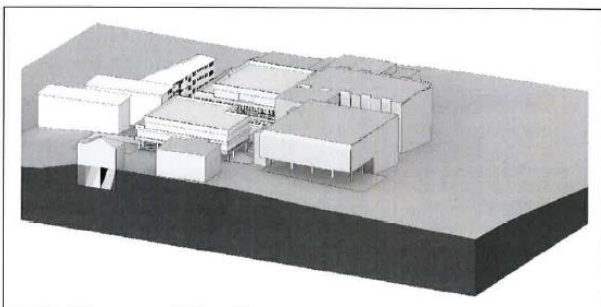
It also requires that living rooms and private open spaces for at least 70% of any adjacent dwellings within a residential flat building or shoptop housing should receive

a minimum of 2 hours of solar access between the hours of 9am and 3pm at the winter solstice (21st June).

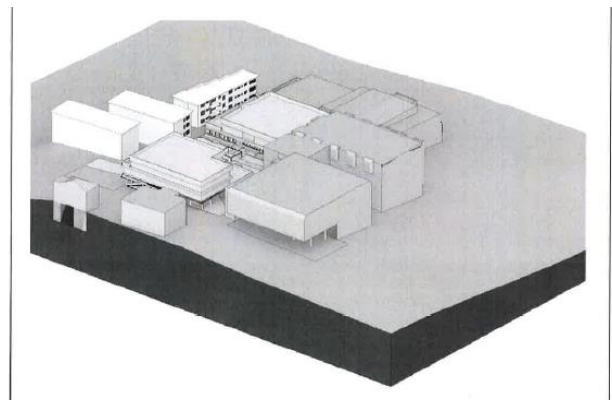
The site has a west-east orientation with west being the site frontage to Rocklands Road. To the west of the site on the opposite side of Rocklands Road is the multi-storey heritage listed building at 7-17 Sinclair Street and to the north of the site is an existing residential flat building at 41 Rocklands Road.

To the south of the existing hospital building is the Mater Clinic which forms part of the Mater Campus and to the east of the site are the 4 storey residential flat buildings at 20 and 22 Hazelbank Road and 1 Gillies Street. Two of the blocks are oriented with the principal living areas facing north and south. The western elevations, which face the boundary shared with the Mater, are either blank or contain service rooms which are partly shaded by existing trees. The third residential flat building, 1 Gillies Street, partly overlaps the subject boundary and the boundary with the Mater Clinic. The principal living areas face east towards Hazelbank Road, with bedrooms and some balconies facing west. The windows to the western façade are mostly obscured by existing trees.

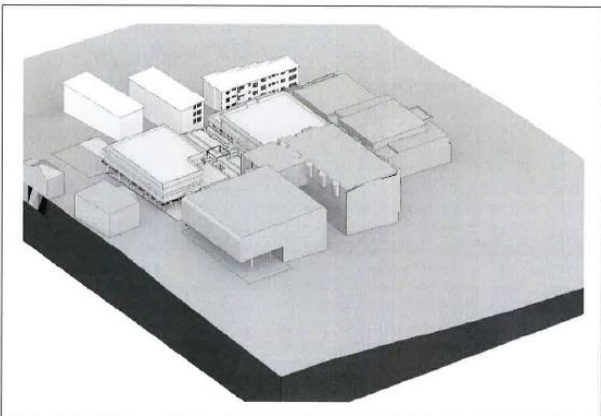
During winter, the principal living areas located on the northern side of the units will receive in excess of 3 hours of direct sunlight during the morning and early afternoon and will only start to become overshadowed during the mid-afternoon. The requirement for 3 hours of solar access between the hours of 9am and 3pm will be exceeded as can be seen in the solar and shadow diagrams. The living areas facing east currently do not receive sunlight until 2pm.



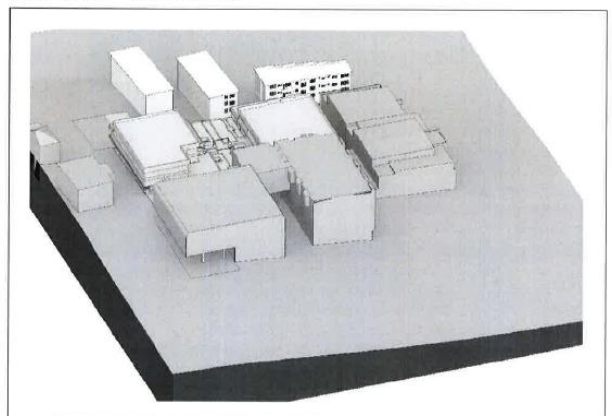
9.00am - 21st JUNE



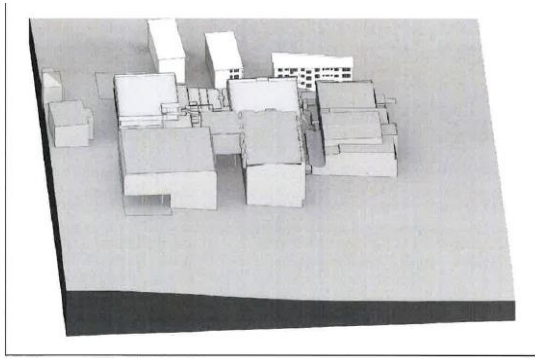
10.00am - 21st JUNE



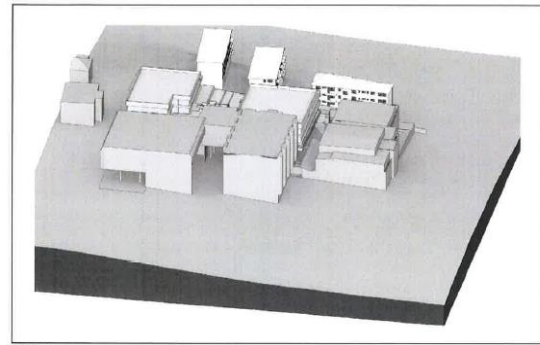
11.00am - 21st JUNE



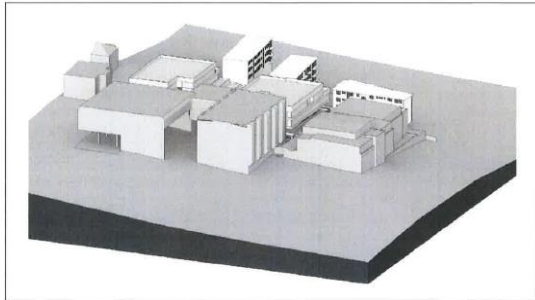
12.00noon - 21st JUNE



1.00pm - 21st JUNE



2.00pm - 21st JUNE

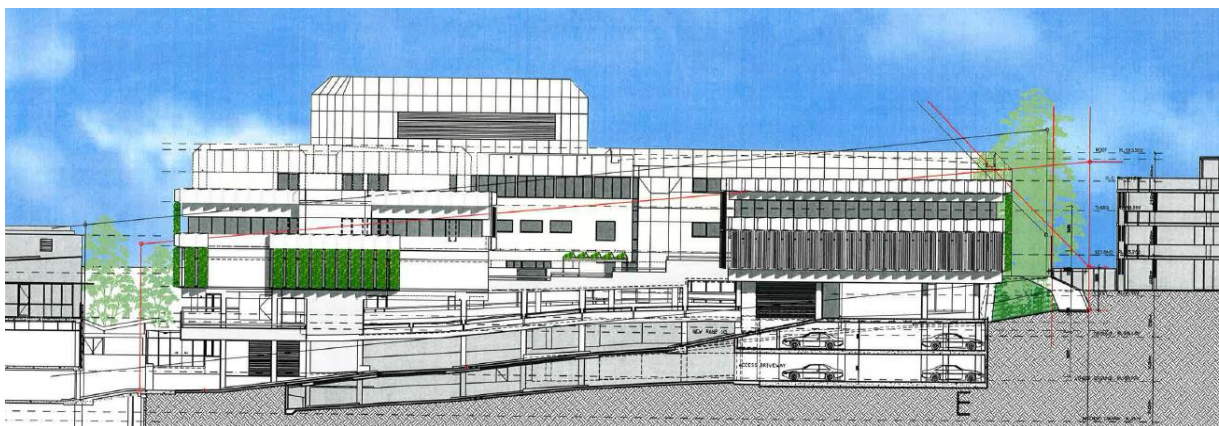


3.00pm - 21st JUNE

View Sharing

The proposed addition is located at the rear of the existing hospital building and would not be visible from Rocklands Road. The extension would also not be visible from Gillies Street at street level as it is proposed to sit wholly behind the existing Mater Clinic. The Executive building will be visible from the Sinclair Street closure.

The two upper levels of the residential flat building at 41 Rocklands Road enjoy distant views of the Parramatta River and Iron Cove bridge across the Hospital site. Submissions have been received from the owners of these apartments with regard to loss of these views. Unit 162 is on the upper level and units 160 and 161 on the level below.



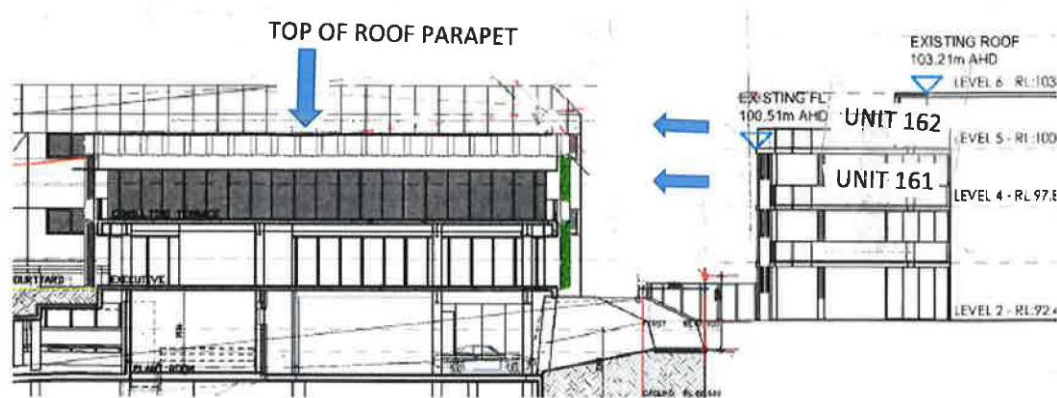


Photo showing unit 160 balcony and terrace of unit 162 (unit 161 behind tree)

Units 160 and 161 has a floor level of RL97.8 with a person standing at eye level of 1.6m the line of sight would be RL99.4.

Unit 162 has a floor level of RL100.51 with a person standing at eye level of 1.6m the line of sight would be RL102.11.

The top of the roof parapet for the Executive building is RL101.15. The top of the roof parapet for the Palliative Care building is RL99.6.

The RLs of the Mater Clinic roof and Hospital building windows were established from survey and Council files to determine what height the Palliative Care building and Executive building would need to be to retain the water and bridge view from the two units.

The upper roof height of the Mater Clinic is RL96 and the window sill on the hospital is RL99.3.

The estimated height of the Palliative Care building for units 160 and 161 to just retain the views would be RL98 and RL99.1 for unit 162. The estimated height of the Executive building for units 160 and 161 to just retain the views would be RL98.9 and RL100.9 for unit 162.



Photo provided by owner of unit 161/41 Rocklands Road showing Iron Cove Bridge view. Confirmed by site visit.



Photo taken by Council planner from unit 162/41 Rocklands Road showing Iron Cove Bridge view.

The 4 step procedure in consideration of view sharing in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* ("Tenacity") is to be applied in assessing whether the breach of the height control is acceptable. The 4 steps from Tenacity are reproduced as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible, is more valuable than one in which it is obscure.

Comment: The views from the three balconies are restricted due to the existing Hospital building. The view to the south west just below the horizon is of the Iron Cove Bridge and Birkenhead Marina. It would be described as a valued water view showing the interface between land and water. It would not be described as iconic.

The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment: The views are from the balconies/terrace directly off the living areas and are taken from a standing position. The views are across the side boundaries of the Hospital site.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment: The view from unit 162 is likely to be affected by the proposed buildings by taking out the lower part of the water view and tree canopies. This would be a moderate view loss.

The view from unit 160 and 161 would be completely blocked by the Executive building as the parapet height is 1.75m higher than the viewing line of sight. This would be a severe to devastating view loss. The outlook would be replaced with a long wall within 10m of the balcony with landscaping in front.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would

probably be considered acceptable and the view sharing reasonable.

Comment: The impact on view loss for unit 162 is caused by the Palliative Care building more than the Executive building. It is noted that the parapet of the building is 800mm higher than the roof height and it would be possible to reduce the height of the parapet by 500mm which would reduce the amount of view loss and probably retain the majority of the water view. The parapets on both building should be lowered.

It is not so easy with the units below. The Executive building that is blocking the view complies with the 12m height control. This building also blocks views across the site from other apartments behind the tennis court on a similar level to 160 and 161.

The proposed buildings are to be built over existing car parking and adjacent to existing buildings to provide the necessary linkage and access to the Hospital. A major part of the design relates to providing the landscaped courtyard to provide a pleasant place and outlook for Palliative Care patients. If the whole of the upper level of the Executive building was to be removed, the Palliative Care building would still have to be lowered a further 1100mm (after the parapet was lowered). It would not be reasonable for the two upper levels of the development to be removed to retain the view of two properties. The same development potential that meets the needs of the Hospital is unlikely to be provided with a more skilful design to retain the view. The available area for building on the Hospital site is already constrained.

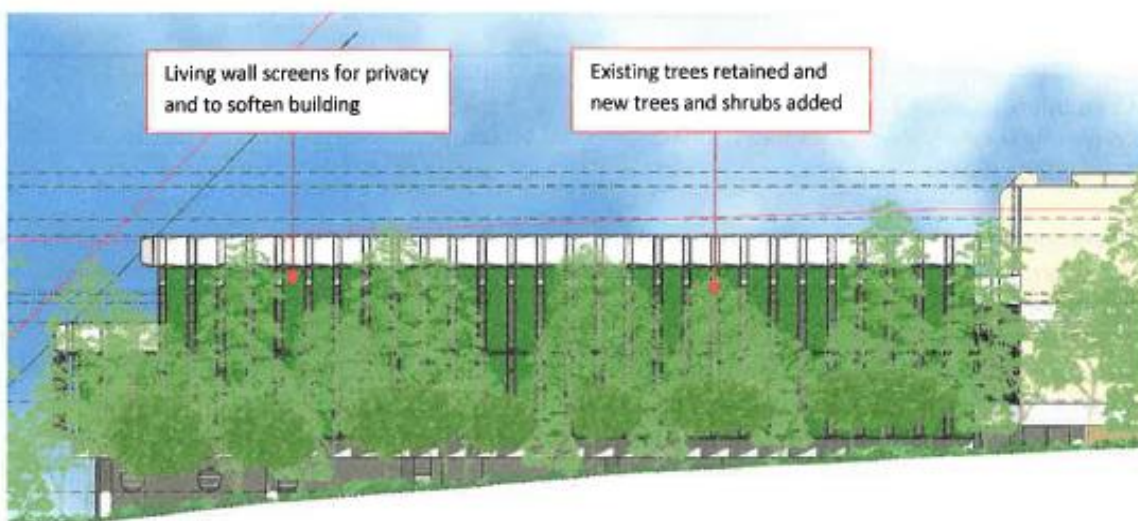
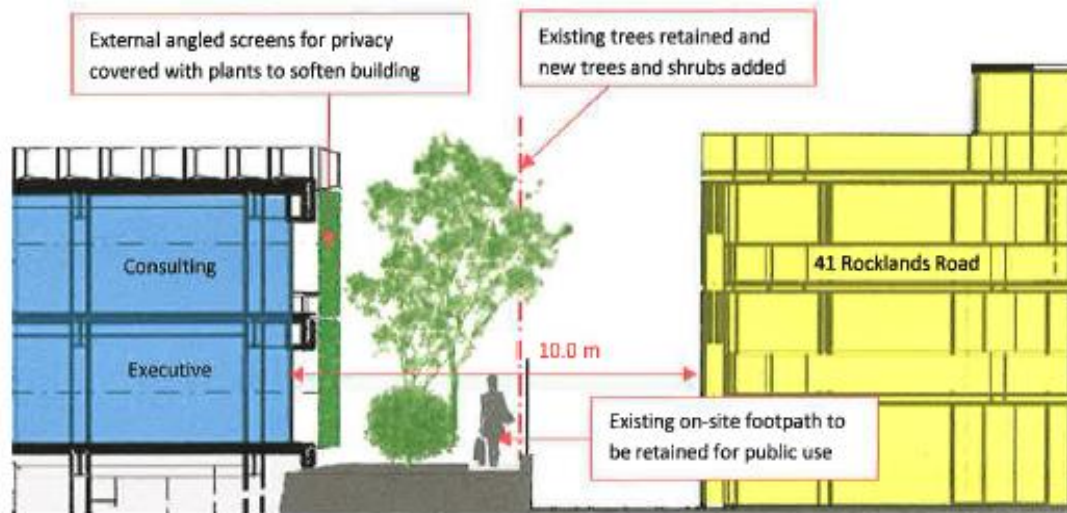
To lessen the impact of the scale of the building and amenity impacts on the neighbours at 41 Rocklands Road, the separation distance could be increased but this would not retain the view from the lower level units.

Visual Privacy

The residential flat building at 41 Rocklands Road enjoys an elevated position compared to the Hospital site. There is also landscaping and established trees along the boundary of the two sites.

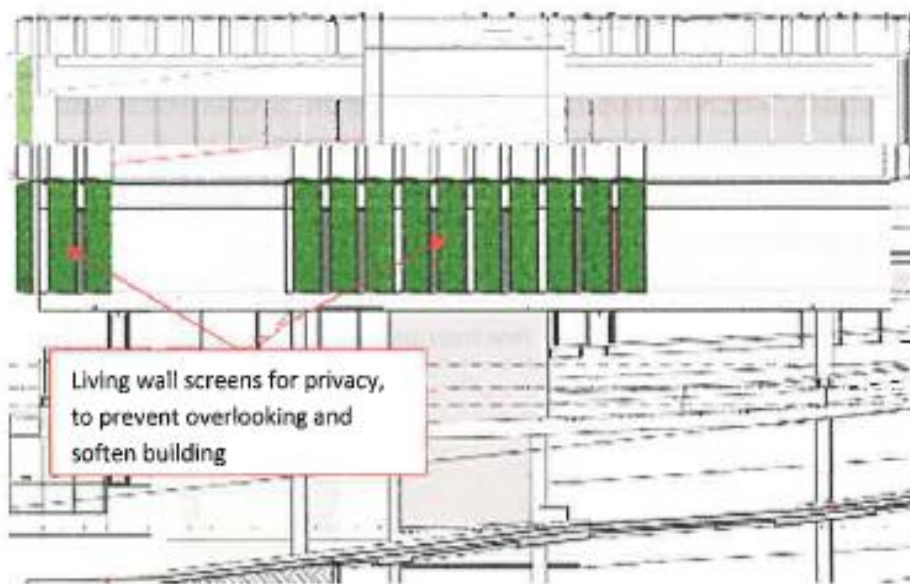
The amended DA locates consulting suites and residential apartments opposite each other on the northern boundary. The physical separation of 10.0m is much less than the separation of the buildings to the Hazelbank Road flat buildings.

Although there is an existing screen of trees and shrubs (with additional planting proposed), there will still be a potential for overlooking between residential and the consulting areas. To address the privacy of patients undergoing consultations all windows will be screened with angled screens covered with plants which also act as sun-control and provide a softened external appearance to the building.

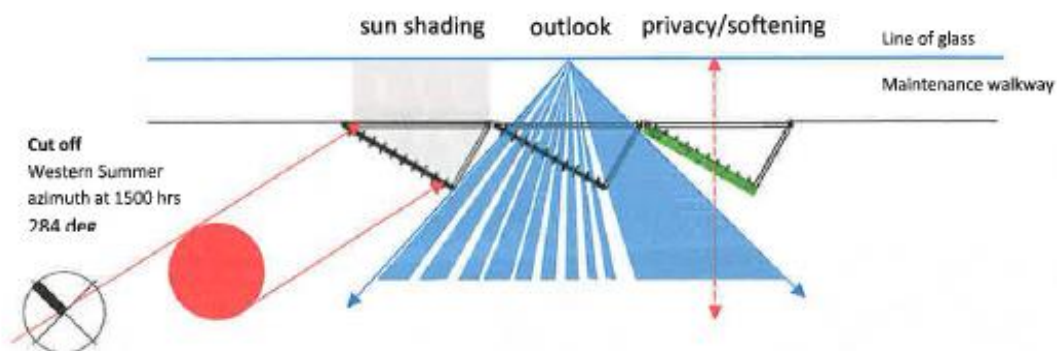


The neighbouring buildings at 20 and 22 Hazelbank Road currently contain 2 residential unit blocks that are oriented with the principal living areas facing north and south. The western elevations, which face the boundary shared with the Mater Campus are either blank or contain service rooms (including kitchens) which are partly obscured by existing trees. Similarly, the preservation of privacy into the Palliative Care area on Level 1 and the overlooking of neighbouring living areas on the eastern boundary has been addressed by using screening,

Living wall screens have been added to the eastern elevation to soften the building and to address privacy to the neighbours from the windows at the ends of the corridors.



The screens are simple versatile elements used for sun shading, privacy, softening of the building form and to impart visual interest and energy conservation.



The proposed screens do not provide sufficient privacy for the adjoining neighbours. There should be additional screening incorporated (possibly more overlapping of the panels or solid wall instead of glass wall) to ensure that there is no overlooking where windows are directly opposite the apartments. The terrace balustrades also require detail of screening at least to a height of 1.6m above floor level. The proposed screens also do not address the problem of light spillage from the buildings where they face the neighbours. Details of window treatment/blinds that can be guaranteed to be closed at night need to be provided to resolve this concern.

Bulk and scale

The height is generally one level below the existing hospital parapet and the height of the buildings closest to the neighbours are of similar height of the RFBs that adjoin the site. While the proposed height of the Palliative Care building does exceed the maximum building height for the site of 12m, it is consistent with the height of the existing hospital building and those of surrounding developments. The impact of the scale of the wall of the Executive building closest to the 41 Rocklands Road apartments could be improved with greater separation. The building could be setback

an additional 2m from the boundary. This increased separation will lessen the impacts on the neighbours and allow the existing and proposed landscaping along the boundary to provide a better buffer and screen. The building as proposed will be too close to the landscaping along the boundary and needs the additional setback to allow canopy trees to grow.



Existing landscaping will require extensive lopping to accommodate buildings

Setbacks

The proposed extension will be located to the rear of the site generally over the existing carparking area and therefore does not have a public street frontage.

Under Council's DCP, for buildings within the R4 High Density Residential Zone and where the land is restricted by a height limit of 12m or less, the building must not exceed a building height plane commencing at 3.5m above ground level (existing) from the rear boundary and projected at an angle of 45 degrees internally to the site.

The Executive building complies with the setbacks from the northern boundary but breaches the height plane from the eastern boundary by up to 1m (due to the slope of the site along the vehicle ramp) for a small section at the southern end.

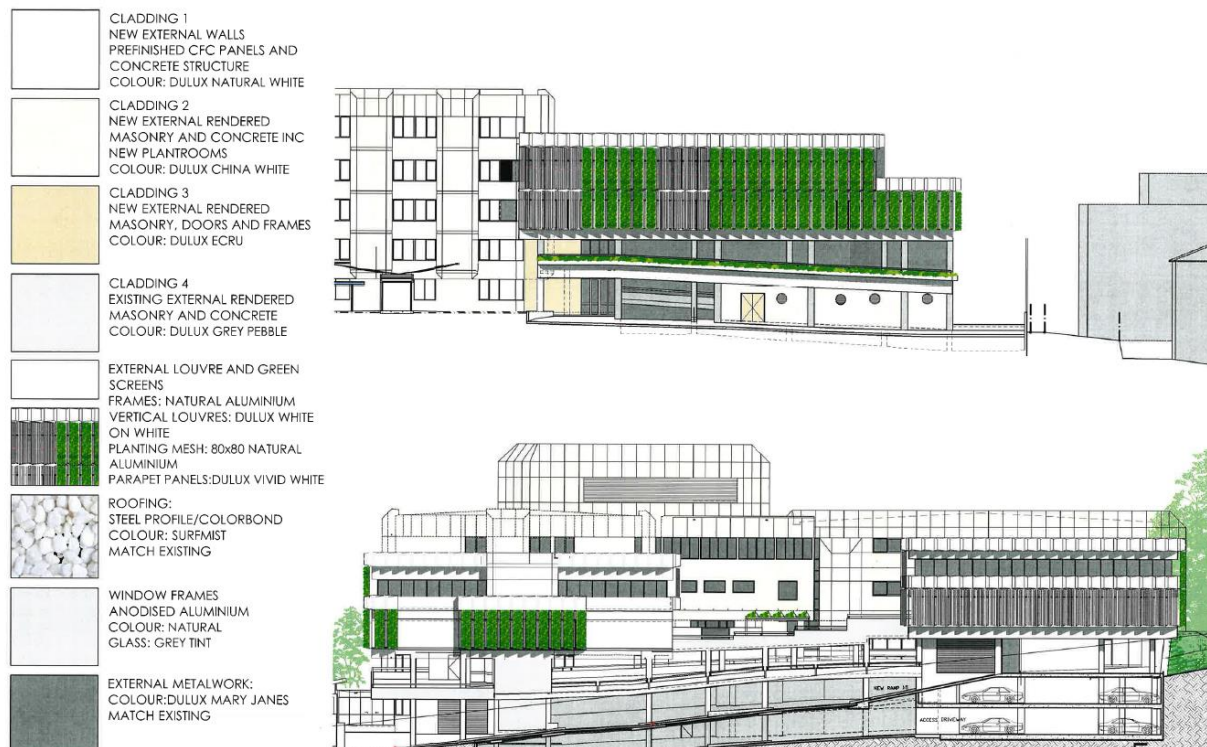
The Palliative Care building generally complies other than a 500mm breach at the terrace balustrade for a small section at the southern end.

Although the Executive building numerically complies with the setback. The impact of the building on the amenity of nearby residents and the landscape buffer warrants additional setbacks. It can be a decision for the applicant to decide whether to move

the whole building towards the Palliative Care building or reduce the floor space of the building.

Colours and Materials

Materials and colours have been designed to be in keeping with the existing buildings onsite. The proposed building design without the living walls (green walls) should be acceptable aesthetically without reliance on the green wall screening. The efficiency of the screens with regard to privacy with or without the green walls needs to be demonstrated further.



Vehicular access and carparking

There are no proposed changes to the existing vehicular access to the site, including the current driveway and pedestrian access.

There will be an additional 20 spaces provided on site excavated below the Executive building. There has been no objection from Council's Traffic Manager about traffic or parking. There have been many submissions about Hospital traffic and parking. Traffic calming measures were introduced with previous major upgrades to the Hospital. A parking study has demonstrated that there is existing parking capacity within the site. The additional parking is adequate to cater for the additional facilities proposed. The addition of 10 beds, consulting rooms and day surgery rooms would not significantly increase car movements within the carpark. The open rear carpark will now be covered and this will lessen the impacts on neighbours.

Acoustic impacts

The NSDCP 2013 sets noise emission limits (LAeq,1hour) to maintain acoustic amenity for urban and suburban areas based upon the recommendations of the NSW Industrial Noise Policy. An assessment of the noise impact was undertaken by Wilkinson Murray with the original design and found that noise levels are predicted to meet the project specific design limits at all residences under the preliminary mechanical design. This can be conditioned with a reasonable expectation of compliance.

Noise levels from carpark activities (use of open vehicle ramp) are predicted to be similar in level and frequency to those produced by the current hospital operations. Construction of the proposed buildings is anticipated to take between 12 months to 15 months to complete. A Construction Noise Management Plan will be required prior to issue of the Construction Certificate, at which stage, a detailed works schedule should be available.

S.4.15(1)(a)(iia) Provisions of any Planning Agreement or Draft Planning Agreement

Council is not aware of any relevant planning agreement or draft planning agreement.

S.4.55(1)(a)(iv) Matters Prescribed by the Regulation

Council is not aware of any prescribed matter under the EPA Regulation that has not already been covered within the body of this report.

S.79C(1)(b) Likely Impacts of the Development

Views

As discussed above there will be impacts to the views currently enjoyed by the upper levels of residents of the residential flat building at 41 Rocklands Road. A reduction in the height of the roof parapet would lessen the impact on the upper level apartment. The views of the Parramatta River and Iron Cove Bridge will be blocked by the upper levels of both buildings from the lower level apartments. It would not be reasonable for the two upper levels of the development to be removed to retain the view of a few. It is unlikely that the same development potential that would meet the needs of the Hospital could be provided with a more skilful design to retain the view.

Solar

The solar and shadow analysis indicates that the living areas of the neighbouring buildings will enjoy sunlight in excess of the minimum three hours between 9am and 3pm as required by the NSDCP 2013.

Social and Economic Impact

No adverse social or economic impacts have been identified that could warrant a refusal of the application.

There is no doubt about the need for the Palliative Care facility for the Hospital and the community. The additional demand for more day only surgery and procedures

within the Hospital is to be addressed with the provision of a new Ambulatory Care Service on Level 2 of the proposed Palliative Care building.

Offices and meeting areas proposed on the lower level of the Executive building for the Hospital Executive are to be relocated from accommodation in the existing Hospital. This in turn will allow expansion of the existing patient admission and waiting areas on the Ground Floor of the Hospital. The specialist consulting suites on level 1 will be leased exclusively to the specialist consultants required for palliative care including gerontologists, geriatricians, oncologists, neurologists and palliative medicine physicians.

The proposal is providing a public benefit to the community whether the Hospital is private or public.

Natural hazards

Council's maps do not identify the site as being bush fire prone. No other natural hazard has been identified.

S.4.15(1)(c) Suitability of the Site to the Proposed Development

Having regard to the characteristics of the site and its location, the proposed development, is considered appropriate in that:

- the proposal is consistent with the relevant zone objectives;
- the scale and form of the building is compatible with the surrounding development;
- the proposal will not result in any significant impacts to adjoining and nearby properties in terms of privacy, view loss, overshadowing and visual impacts that would warrant rejection of the application (subject to further modification);
- the proposed development will provide for improved health care services to the community.

S.4.15(1)(d) Public Submissions

The issues raised by the submitters have generally been addressed in the assessment report or may be resolved by condition should consent be granted.

S.4.15(1)(e) The Public Interest

The proposal will improve the function of the site by providing a broad range of health services, including Palliative Care Services, Day Surgery, Ambulatory Services and access to a range of specialist consultants. The proposal is considered to be in the Public Interest.

SECTION 7.11 CONTRIBUTIONS

Medical Centres require payment of a Section 7.11 contribution, however, hospitals are exempt under Council's Contribution Plan.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	Yes
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

CONCLUSION AND REASONS FOR RECOMMENDATION

The development application has been assessed against all applicable environmental planning instruments and was found to be generally satisfactory, including the North Sydney LEP 2013 and North Sydney DCP 2013.

The amended application was referred to Council's Design Excellence Panel for comment and there was support for the proposal by the DEP. The concerns raised with the original proposal were addressed by the applicant with the amended plans.

The assessment has taken into account community views and addresses the concerns raised in submissions. The proposal will not result in any unreasonable adverse effect on the local built and natural environment and will not result in any unreasonable adverse social or economic impact.

The proposal would promote the orderly and economic use and development of land and its approval is in the public interest.

There are a number of concerns with the proposal that need to be satisfactorily resolved with regard to amenity issues. These concerns can be addressed with a lowering of the parapets of both buildings; additional 2m setback of the Executive building from the northern boundary; additional privacy screening to windows

opposite apartment buildings and terrace edges; provision of screening on eastern edge of carpark below the courtyard; and details of window treatment/blinds that can control light spillage opposite apartment buildings.

Having regard to the provisions of Section 4.15 of the EP&A Act 1979 the application is considered to be satisfactory and is recommended for a deferred commencement **approval**.

RECOMMENDATION

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

THAT the Sydney North Planning Panel, as the consent authority, assume the concurrence of the Secretary of the Department of Planning and invoke the provisions of Clause 4.6 with regard to the exception to the development standard for height and grant deferred commencement consent to 2017SNH074 – North Sydney - Development Application No.359/17 subject to the following deferred commencement condition and the attached conditions.

AA. Deferred Commencement Condition

This consent shall not operate until the following deferred commencement condition has been satisfied.

The applicant must satisfy Council as to the matters specified in the deferred commencement condition within 5 years of the date of the grant of this consent.

If the applicant fails to satisfy Council as to the matters specified in the deferred commencement condition within 5 years of the date of the grant of this consent this consent will lapse in accordance with Section 95(6) of the Environmental Planning and Assessment Act 1979.

NOTE: Consideration should be given to providing the evidence to Council to allow sufficient time to consider the same and form a view as to whether the deferred commencement conditions are satisfied or not. You are also advised of your appeal rights under clause 95(6) of the Environmental Planning and Assessment Regulation 2000, which provides that:

If the consent authority has not notified the applicant within the period of 28 days after the applicant's evidence is produced to it, the consent authority is, for the purposes only of section 8.7 of the Act, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.

Amended Plans

AA1. Amended architectural plans shall be prepared and submitted for the approval of the Manager of Development Services containing the following changes:

- i. Lowering of the parapets of both buildings by 500mm so that the maximum height of the northern (Executive) building is RL100.65 and the maximum height of the southern (Palliative Care) building is RL99.1;

- ii. The northern (Executive) building being setback an additional 2m setback from the northern boundary;
- iii. additional privacy screening being provided to all windows opposite apartment buildings and along the terrace edges;
- iv. provision of screening (planting and/or architectural panels) on the eastern edge of the carpark below the courtyard;
- v. details of window treatment/blinds that can control light spillage from both buildings where they are opposite apartment buildings;

Amended landscape plan shall be prepared and further detailed to the satisfaction of Council's Landscape Development Officer as follows:

- Details of planting species, plant sizes and design of the angled privacy screens are to be provided and equivalent to Filtrexx 'Living Walls' System or a similar propriety solution that provides adequate soil, nutrients and water for the longevity of climbing and creeping plants to cover the whole of the trellis system.
- Screening trellises with climbing plants are to be provided along the carpark edge that faces 20 and 22 Hazelbank Road to screen the car parking from the apartment buildings.
- Notations to be made on the drawings that all elevated planters and planter boxes are to be irrigated. Recycled water is to be used where possible.
- Plan to be submitted that is consistent with the survey plan and shows the location and height of all existing trees to be retained and those to be removed, including those:
 - located on the car park median strip that is to be removed along the existing driveway entry,
 - within the existing carpark,
 - adjacent to and within the public pathway to the north of the site, and
 - at the rear of 20 and 22 Hazelbank Road and the north-east corner of 3-9 Gillies Street.

(Reason: To ensure that the proposal is acceptable with regard to its impacts on the amenity of the neighbours and to provide an appropriate landscape setting)

Geoff Mossemeneer
EXECUTIVE PLANNER

End
