

SYDNEY WESTERN CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	2017SSW033
DA Number	DA-290/2017
Local Government Area	Liverpool City Council
Proposed Development	Construction and operation of a Residential Aged Care Facility development pursuant to the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
Street Address	Lot 1-7 in DP 28819, Lot 139-141 in DP 26304 and Lot 1 in DP 57781 11-15 Lang Road, 76-80 Marsh Parade & 536-542 Hume Highway, Casula
Applicant	Catholic Healthcare Ltd
Owner	Catholic Healthcare Ltd
Date of DA Lodgement	26 April 2017
Number of Submissions	One
Regional Development Criteria Clause 5(b) of Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011.	The development has a capital investment value of \$27,727,960
List of All Relevant 4.15(1)(a) Matters	<ul style="list-style-type: none"> • <i>List all of the relevant environmental planning instruments: Section 4.15(1)(a)(i)</i> <ul style="list-style-type: none"> • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. • State Environmental Planning Policy (Infrastructure) 2007. • State Environmental Planning Policy No.64 – Advertising and Signage • State Environmental Planning Policy No.55 – Remediation of Land. • Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment. • Liverpool Local Environmental Plan 2008. • <i>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: Section 4.15(1)(a)(ii)</i> <ul style="list-style-type: none"> • No draft Environmental Planning Instruments apply to the site. • <i>List any relevant development control plan: Section 4.15(1)(a)(iii)</i> <ul style="list-style-type: none"> • Liverpool Development Control Plan 2008. <ul style="list-style-type: none"> - Part 1 – General Controls for all Development.

	<ul style="list-style-type: none"> List any relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: Section 4.15(1)(a)(iia) No planning agreement relates to the site or proposed development. List any relevant regulations: 4.15(1)(a)(iv) Consideration of the provisions of the Building Code of Australia.
List all documents submitted with this report for the panel's consideration	<ol style="list-style-type: none"> Recommended conditions of consent Architectural Plans Landscape Plans Plans showing development potential of adjoining sites Height exceedance diagrams Tree Removal Plan Statement of Environmental Effects Clause 4.6 Variation – Accessibility Clause 4.6 Variation – Height Clause 4.6 Variation – Landscaping RSA Report dated 24 July 2018 Revised RSA Report dated 19 September 2018 Traffic Advice dated 3 August 2018 Further Traffic Advice dated 20 September 2018 Response to RSA dated 7 June 2018 Swept Path Analysis Arborist Report Traffic and Parking Assessment Detailed Site Investigation Asbestos Report BCA Report Acoustic Report Waste Water Statement Operational Waste Management Plan Ministerial Direction – Section 94E
Recommendation	Approval, subject to conditions
Report Prepared by	George Nehme
Report date	5 November 2018

Summary of Section 4.15 matters Have all recommendations in relation to relevant Section 4.15 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? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S94EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	No
Conditions Have draft conditions been provided to the applicant for comment?	Yes

1. EXECUTIVE SUMMARY

1.1 Reasons for the report

The Sydney Western City Planning Panel is the determining authority as the Capital Investment Value of the development is over \$20 million, pursuant to Clause 5(b) of Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011.

1.2 The proposal

This Application is seeking approval for the construction and operation of a 144 one-bedroom residential aged care facility (RACF) development at 11-15 Lang Road, 76-80 Marsh Parade and 536-542 Hume Highway, Casula, under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP)*.

The Sydney Western City Planning Panel is the determining body as the Capital Investment Value of the development is over \$20 million.

1.3 The site

The site is identified as Lots 1-7 in DP 28819, Lots 139-141 in DP 26304 and Lot 1 in DP 57781 and is described as 11-15 Lang Road, 76-80 Marsh Parade and 536-542 Hume Highway, Casula.

The existing dwellings on the site are being demolished, pursuant to Complying Development Certificate (CDC).

The site has a frontage of some 124m to the Hume Highway, approximately 108m to Lang Road and 31.4m to Marsh Parade. It is irregular in shape with a total area of 8,564m². The site has a topography which increases in grade from the Marsh Parade frontage to the Lang Road frontage along the Hume Highway boundary of approximately 4.94m. The site also has a cross-fall from the corner of Lang Road with the Hume Highway to the north-east corner of the site at the Marsh road frontage of approximately 5.85m.

1.4 The issues

The main issues are identified as follows:

- Applicability of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) (Seniors Housing SEPP) 2004, to the development as the development site does not meet the accessibility requirements, stipulated in Clause 26 of the Seniors Housing SEPP. The proposed development is located on land which is more than 400m away from the facilities specified in Clause 26(1)(a) to (c) for the forward journey to all of the range of the facilities and services in the Liverpool City Centre from the bus stop on the opposite of the site near the corner of Kurrajong Road with the Hume Highway, being some 622m. This does not comply with Clause 26 of the Seniors Housing SEPP.

As the proposed development site falls outside the accessibility criteria, the applicant has submitted a Clause 4.6 variation to justify the non-compliance. However, an overriding concern was whether Clause 26 of the Seniors Housing SEPP was

considered a **prohibition** and not a development standard and therefore is not a clause that could be varied.

As such, the application was accompanied by legal advice provided by the applicant to answer that specific question. The legal advice, dated 21 December 2017, prepared by Corrs Chambers Westgarth Lawyers is attached to this report. In summary the legal advice stated that;

2.1 Justice Robson in Principal Healthcare Finance Pty Ltd v Ryde City Council [2016] NSWLEC 153, held that clause 26 of the Seniors SEPP is a development standard and not a prohibition.

2.2 Consequently, it is open to the consent authority to consider and accept a SEPP 1 objection to vary the development standards in clause 26 of the Seniors SEPP.

For completeness the advice provided by Corrs Chambers Westgarth Lawyers was peer reviewed at the request of Liverpool City Council, by Marsden's Law Group. The peer review dated 28 February 2018 is attached to this report. In summary the peer review stated that;

On the basis of the current case law it would seem that clause 26 of SEPP Seniors is likely to be properly interpreted to be a "development standard" as defined in section 4(1) of the Environmental Planning and Assessment Act 1979 (NSW) ("EP&A Act").

Whilst we agree with the Corrs advice to the extent that it concludes that clause 26 of SEPP Seniors is, on the basis of current case law, a "development standard", we do not agree with the advice to the extent that it asserts that it is open to the consent authority to consider and accept a SEPP 1 objection in relation to the provision if Liverpool Local Environmental Plan 2008 ("LEP 2008") applies to the land to which the development application relates. In that regard, clause 1.9(2) of LEP 2008 states:

"(2) The following State environmental planning policies (or provisions) do not apply to the land to which this Plan applies:

State Environmental Planning Policy No 1—Development Standards"

However, the development standard in clause 26 of SEPP Seniors could be made the subject of written request under clause 4.6 of LEP 2008. Clause 4.6 of LEP 2008 relevantly states:

"(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause."

It is on the basis of the above, it is concluded that Clause 26 of the Seniors Housing SEPP is a development standard and not a prohibition. The Seniors Housing SEPP applies to the development and the other standards within the SEPP apply to the development proposal where applicable.

It was also concluded based on the advice provided that all variations proposed made in the form of a SEPP1 objection would need to be considered pursuant to Clause 4.6 of the LLEP 2008. Therefore, the applicant revised the SEPP1 variations proposed to the Seniors Housing SEPP to Clause 4.6 variations. All variations have been attached to this report.

- Non-compliance with the State Environmental Planning Policy (Housing for Seniors or People with a Disability) (Seniors Housing SEPP) 2004, Clause 26, Clause 40(4)(a) - (b) and Clause 48(c).

- The proposed development is located on land which is more than 400m away from the facilities specified in Clause 26(1)(a) to (c) for the forward journey to all of the range of the facilities and services in the Liverpool City Centre from the bus stop on the opposite of the site near the corner of Kurrajong Road with the Hume Highway, being some 622m. This does not comply with Clause 26 of the Seniors Housing SEPP. The applicant has provided a Clause 4.6 variation to justify the non-compliance.
- Clause 40(4)(a) -(b) of the Seniors Housing SEPP stipulates that the height of all buildings must be 8m or less buildings that is adjacent to a boundary of the site must not be more than 2 storeys in height.

The proposed development has been lodged with a maximum height to the ceiling of the topmost floor of 10.2m and with a maximum 3 storey element. The height exceedance in terms of metres and storeys reaches the worst point along the Marsh Parade frontage. The applicant has provided a Clause 4.6 variation to justify the non-compliance.

- Pursuant to Clause 48(c) of the Seniors Housing SEPP the proposed development the is required to provide 3,600m² of landscaped area based on the requirement of 25m² per bed. The proposed development provides 2,559m² of landscape area which equates to a shortfall of 1,041m² or 17.8m² per bed.

Given the non-compliance to the development standard the applicant has provided a Clause 4.6 variation to justify the non-compliance.

1.5 Exhibition of the proposal

The proposal was notified from 11 May 2017 to 26 May 2017 in accordance with Liverpool Development Control Plan 2008. Due to a minor description error the proposal was re-notified from 15 May 2017 to 30 May 2017. As a result of the public consultation, one submission was received concerning privacy to an adjoining site.

1.6 Conclusion

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act 1979. Based on the assessment of the application and the consideration of the written request to vary Clause 26, Clause 40(4)(a) -(b) and Clause 48(c) of the Seniors Housing SEPP, it is recommended that the application be approved, subject to conditions.

2. SITE DESCRIPTION AND LOCALITY

2.1 The site

The site is identified as Lots 1-7 in DP 28819, Lots 139-141 in DP 26304 and Lot 1 in DP 57781 and is described as 11-15 Lang Road, 76-80 Marsh Parade and 536-542 Hume Highway, Casula.

The existing dwellings on the site are being demolished, pursuant to Complying Development Certificate (CDC).

The site has a frontage of some 124m to the Hume Highway, approximately 108m to Lang Road and 31.4m to Marsh Parade. It is irregular in shape with a total area of 8,564m². The site has a topography which increases in grade from the Marsh Parade frontage to the Lang Road frontage along the Hume Highway boundary of approximately 4.94m. The site also has

a cross-fall from the corner of Lang Road with the Hume Highway to the north-east corner of the site at the Marsh road frontage of approximately 5.85m.



Figure 1: Aerial photograph of the site (site highlighted in yellow).

The properties known as 9 Lang Road and 74 Marsh Parade, adjoins the site's eastern boundaries, each containing a dwelling house. The land to the immediate north of the site on the opposite side of Marsh Parade is a "slip-lane" to the Hume Highway which services a number of dwelling houses. To the east of the site along Marsh Parade are detached dwelling houses.

The land at the intersection of Marsh Parade with Canberra Avenue to the east of the site consists of a small neighbourhood centre, zoned B1 Neighbourhood Centre, which contains service related uses: a family day care centre, butcher, massage parlour, and real estate agency.

The land on the western side of the Hume Highway contain detached dwelling houses. The land to the south of the site at the corner of the Hume Highway and Lang Road comprises detached dwelling house. The land on either side of Lang Road to the east and south of the site has been developed for detached dwelling houses, with the exception of 5 and 6 Lang Road which contain townhouse developments and next door to 5 Lang Road on the corner of Canberra Avenue there is a DA for town house complex.

2.2 The locality

The subject site is located within the suburb of Casula. The residential area is predominantly characterised by low density detached housing with sporadic infill developments consisting of semi-detached dwellings and multi-dwelling housing developments.

The subject site is located approximately 3.6km south of the Liverpool CBD.



Figure 2: Context Map

3. BACKGROUND

3.1 Planning Panel Briefing

A briefing meeting was held on 13 November 2017. Key issues discussed at the meeting include:

- *Built form in residential context and highway presentation;*

Comment: The built form in the existing residential context is discussed in detail further in this report. In summary the proposed development is considered to provide an appropriate built form and has been designed to accommodate the existing topography of the site and the unique nature of the development proposal. The development presents as a primarily 2 storey elements to the Hume Highway and is appropriately screened with landscaping treatments.

- *LEP clause 4.3 – height of buildings*

Comment: As the height controls stipulated in Clause 40(4)(a) -(b) of the Seniors Housing SEPP apply to this development, Clause 4.3 of the LLEP 2008 does not.

- *SEPP clause 40 (4a) height in zones – residential flat buildings not permitted height*

Comment: The applicant has proposed a variation to the height control stipulated in Clause 40(4)(a) of the Seniors Housing SEPP. The merits of the variation are discussed further in this report.

- *Clause 4.4 – floor space ratio*

Comment: As the FSR controls stipulated in the Seniors Housing SEPP apply to this development, Clause 4.4 of the LLEP 2008 does not. The proposed development is compliant with the FSR controls of the SEPP.

- *Location and access to facilities and public transport*

Comment: As indicated previously in this report the application does not meet the accessibility requirements pursuant to Clause 26 of the Seniors Housing SEPP. The applicant has provided a written request to vary Clause 26, which is discussed in detail further in this report.

- *Lack of landscape area and extent of hard stand treatment*

Comment: With the provision of amended plans, the proposed landscape area within the site has increased from 2,277m² to 2,559m². This equates to 30% of the development site. The proposal has also incorporated additional planting along the Hume Highway frontage to provide appropriate screening of the development and provide an aesthetically pleasing streetscape presentation. An image of the landscape master plan is provided below. As a consequence of the increase in landscape area the amount of hard stand area has also been reduced.

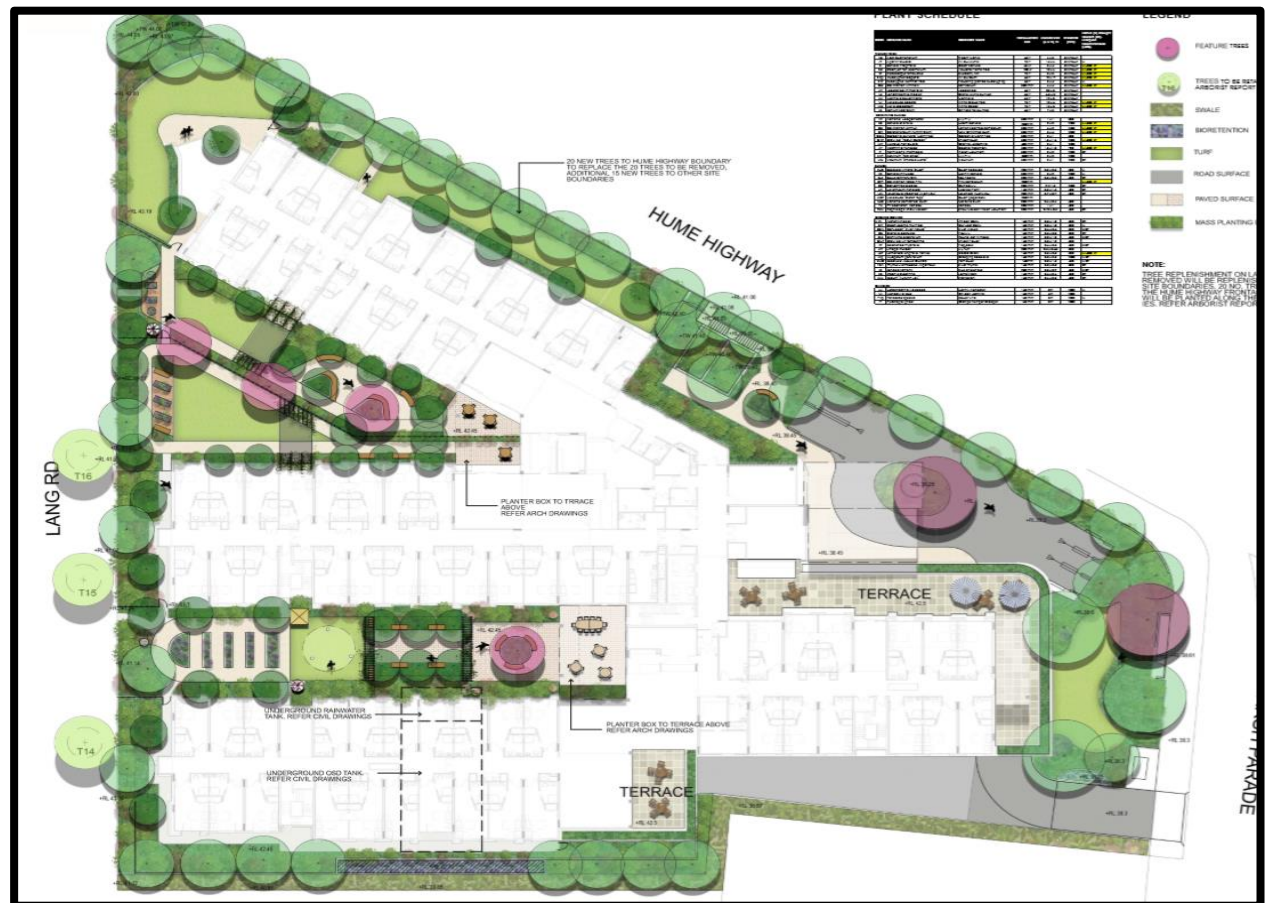


Figure 3: Landscape Master Plan

- *Parking on street – traffic management plan in place*

Comment: The proposal was reviewed by Council's traffic and transport department and considered to be satisfactory. Conditions of consent have been imposed requiring an operation plan of management to be in place that addresses any potential adverse impact on parking.

- *Location of entry driveway – road safety – intrusions to the residential area*

Comment: Concern was raised as to whether the driveway access off Marsh Parade was the most appropriate location. In response to this concern the applicant engaged a Road Safety Auditor to undertake a Road Safety Audit (RSA) to address this concern. The RSA, dated 24 July 2018 was prepared by McLaren traffic Engineering and is attached to this report. The RSA concluded;

A review and audit has been carried out on the proposed plans of the residential aged care facility in Casula. The audit findings are contained in Section 4 of this report with options for investigation included therein. To summarise:

- 1. Modify the proposed driveway splay to accommodate a 6.4m SRV for left turn exit from the site and prohibit left turn exit for vehicles greater than 6.4m in length, OR remove site access driveway from Marsh Parade and relocate it to the Lang Road frontage.*
- 2. Consider providing a line marked driveway centre line starting from the gutter to provide separation between entering and exiting vehicles. Additional line marking shall also be reapplied to the centre BB lines along Marsh Parade adjacent to the proposed site driveway.*
- 1. Remove proposed pedestrian access onto Marsh Parade so as not to encourage use of the bus stop (Stop ID 2170352) located in the narrow median between the east side of the Hume Highway and the unnamed access road north of Marsh Parade. Encourage by redesign provision of pedestrian access to bus stop (Stop ID 2170558) located in front of 540-542 Hume Highway. The introduction of a Plan of Management to encourage the use of the southern bus stop shall be implemented.*

The recommendations raised in this audit are based upon the independent opinions and judgements of the authors. It should be noted, however, that it is ultimately the responsibility of the Project Manager (refer to Section 1.1) and Road Authorities (Liverpool City Council and Roads & Maritime Services (RMS)) to determine how best to respond to identified road safety issues.

Following the conclusion of the RSA, the applicant provided further traffic advice dated 3 August 2018, prepared by Colston Budd Rogers and Kafes Pty Ltd, stipulating that amended plans have been undertaken to take on board all recommendations of the RSA. Consequently, amended plans were also provided to Council addressing the recommendations of the RSA.

Council's Traffic and Transport Department reviewed the amended information inclusive of the RSA and requested that the applicant provide Council with an updated RSA addressing the potential traffic conflict between westbound traffic from the development wishing to turn right to access the service road parallel to Hume Highway and southbound Hume Highway traffic turning left to enter Marsh Parade, and recommend concrete solution to alleviate the problem.

Consequently, a revised RSA, dated 19 September 2018, prepared by McLaren traffic Engineering and is attached to this report. The RSA concluded;

A review and audit has been carried out on the proposed plans of the residential aged care facility in Casula. The audit findings are contained in Section 4 of this report with options for investigation included therein. To summarise:

- 1. Prohibit vehicles greater than 6.4m in length turning left out of the site.*
- (a) Modify the proposed driveway splay to accommodate a 6.4m SRV for left turn exit from the site and prohibit left turn exit for vehicles greater than 6.4m in length. Modify / reduce the proposed driveway splay to accommodate left turn exit movements for vehicles up to a 6.4m SRV as per Clause 2.2 (a) of AS2890.2. The modification shall reduce the splay such that the driveway does not encroach into the prohibited driveway locations as per Clause 3.2.3 & Figure 3.1 of AS2890.1. It is expected that deliveries to the proposed development are occasional in nature, therefore service vehicles are capable of using the full width of the access driveway as per Clause 3.2.2 (d) of AS2890.2;*
- (b) Install "NO LEFT TURN - VEHICLES UNDER 6.4m EXCEPTED" signage internally on the exit side of the site driveway;*

- (c) *Implement a Plan of Management (PoM) for all deliveries by service vehicles to occur outside of peak arrival and departure times for visitors and staff;*
- (d) *A concept driveway and signage layout plan is shown in Annexure E for reference.*

OR remove site access driveway from Marsh Parade and relocate it to the Lang Road frontage.

2. *Consider providing a line marked driveway centre line starting from the gutter to provide separation between entering and exiting vehicles. Additional line marking shall also be reapplied to the centre BB lines along Marsh Parade adjacent to the proposed site driveway.*
3. *Remove proposed pedestrian access onto Marsh Parade so as not to encourage use of the bus stop (Stop ID 2170352) located in the narrow median between the east side of the Hume Highway and the unnamed access road north of Marsh Parade. Encourage by redesign provision of pedestrian access to bus stop (Stop ID 2170558) located in front of 540-542 Hume Highway. The introduction of a Plan of Management to encourage the use of the southern bus stop shall be implemented.*

If such a PoM cannot guarantee to prevent pedestrians of the proposed development from using the northern bus stop then the proposed footpath shall be altered. The alterations of the footpath to the northern bus stop shall direct pedestrians to cross Marsh Parade to the east of the site, providing crossing at the narrower, straight section of the Marsh Parade. The existing footpath shall be extended around the corner of Marsh Parade / 'unnamed road' and connect to the bus stop through a crossing on the 'unnamed road'. The introduction of such a footpath would require additional footpaths, pram ramps and fencing to be constructed in consultation with Council.

Subsequent to the revised RSA prepared by McLaren dated 19 September 2018, correspondence dated 20 September 2018 prepared by Colston Budd Rogers and Kafes Pty Ltd, stipulating that;

The updated RSA of 19 September 2018 confirms that that access to the proposed development can be provided from Marsh Parade (subject to some design changes which have been addressed in amended plans). It also addresses the matters raised by Council in its email of 14 September 2018, finding that the proposed access on Marsh Parade would not give rise to any adverse impacts at the Hume Highway intersection with Marsh Parade or at the signalised intersection of De Meyrick Avenue / unnamed access / service road. Furthermore, the RSA has not identified any requirement for mitigation measures at these intersections.

The revised RSA, amended plans were reviewed by Council's Traffic and Transport Department and found to be satisfactory subject to conditions of consent. It is on the basis of the above that the driveway access off Marsh Parade is considered satisfactory in this instance.

- *Design – traffic noise*

Comments: The application was accompanied by an acoustic report prepared by JHA Services (report no: 160455-RevE) dated 9 March 2017. The report recommended appropriate acoustic treatment measures to alleviate potential traffic noise impacts on the proposed development. The Acoustic report was reviewed by Councils Environment and Health Officers and found to be satisfactory.

- *Security – safety of residents preventing movement onto roadways*

Comment: Appropriate plans of management have been imposed as a condition of consent requiring the implementations and maintenance of safeguard methods to prevent residents of the facility from movement onto roadways.

- *Applicability of section 94 plan*

Comment: The Ministerial Direction issued under Section 94E of the Environmental Planning and Assessment Act (EP&A Act) 1979, dated 14 September 2007, advises that certain exemptions apply to seniors housing provided by a social housing provider from a contribution.

A social housing provider under the Seniors Housing SEPP is defined as;

social housing provider means any of the following:

- (a) *the New South Wales Land and Housing Corporation,*
- (b) *the Department of Housing,*
- (c) *a community housing organisation registered with the Office of Community Housing of the Department of Housing,*
- (d) *the Aboriginal Housing Office,*
- (e) *a registered Aboriginal housing organisation within the meaning of the [Aboriginal Housing Act 1998](#),*
- (f) *the Department of Ageing, Disability and Home Care,*
- (g) *a local government authority that provides affordable housing,*
- (h) ***a not-for-profit organisation that is a direct provider of rental housing to tenants.***

Catholic Health Care is identified as a not-for profit organisation. It is on this basis that section 7.11 Contributions are not applicable to this development. The Ministerial Direction is attached to this report.

- *Shadowing of onsite open space and adjacent premises*

The overshadowing impact of the development is addressed in detail further in this report. In summary the proposed development is considered to be designed to limit the potential overshadowing impacts on adjoining properties.

4. DETAILS OF THE PROPOSAL

The development application is for the construction and operation of a Residential Aged Care Facility (RACF) development under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 with the following details:

- Site preparation, removal of trees and bulk earthworks;
- Construction of an electrical substation;
- Construction of a part 2, part 3 level building which will contain 144 one-bedroom residential aged care facility for high and dementia care residents, suitable to accommodate 144 residents;
- A residential aged care building with a gross floor area of 7,953 square metres;
- Ground level car parking for 35 cars inclusive of disabled parking of which 29 spaces are under cover;
- Parking to enable a mini-van to park at the site;
- Ambulance bay;
- Loading dock with manoeuvring area;
- Aged care amenities and facilities which will include:

- Multi-function space;
- Physiotherapy room;
- Consulting rooms;
- Hairdressing salon;
- Reception and lobby area;
- Administration, manager and staff rooms;
- Strategically located lounge and dining areas for residents to enjoy outlooks to the landscaped gardens and terraces;
- Nurse stations at each residential level;
- On-site facilities for provision of catering with full commercial kitchen and refrigeration/store rooms;
- On-site linen services;
- Plant areas;
- Storage areas;
- Staff amenities;
- Lift access to each level of the building for all residents and users; and
- A landscaped garden setting with an area of some 2,559 square metres of landscaped open space to accommodate formal settings, outdoor seating, gardens which surround the built form extending towards the Hume Highway and Lang Road boundaries, while at the same time fencing to provide a secure environment for residents.
- The facility will employ a total of 41 full time and part time staff.



Figure 4: Photomontage of the proposal from Hume Highway



Figure 5: Photomontage of the proposal from Hume Highway and Lang Road



Figure 6: Site Plan

5.1 Relevant matters for consideration

The following Environmental Planning Instruments, Development Control Plans and Codes or Policies are relevant to this application:

Environmental Planning Instruments (EPI's)

- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
- State Environmental Planning Policy (Infrastructure) 2007.
- State Environmental Planning Policy No.64 – Advertising and Signage
- State Environmental Planning Policy No.55 – Remediation of Land.
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.
- Liverpool Local Environmental Plan 2008.

Draft Environmental Planning Instruments

- No draft Environmental Planning Instruments apply to the site.

Development Control Plans

- Liverpool Development Control Plan 2008
 - Part 1 – Controls applying to all development

5.2 Permissibility

The site is zoned R3 – Medium Density Residential pursuant to LLEP 2008 as depicted in Figure 7.

The subject application is being proposed under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) (Seniors Housing SEPP) 2004. The proposed development would be defined as “*Seniors Housing*” and more specifically a *residential care facility*. Seniors Housing under the Seniors Housing SEPP is defined as;

“seniors housing is residential accommodation that is, or is intended to be, used permanently for seniors or people with a disability consisting of:

- (a) a residential care facility,** or
- (b) a hostel, or
- (c) a group of self-contained dwellings, or
- (d) a combination of these,

but does not include a hospital”.

A residential care-facility under the Seniors Housing SEPP is defined as;

“residential care facility is residential accommodation for seniors or people with a disability that includes:

- (a) meals and cleaning services, and
- (b) personal care or nursing care, or both, and
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,

not being a dwelling, hostel, hospital or psychiatric facility”.

A residential care facility is a form of development that is covered by the Seniors Housing SEPP 2004 pursuant to Clause 4(1a).

Clause 4(1a) of the Seniors Housing SEPP 2004 states the following;

This Policy applies to land within New South Wales that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if:

(a) development for the purpose of any of the following is permitted on the land:

- (i) dwelling-houses,**
- (ii) residential flat buildings,
- (iii) hospitals,
- (iv) development of a kind identified in respect of land zoned as special uses, including (but not limited to) churches, convents, educational establishments, schools and seminaries.

The proposed development is located within an R3 zone pursuant to the Liverpool Local Environmental Plan (LLEP) 2008. Under the R3 zone of LLEP 2008 “*dwelling-houses*” are a permitted form of development. Therefore, having regard to Clause 4(1a), the development site is considered to be located on land zoned primarily for urban purposes and the provisions of the Seniors Housing SEPP are applicable to this development proposal.

Therefore, having regard to the above the proposed development is permissible under the Seniors Housing SEPP and is not required to address permissibility under the LLEP 2008.

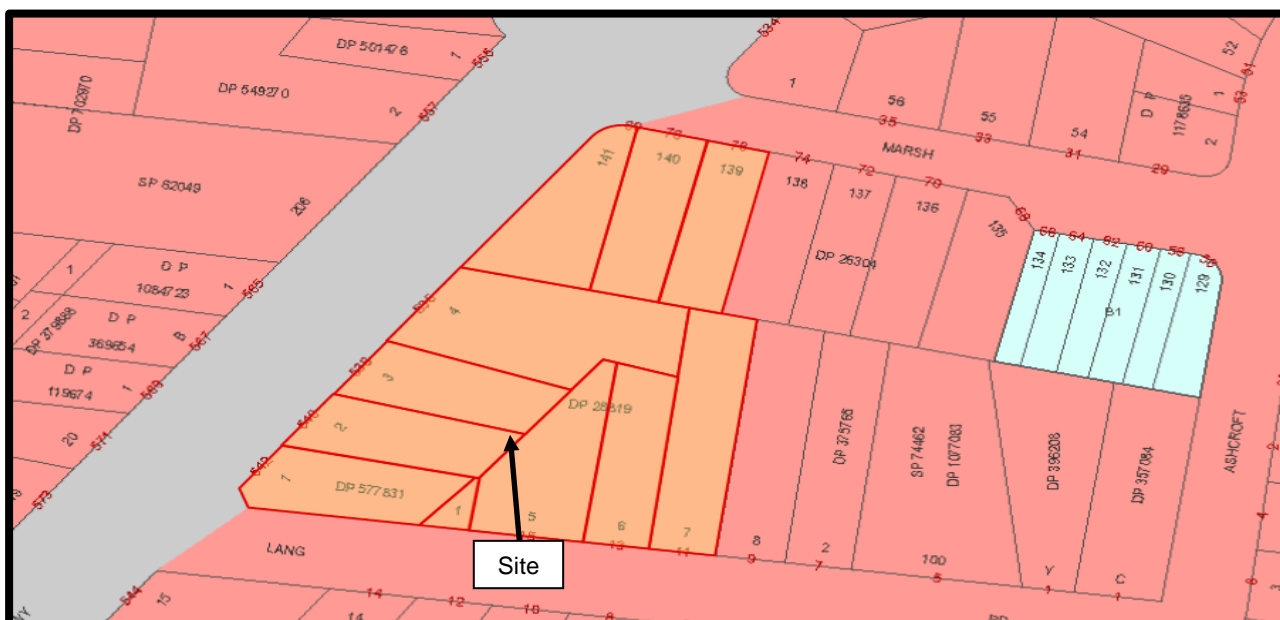


Figure 7: Extract of the LLEP 2008, zoning map

6. ASSESSMENT

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.15 of the Environmental Planning and Assessment Act 1979 as follows:

6.1 Section 4.15(1)(a)(1) – Any Environmental Planning Instrument

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

(i) Permissibility

As indicated previously in this report the proposed development is permissible under the Seniors Housing SEPP.

(ii) Assessment

An assessment of the proposal against the applicable provisions contained in the Seniors Housing SEPP has been undertaken and is detailed in the table below.

PROVISIONS	PROPOSAL	COMPLIANCE
26 Location and access to facilities 1) Site must have access shops, bank service providers and other retail and commercial services that residents may reasonably require, community services and recreation facilities and the practice of a general medical practitioner. 2) Access must be within 400m via a suitable access with gradient of no more than 1:14.	<p>The proposed development is located on land which is more than 400m away from the facilities specified in Clause 26(1)(a) to (c) for the forward journey to all of the range of the facilities and services in the Liverpool City Centre from the bus stop on the opposite of the site near the corner of Kurrajong Road with the Hume Highway, being some 622m.</p> <p>The return journey from the Liverpool City Centre alights at a</p>	<p>Does not comply. See discussion and variation pursuant to Clause 4.6 below.</p>

<p>3) Bus services within 400m must be available to and from the site at least once between 8am to 12 noon per day and at least once between 12 noon and 6pm on weekdays.</p>	<p>bus stop immediately at the street frontage of the site on the Hume Highway near the corner with Lang Road being some 77m.</p> <p>However, the gradients of this route via the pathways within the streets comply with those detailed above or can be made to comply.</p>	
<p>27 Bush fire prone land</p> <p>Land in the vicinity of bush fire prone land or vegetation buffer to consider general location of development, means of access to and egress from the general location and matters listed in (a) to (i).</p>	<p>Site not bush fire affected.</p>	<p>N/A</p>
<p>28 Water and sewer</p> <p>Written evidence to demonstrate that housing will be connected to a reticulated water system and will have adequate facilities for sewage disposal.</p>	<p>Site is fully serviced for water and sewerage.</p>	<p>Complies</p>
<p>29 Site compatibility criteria</p> <p>A consent authority, in determining a development application to which this clause applies, must take into consideration the criteria referred to in clause 25 (5) (b) (i), (iii) and (v).</p> <p>Clause 25 (5) (b) (i), (iii) and (v) state the following;</p> <p>(i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development.</p> <p>(iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out</p>	<p>(i) Land is not mapped as ESL, nor does it contain any threatened species or protected habitat. The land is zoned for residential development and is adjacent to residential development to the north, south, east and west.</p> <p>(iii) The accessibility to the appropriate services arising from this development as required by Clause 26 are detailed in the Clause 4.6 variation below.</p>	<p>Complies</p>

<p>in clause 26) and any proposed financial arrangements for infrastructure provision.</p> <p>(v) without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.</p>	<p>(v) The proposed development has carefully considered the potential impacts of the development on the surrounding development. The proposed development has been designed to alleviate potential, privacy and overshadowing impacts impacts on adjoining development. The proposed development has been designed to accommodate the existing topography of the site, while still enabling a well de-designed purpose-built seniors housing development. The proposed development does not inhibit the development potential of adjoining sites, which may be able to still development to the maximum potential permitted within the R3 zone that applies to their site and within the allowable FSR, heights that apply.</p>	
<p>30 Site analysis</p> <p>Submission of a site analysis and supporting statement identifying how the development has been designed having regard to site analysis required.</p>	<p>A site analysis has been included as part of the application.</p>	<p>Complies</p>
<p>31 Design of in-fill self-care housing</p> <p>In determining a development application made pursuant to this Chapter to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the provisions of the <i>Seniors Living Policy: Urban Design Guideline for Infill Development</i> published by the Department of Infrastructure, Planning and Natural Resources in March 2004.</p>	<p>The development does not involve any in-fill self-care housing. As such, the provisions of the “Seniors Living Policy: Urban Design Guidelines for infill Development” do not apply.</p>	<p>Not Applicable.</p>

<p>32 Design of residential development</p> <p>A consent authority must not consent to a DA unless it is satisfied that the development demonstrates adequate regard to the principles of Division 2 (Clauses 33 to 39).</p>	<p>Each element discussed below.</p>	<p>Complies</p>
<p>33 Neighbourhood amenity and streetscape</p> <p>Development should: recognise desirable elements of current character and desired future character; maintain reasonable amenity and residential character by building setbacks to reduce bulk and overshadowing, building form and siting relative to the land form; compatible building heights; consistent front setback; and consistent landscaping.</p>	<p>The proposed development relates to the character of the locality and provides a varied form to reduce the bulk of the building. Appropriate setbacks are provided to maximise amenity for residents of the proposal and adjoining properties. There is limited overshadowing of adjoining residential properties, given the orientation of the development site and the orientation of the development itself.</p> <p>The building heights along the three street frontages are considered to be compatible with the desired future character of adjoining sites particularly when having regard to the R3 zoning. The proposed development allows for an appropriate presentation to the street, provides appropriate setbacks from the Hume Highway, Lang Road and Marsh Parade in line with the existing development, while not inhibiting the future development potential.</p> <p>The proposed development allows for an appropriate transition and buffer to adjoining sites to the east at 9 Lang Road and 74 Marsh Parade while providing a suitably designed development that has appropriately considered the slope of the development site.</p>	<p>Complies</p>
<p>34 Visual and acoustic privacy</p> <p>Appropriate site planning, location and design of windows and balconies, screening devices.</p>	<p>The proposal was accompanied by an acoustic report that has demonstrated the proposed development can be designed to</p>	<p>Complies</p>

Locating bedrooms away from driveways, parking areas and footpaths to ensure acceptable noise levels.	alleviate potential overshadowing or privacy impacts on adjoining development. Appropriate buffers have been provided to adjoining development and windows have been appropriately located to alleviate and potential visual impact on adjoining properties.	
35 Solar access and design for climate Ensure adequate daylight to main living areas of neighbours and residents; and sunlight to private open space. Site planning to reduce energy and maximise use of solar energy and natural ventilation.	All adjoining sites to the east have a north south orientation. Having regard to the orientation of the adjoining sites, the proposed development will not inhibit the adjoining sites from obtaining the required 3 hours of solar access between 9am-3pm on 21 June.	Complies
36 Stormwater Control and minimise disturbance and impacts of stormwater runoff. Include on-site detention or re-use for second quality water uses.	Stormwater design assessed by Council's Engineering officers.	Satisfactory
37 Crime prevention Provide personal property security for residences and visitors and encourage crime prevention.	<p>The proposed development has been designed to meet the standards of the CPTED principles. The development has been designed to promote active and passive surveillance, providing appropriate CCTV and access control devices to limit access to appropriate people.</p> <p>The proposed development has provided appropriate lighting and signage to distinguish between public/private spaces.</p>	Complies
38 Accessibility Provide obvious and safe pedestrian links from the site that provide access to public transport services or local facilities. Provide attractive and safe pedestrian and motorist environments with convenient access and parking.	Accessibility report submitted with application provides recommendations to achieve access in accordance with DDA and BCA.	Satisfactory
39 Waste management	Appropriate waste management proposed. Comprehensive	Complies

Provide waste facilities that maximise recycling.	waste management plan provided and considered satisfactory.	
<p>40 Development standards minimum sizes and building height</p> <p>Subclause 5 of clause 40 states;</p> <p><i>Subclauses (2), (3) and (4) (c) do not apply to a development application made by any of the following:</i></p> <p><i>(a) the Department of Housing,</i></p> <p><i>(b) any other social housing provider.</i></p> <p>The only provisions under Clause 40 that applies to the development is subclause 4a and b. Subclause 4a and b relate to height of buildings and number of storeys permitted.</p> <p><u>Height in residential zones where residential flat buildings are not permitted</u></p> <p>8m maximum</p> <p>Maximum 2-storeys</p>	<p>As Catholic Health Care is recognised as a social housing provider, subclause 2, 3 and 4c relating to site area, frontage and landscaped area do not apply to this development.</p> <p>Portions of the proposed development exceed a height of 8m when measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point as required by the Aged Care SEPP. A height of 10.2m is proposed</p> <p>Portions of the proposed development exceed the 2-storey height limit and propose 3 storey elements.</p>	<p>Not applicable</p> <p>Does not comply. Variation discussed below.</p> <p>Does not comply. Variation discussed below.</p>
<p>48 Development standards that cannot be used to refuse development consent for residential care facilities</p> <p>Building height: if all buildings are 8m or less in height. Buildings exceed 8m in height but are satisfactory and comply.</p>	<p>Height: A maximum 10.2m to the ceiling proposed and elements of the development provide 3 storeys.</p>	<p>Does not comply. Variation discussed below.</p>

Density and scale: if density and scale when expressed as FSR is 1:1 or less.	FSR 0.92:1	Complies
Landscaped area: if minimum 25m ² of landscaped area per bed.	Based on the number of beds 3,600m ² of landscaped area required. The development provides 2,559m ² of landscaped area.	Does not comply. Variation discussed below.
Parking for residents and visitors: if at least: 1 space per 10 beds 1 space per 2 staff, 1 ambulance space.	Based on numbers of 144 beds and 41 staff a total of 35 spaces are required. A total of 35 spaces are proposed, inclusive of 1 Ambulance space.	Complies

As indicated in the table above the proposed development seeks to vary a number of controls of the Seniors Housing SEPP, namely Clause 26 relating to accessibility, Clause 48(a) relating to the height of building and number of stories and Clause 48(c) relating to landscaped area. It is important to note that, based on legal advice provided to Council as summarised previously in this report, the variation to the standards in the SEPP have been made pursuant to Clause 4.6 of the LLEP 2008. Therefore, the variations below take the form of a Clause 4.6 variation instead of a SEPP 1 Objection.

Discussion on variation to Clause 26 of Seniors Housing SEPP pursuant to Clause 4.6 of LLEP 2008

Variation to Clause 26 Location and access to facilities

Clause 26(1), 2(a), 2(b) and (3) state the following;

- (1) *A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:*
 - (a) *shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
 - (b) *community services and recreation facilities, and*
 - (c) *the practice of a general medical practitioner.*
- (2) *Access complies with this clause if:*
 - (a) *the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development that is a distance accessible by means of a suitable access pathway and the overall average gradient for the pathway is no more than 1:14, although the following gradients along the pathway are also acceptable:*
 - (i) *a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,*
 - (ii) *a gradient of no more than 1:10 for a maximum length of 5 metres at a time,*
 - (iii) *a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time, or*
 - (b) *in the case of a proposed development on land in a local government area within the Greater Sydney (Greater Capital City Statistical Area)—there is a public transport service available to the residents who will occupy the proposed development:*

- (i) *that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and*
- (ii) *that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and*
- (iii) *that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive),*

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

- (3) *For the purposes of subclause (2) (b) and (c), the overall average gradient along a pathway from the site of the proposed development to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) is to be no more than 1:14, although the following gradients along the pathway are also acceptable:*

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

As indicated in the assessment table above the proposed development is located on land which is more than 400m away from the facilities specified in Clause 26(1)(a) to (c) for the forward journey to all of the range of the facilities and services in the Liverpool City Centre from the bus stop on the opposite of the site near the corner of Kurrajong Road with the Hume Highway, being some 622m.

The return journey from the Liverpool City Centre alights at a bus stop immediately at the street frontage of the site on the Hume Highway near the corner with Lang Road being approximately 77m away from the site.

Having regard to the above, the proposed development does not meet the requirements of Clause 26, when taking into consideration the distance to the required facilities stipulated in Clause 26(1) (a) to (c) nor the distance to public transport facilities that provide access to the facilities stated in Clause 26(1) (a) to (c). Given the non-compliance to the development standard the applicant has provided a written request to vary Clause 26, pursuant to Clause 4.6 of the LLEP and it is summarised below;

The objectives and standards of Clause 4.6 of the Liverpool Local Environmental Plan (LEP) 2008 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.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

1) Circumstances of the development

This Application is seeking approval for the construction and operation of a 144 one-bedroom residential aged care facility (RACF) development, under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP)*.

2) Written request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the contravening of the development standard

The applicant has provided the following comments addressing why compliance with the development standard is unreasonable or unnecessary in this case, as summarised:

- *Due to the average age of residents for which the proposed residential care facility will provide a home (being between 83 and 85 years of age), most persons on-site will not have the capacity to independently leave the site to access the services and facilities outlined in Clause 26 above. The criteria are more suited to a self-care style of Seniors Housing which this proposed development does not involve.*
- *The proposed development complies with the objectives of this clause and provides access to facilities by a superior means to those identified in clause 26(2).*

For example, CHL as the managers of the proposed residential care facility seeks to provide superior services on-site which will include:

- *Physiotherapy,*
 - *Hairdressing salon;*
 - *Cafe;*
 - *Strategically located lounge and dining areas for residents to enjoy outlooks to the landscaped gardens;*
 - *Nurse stations at each residential level;*
 - *On-site facilities for provision of catering with full commercial kitchen and refrigeration/store rooms;*
 - *On-site linen services;*
 - *Plant areas;*
 - *Storage areas;*
 - *Staff amenities;*
 - *Lift access to each level of the building for residents with a separate service lift access for "back-of-house" functions;*
- *With respect to the provisions of Clause 26, should CHL be successful in receiving Residential Aged Care Places in the 2016-17 ACAR, it is anticipated that residents will generally be from the surrounding localities and local government area. Given this,*

residents will be able to continue to access their existing local treating doctor and therefore will not place any greater burden on existing medical services in the area.

- The operator and manager of the residential aged care facility when completed has recognised that the proposed development should provide for access to the specific services and facilities required by their residents, and to this extent have included provision for a number of services and facilities on-site. A mini-van will be available when required should the need arise, suitable for door to door access between the proposed development and the specific service requested access by a resident. This will also enable residents to be supervised for this journey and afforded personalised care which the public transport service does not provide. The proposed development can allow for provision of day excursions for residents if required, which would also be supervised. The RACF can provide services which are superior to that of the public transport service and can ensure that the site cannot be described as isolated;*

In response to the comments raised above, Council has provided the following justification as to why the imposition of the applicable height control is unreasonable and unnecessary in this instance:

- The proposed facility is being design and proposed as a purpose-built aged care facility for high and dementia care patients. Based on the nature and type of residents to be cared for in this facility it is highly unlikely that they will have the ability to leave the site independently to access public transport facilities and therefore the requirement to have services or public transport options available within 400m is not necessitated.*
- The proposed development has incorporated many of the facilities that are covered by Cause 26(1) (a) to (c) including consulting rooms, physiotherapy rooms, hairdressing salons and commercial kitchens.*
- The operator of the facility has indicated that they will be provide transport services in the form of a mini-van, which will be available to residents of the facility when required to provide door-door access to specific services when required. Having regard to the residents that will be cared for within the facility this is considered a superior alternative in this instance.*
- The proposed development is a purpose-built facility that provides a positive social benefit to the LGA and will benefit the local community as whole.*

3) Consistency with objectives of the zone – R3 Medium Density Zone.

The objectives of the R3 Medium Density zone are as follows;

- To provide for the housing needs of the community within a medium density residential environment.*
- To provide a variety of housing types within a medium density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To provide for a concentration of housing with access to services and facilities.*
- To provide for a suitable visual transition between high density residential areas and lower density areas.*
- To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development is consistent with the objectives of the R3 zone in that it provides for the housing needs of the community by providing a purpose-built aged care facility to accommodate high care and dementia patients.

The proposal also contributes to the variety of housing types within a medium density environment by providing a unique facility to cater for aged residents. This contributes to the housing diversity within the medium density environment.

The proposal provides for a development that provides specific facilities for the aged care residents that will be cared for within the facility including consulting rooms, physiotherapy rooms, hairdressing salons and commercial kitchens.

The proposed development has been designed to provide a high level of residential amenity for the future residents of the facility while still enabling appropriate levels of privacy, solar access, acoustic amenity for the residents in the immediate vicinity and the surrounding locality.

4) Consistency with Clause 4.6 objectives

- 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,*

It is considered appropriate in this instance to apply a degree of flexibility when applying the accessibility standard of the Aged Care SEPP due to the fact that the proposed facility is unique in nature. The residents who will be cared for in this facility will be high and dementia care residents whom are highly unlikely to be able to independently access the facilities stipulated in this clause. It is considered that the proposed development will serve a greater social purpose for the community and imposing strict compliance with this clause will not achieve a superior alternative outcome in this instance.

5) Recommendation

With considerations to the discussion above, the proposed variation to the Clause 26 “Location and access to facilities” is supported in this circumstance.

Discussion on variation to Clause 40(4)(a)-(b) of Seniors Housing SEPP pursuant to Clause 4.6 of LLEP 2008

Variation to Clause 40(4)(a)-(b) Building Height

Clause 40(4)(a)-(b) state the following;

- (4) ***Height in zones where residential flat buildings are not permitted*** *If the development is proposed in a residential zone where residential flat buildings are not permitted:*

- (a) *the height of all buildings in the proposed development must be 8 metres or less, and*

Note: *Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).*

- (b) *a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height.*

Note: *The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.*

It is important to note that “height” under the Aged Care SEPP is defined as

“height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point”.

This definition under the SEPP is different to the interpretation of height under the standard instrument. As can be seen from the definition of height under the Aged Care SEPP, height is measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point. Under the standard instrument the height of building is taken from the existing ground level to the top most point of the building and not from the ceiling on the topmost floor.

Clause 40(4)(a) -(b) of the Seniors Housing SEPP stipulates that the height of all buildings must be 8m or less buildings that is adjacent to a boundary of the site must not be more than 2 storeys in height.

The proposed development has been lodged with a maximum height to the ceiling of the topmost floor of 10.2m and with a maximum 3 storey element. The height exceedance in terms of metres and storeys reaches the worst point along the Marsh Parade frontage.

Given the non-compliance to the development standard the applicant has provided a written request to vary 40(4)(a) -(b), pursuant to Clause 4.6 of the LLEP and it is summarised below;

The objectives and standards of Clause 4.6 of the Liverpool Local Environmental Plan (LEP) 2008 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.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

1) Circumstances of the development

This Application is seeking approval for the construction and operation of a 144 one-bedroom residential aged care facility (RACF) development, under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP)*.

2) Written request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the contravening of the development standard

The applicant has provided the following comments addressing why compliance with the development standard is unreasonable or unnecessary in this case, as summarised:

- *There are a number of reasons/factors for the non-compliance and these factors when combined have contributed to the design as proposed:*
 - *The goal to minimise impacts on adjoining properties views/outlooks;*
 - *To create a streetscape presentation which is generally two (2) storeys to Lang Road and the Hume Highway;*
 - *To achieve a driveway access to the car parking area and loading dock suitable for gradients for the ramping system;*
 - *The desire to gain disabled access throughout the development from the main pedestrian entry at the Marsh Road frontage with landscaped garden areas to the Lang Road and Hume Highway frontages; and*
 - *To accommodate the gradient of the site which is at its steepest in the cross-fall is just under 5m while at the same time minimising level changes at the eastern side of the site.*
 - *The proposed development will not create any unreasonable overshadowing, result in loss of privacy or create an adverse visual impact upon the streetscape or the environment given the area of non-compliance is in a portion of the site which does not dominate the streetscape and has building has been lowered;*
 - *The development will not generate any adverse traffic impacts,*
 - *The breach of the height control in terms of the 8m ceiling height will not be readily visible from Lang Road or the Hume Highway.*

In response to the comments raised above, Council has provided the following justification as to why the imposition of the applicable height control is unreasonable and unnecessary in this instance:

- The proposed development has primarily been designed to cater for the slope of the site from Lang Road to Marsh Parade in an effort to reduce the amount of level changes throughout the site and the development itself given its unique development type.
- The proposed development has provided a setback of 6m or more along the eastern boundary to reduce the potential impact in terms of privacy and overshadowing on the adjoining properties to the east at 74 Marsh Parade and 9 Lang Road Casula. A 6m setback is generally a greater setback for development in an R3 zone. The setback of 6m is more aligned to the expected setback of a higher density form of development in an R4 High Density or commercial zone. As such, it can be seen that despite the height exceedance the proposed development has considered the potential impacts on adjoining properties by providing the greater setback.
- As indicated previously and as indicated in the figures below, the proposed development has been designed to cater for the slope of the site. Having regard to the slope of the site the non-compliance along the Lang Road/Hume Highway frontages are considered negligible and do not create a detrimental impact on adjoining sites at the Lang Road frontage. As there are no development adjoining the site along the Hume Highway frontage the proposed development will not create a detrimental impact on adjoining properties along the Hum Highway frontage.

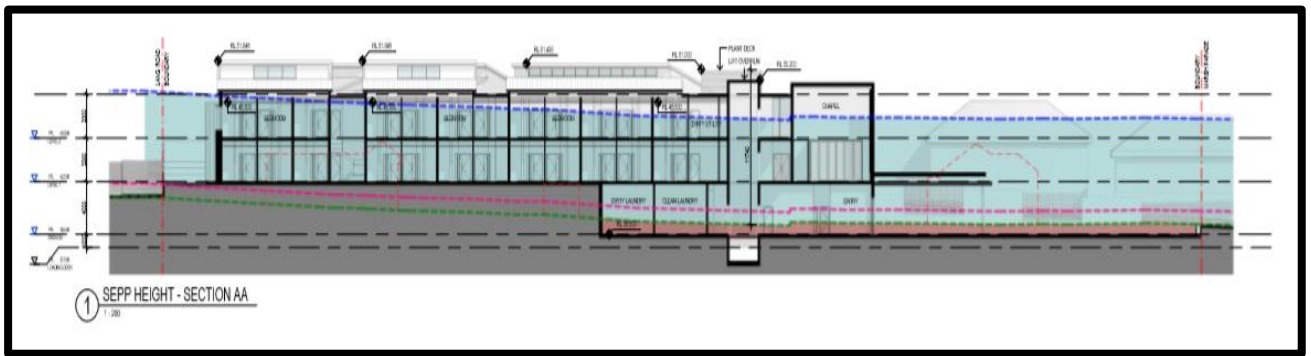


Figure 8: Cross section of height exceedance from Hume Highway

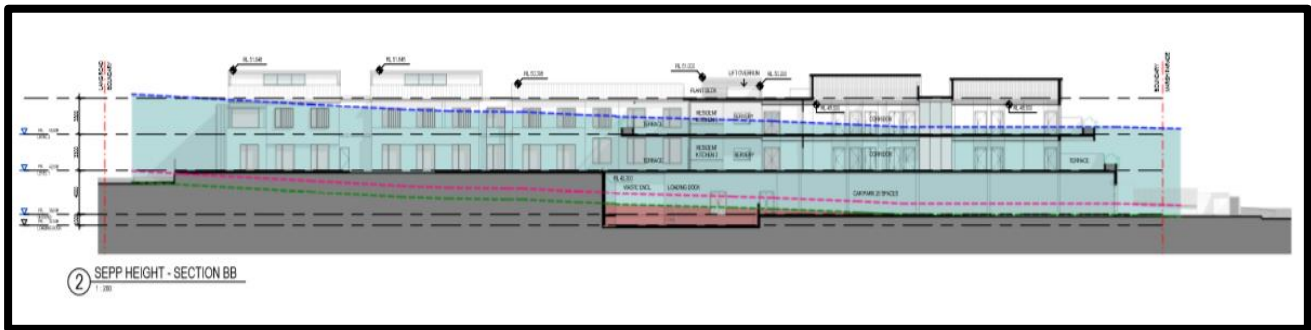


Figure 9: Cross section of height exceedance from eastern elevation

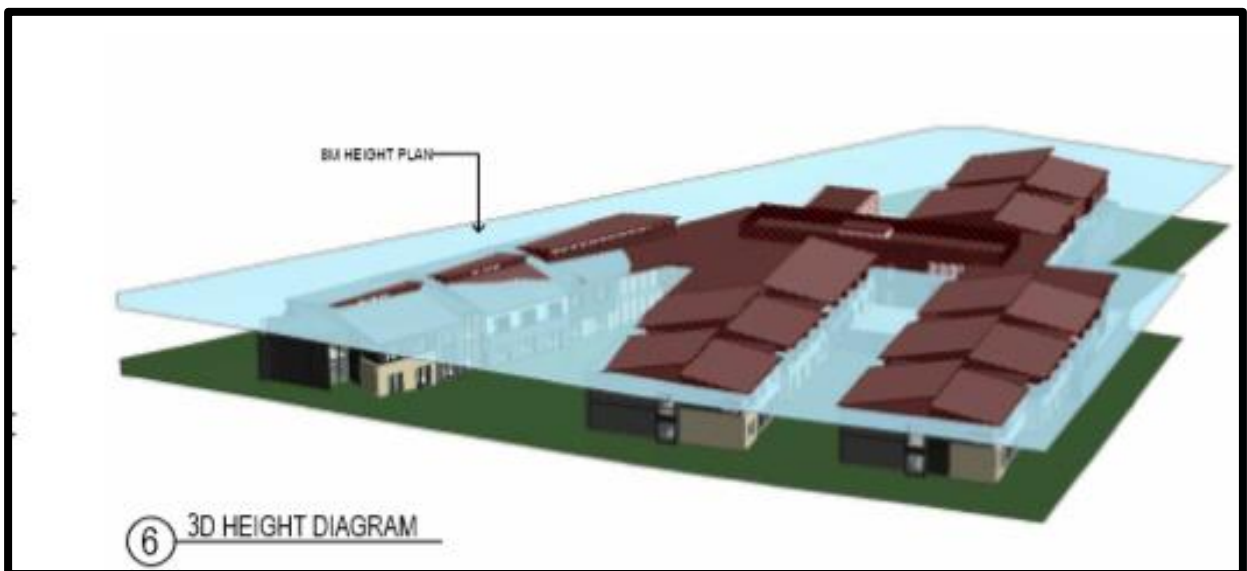


Figure 10: 3D Height Diagram

- The height non-compliance along the Lang Road/Hume Highway elevations and for the majority of the eastern boundary the non-compliance is limited to roof elements and do not create a detrimental privacy impact on adjoining sites.
- The applicant has provided diagrammatical illustrations indicated below that demonstrate that appropriate forms of development in accordance with the applicable development standards may be constructed on the sites immediately to the east at 74 Marsh Parade and 9 Lang Road Casula.

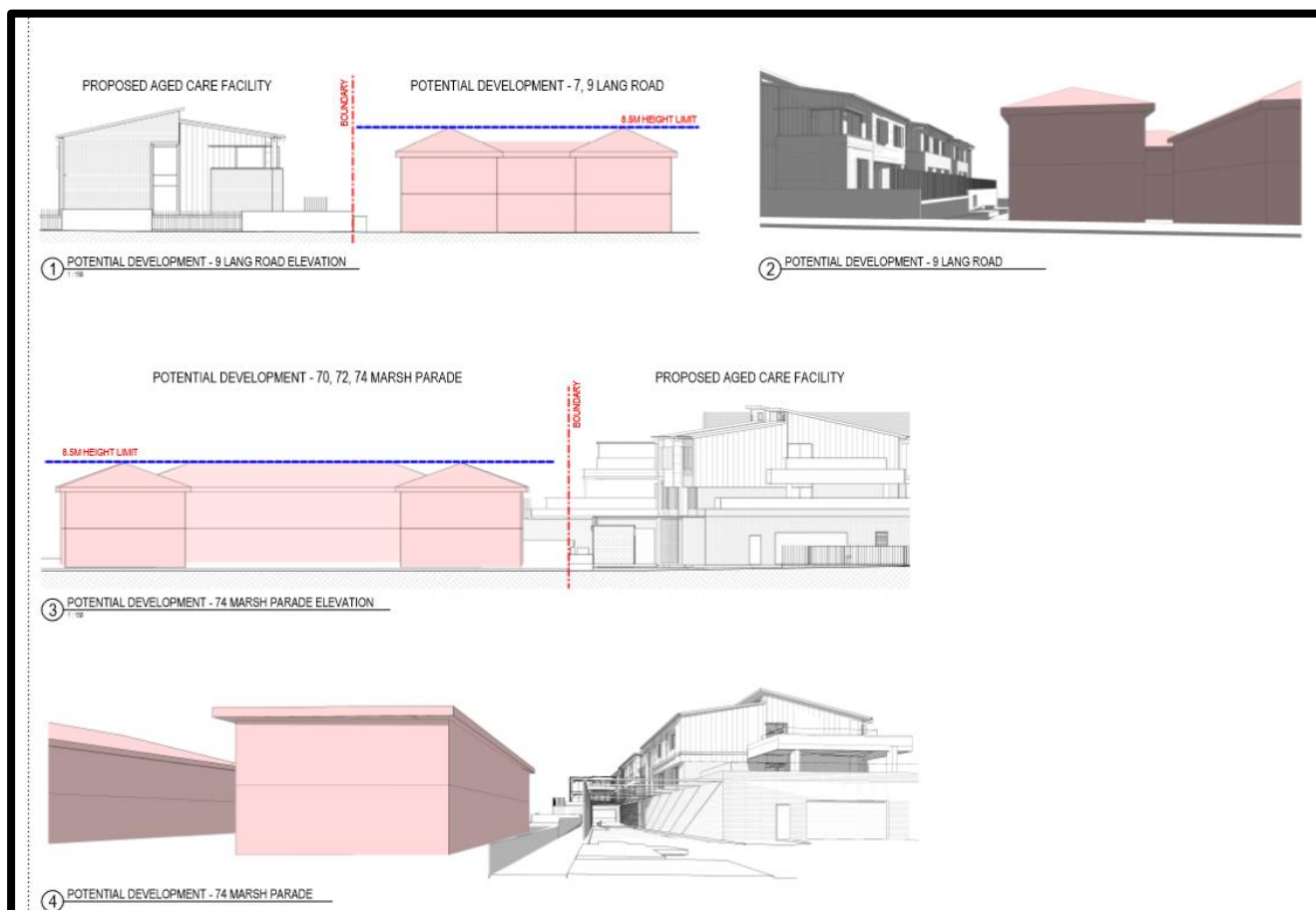


Figure 11: Development Potential of adjoining sites

- The subject sites directly east of the development site have a north/south orientation similar to the that of the development. Given the north/south orientation of the adjoining sites it is considered highly unlikely that any future development on these sites will be prevented from achieving the required solar access requirements.
- To further alleviate potential acoustic and privacy impacts on adjoining sites to the east at the worst point of exceedance along Marsh Parade, the applicant has introduced an arbour structure over the entry driveway from Marsh Parade to act as a further buffer from the adjoining site to the east while providing an aesthetically please landscape presentation to Marsh Parade.
- The proposal has been designed to enable the most suitable access/egress to the site off Marsh Parade to a well-integrated under croft parking area.
- The proposed development remains compliant with the applicable FSR pursuant to the SEPP.
- The proposal has been designed to an appropriate bulk and scale given the site area and location.
- The development is considered to be consistent with the objectives of the zone in which it is located and provides a critical service that provides important social benefit to the community.

3) Consistency with objectives of the zone – R3 Medium Density Zone.

The objectives of the R3 Medium Density zone are as follows;

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

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development is consistent with the objectives of the R3 zone in that it provides for the housing needs of the community by providing a purpose-built aged care facility to accommodate high care and dementia patients.

The proposal also contributes to the variety of housing types within a medium density environment by providing a unique facility to cater for aged residents. This contributes to the housing diversity within the medium density environment.

The proposal provides for a development that provides specific facilities for the aged care residents that will be cared for within the facility including consulting rooms, physiotherapy rooms, hairdressing salons and commercial kitchens.

The proposed development has been designed to provide a high level of residential amenity for the future residents of the facility while still enabling appropriate levels of privacy, solar access, acoustic amenity for the residents in the immediate vicinity and the surrounding locality.

4) Consistency with Clause 4.6 objectives

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

It is considered appropriate in this instance to apply a degree of flexibility when applying the height standard of the Aged Care SEPP due to the fact that the proposed facility has been designed with due consideration of both the streetscape presentation and its potential impacts on adjoining properties. The proposed variation is primarily a direct result of the site topography and despite the non-compliance does not create a detrimental impact on adjoining properties in terms of privacy and overshadowing.

5) Recommendation

With considerations to the discussion above, the proposed variation to Clauses 40(4)(a)-(b) of the Aged Care SEPP is supported in this circumstance.

Discussion on variation to Clause 48(c) of Seniors Housing SEPP pursuant to Clause 4.6 of LLEP 2008

Variation to Clause 48(c) Landscape Area

Clause 48(c) of the Aged Care SEPP states;

A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds:

- (c) **landscaped area:** if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,*

As indicated in the assessment table above the proposed development the proposed development is required to provide 3,600m² of landscaped area based on the requirement of 25m² per bed. The proposed development provides 2,559m² of landscape area which equates to a shortfall of 1,041m² or 17.8m² per bed.

Given the non-compliance to the development standard the applicant has provided a written request to vary Clause 48(c) pursuant to Clause 4.6 of the LLEP and it is summarised below;

The objectives and standards of Clause 4.6 of the Liverpool Local Environmental Plan (LEP) 2008 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.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

1) Circumstances of the development

This Application is seeking approval for the construction and operation of a 144 one-bedroom residential aged care facility (RACF) development, under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP)*.

2) Written request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the contravening of the development standard

The applicant has provided the following comments addressing why compliance with the development standard is unreasonable or unnecessary in this case, as summarised:

- *The proposal provides for 2,559 square metres of deep soil landscaped areas not occupied by the building as per the above definition, not including the driveway, pathways and associated areas. Refer to the amended "Site Plan". In addition, a number of locations accessible from the "central spine" of the RACF design include areas capable of "open-air recreation" which have direct supervision, these include balconies and terraces which have a combined area of 469 square metres. However, the landscaped area for the proposal is less than 25 square metres of landscaped area per residential care facility bed, being 18 square metres per bed.*
- *Due to the average age of residents for which the proposed residential care facility will provide a home (being between 83 and 85 years of age), most persons on-site will not*

have the capacity to independently enter the gardens without supervision or assistance. The criteria are more suited to a “self-care or independent living” style of Seniors Housing which this proposed development does not involve.

- It is considered that the criteria in clause 48(c) of the Seniors Housing SEPP does not necessarily cater for those who would reside in the applicant’s proposed “residential aged care facility”, i.e. frail persons not capable of independent living.*
- The proposed development, while not strictly complying with the 25 square metres landscaped area per bed, seeks to off-set this small non-compliance by providing for increased resident amenity within the development itself by inclusion of several generously sized “lounge areas” internally and balcony/terrace areas. Each of the lounge and balcony/terrace areas has an attractive aspect overlooking the private landscaped areas of the proposed development.*
- The proposed development will not create any unreasonable overshadowing, result in loss of privacy or create an adverse visual impact upon the streetscape or the environment given the area of non-compliance is in a portion of the site which does not dominate the streetscape and has building height has been lowered in its RLs to achieve suitable levels internally of the RACF which converge with the available landscaped area.*

In response to the comments raised above, Council has provided the following justification as to why the imposition of the applicable height control is unreasonable and unnecessary in this instance:

- The proposed facility is being design and proposed as a purpose-built aged care facility for high and dementia care patients. The landscaped area control is more appropriate for self-care residents who will have the ability to independently utilise private courtyards.
- The proposed development has been designed with suitably located recreation areas between the wings of the development to enable appropriately supervised private recreation of the high care residents that will be living in the facility.
- The proposed development has provided additional recreational areas within the facility itself to provide for private recreation of the high care residents.
- Despite the non-compliance the proposed development has been appropriately landscaped and presents appropriately to all street frontages.

3) Consistency with objectives of the zone – R3 Medium Density Zone.

The objectives of the R3 Medium Density zone are as follows;

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development is consistent with the objectives of the R3 zone in that it provides for the housing needs of the community by providing a purpose-built aged care facility to accommodate high care and dementia patients.

The proposal also contributes to the variety of housing types within a medium density environment by providing a unique facility to cater for aged residents. This contributes to the housing diversity within the medium density environment.

The proposal provides for a development that provides specific facilities for the aged care residents that will be cared for within the facility including consulting rooms, physiotherapy rooms, hairdressing salons and commercial kitchens.

The proposed development has been designed to provide a high level of residential amenity for the future residents of the facility while still enabling appropriate levels of privacy, solar access, acoustic amenity for the residents in the immediate vicinity and the surrounding locality.

4) Consistency with Clause 4.6 objectives

- 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,*

It is considered appropriate in this instance to apply a degree of flexibility when applying the landscape standard of the Aged Care SEPP due to the fact that the proposed facility is unique in nature. The residents who will be cared for in this facility will be high and dementia care residents whom are highly unlikely to be able to independently utilise private recreation areas. The provision of 25m² of landscaped area per bed is more suited to a self-care facility which is not the case in this instance.

5) Recommendation

With considerations to the discussion above, the proposed variation to the Clause 48(c) "Landscaped Area" is supported in this circumstance.

(b) State Environmental Planning Policy (Infrastructure) 2007

The subject site has a secondary frontage to the Hume Highway. The Hume Highway is a Classified Road and as such the proposal must be considered under the relevant provisions of the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP). Specifically, the following clauses have been considered during the assessment of this proposal.

101 Development with frontage to classified road

(1) The objectives of this clause are:

- (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) the design of the vehicular access to the land, or*

- (ii) *the emission of smoke or dust from the development, or*
- (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment: Vehicular access and egress to the development site is provided off Marsh Parade. The Roads and Maritime Services (RMS) have reviewed the application and considered it to be satisfactory, subject to conditions of consent. The conditions of consent from the RMS form part of the recommended conditions of consent.

The applicants have provided an Acoustic Impact Assessment prepared by JHA Services (report no: 160455-RevE) dated 9 March 2017. The assessment recommended noise attenuation measures that will alleviate any detrimental acoustic impact on the proposed development that would be generated by the potential main road noise. The report was reviewed by Councils Environmental Health Department and considered satisfactory. As such conditions of consent will be imposed requiring the recommendations of the report be implemented during construction. Therefore, with the implementations of the recommendation of the Acoustic report it is considered that the proposal will reduce the potential impact of traffic noise on the proposed development.

Given the above it is considered that the subject proposal meets the relevant objectives and regulations of Clause 101. The proposed development has incorporated practicable vehicular access and sufficient noise attenuation measures to ensure the proposed development is suitable and will not compromise the operation of The Hume Highway.

102 Impact of road noise or vibration on non-road development

- (1) *This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RTA) and that the consent authority considers is likely to be adversely affected by road noise or vibration:*
 - (a) *a building for residential use,*
 - (b) *a place of public worship,*
 - (c) *a hospital,*
 - (d) *an educational establishment or child care centre.*
- (2) *Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.*
- (3) *If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
 - (a) *in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,*
 - (b) *anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*
- (4) *In this clause, **freeway**, **tollway** and **transitway** have the same meanings as they have in the [Roads Act 1993](#).*

Comment: In response to the above clause the applicant submitted an Acoustic Impact

assessment prepared by JHA Services (report no: 160455-RevE) dated 9 March 2017. The report recommended a variety of acoustic treatments to comply with the SEPP Infrastructure. The acoustic assessment was reviewed by Council's Environmental Health Department and found to be satisfactory. Therefore conditions of consent have been included, that ensure the recommendations specified in the acoustic report will be implemented during the construction.

Given the above it is considered that the subject proposal meets the relevant objectives and regulations of Clause 102. The proposed development has incorporated suitable acoustic treatments in accordance with the submitted acoustic report to comply with the relevant requirements of the Infrastructure SEPP.

(c) State Environmental Planning Policy No.64 – Advertising and Signage

As part of the development application includes two proposed flush wall signs, which will identify the name and logo of Catholic Health Care on the site. The signs are indicated in figure 12 below and will be a maximum of 3.209m long by 1m high. One of the proposed signs will be located on the upper floor of the northern elevation fronting the entry off Marsh Parade and the second will be located along the southern elevation at the intersections of Lang Road and the Hume Highway. The location of the signs are indicated in figures 13-14 below.

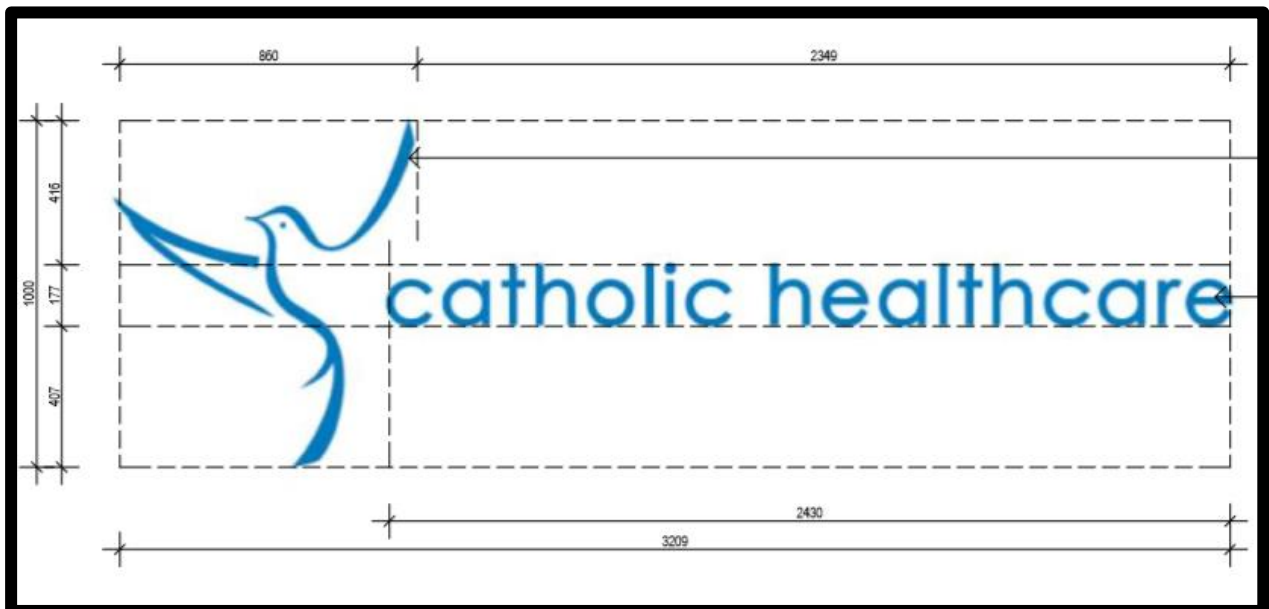


Figure 12: Proposed Sign



Figure 13: Proposed sign location Hume Highway/Marsh Parade

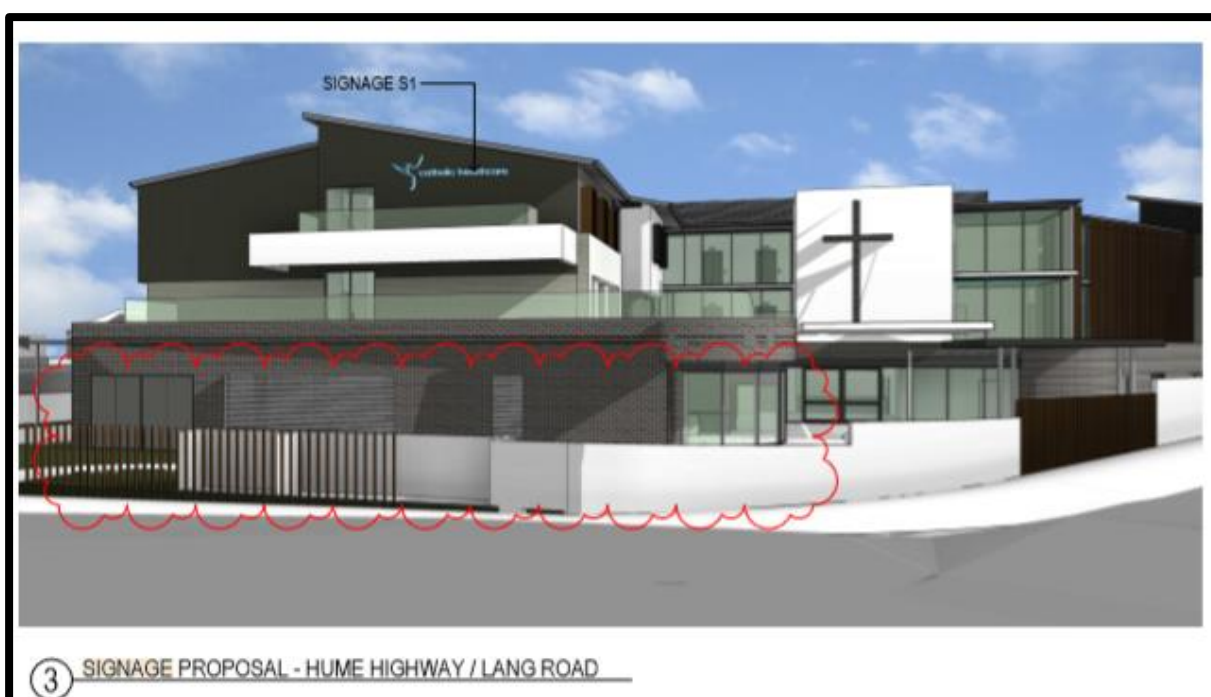


Figure 14: Proposed sign location Hume Highway/Lang Road

As such the proposal has been assessed having regard to the objectives and provisions of SEPP 64. An assessment pursuant to the objectives and Schedule 1 – Assessment Criteria is provided in the following compliance table:

REQUIREMENT	COMMENT
Objectives	
Consistency with the objectives of SEPP64 as set out in clause 3 (1)(a):	The proposed signage is compatible with the amenity of the surrounding area and would effectively communicate both the branding and services provided at the site. It is
(a) to ensure that signage (including advertising):	

(i) is compatible with the desired amenity and visual character of an area, and (ii) provides effective communication in suitable locations, and (iii) is of high-quality design and finish.	considered that the proposed signage is of a high-quality design and finish.
Character of the area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed signage is considered to be compatible with the desired future character of the area.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	
Special Areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposal does not detract from the amenity of any of these features or sites
Views and Vistas	
Does the proposal obscure or compromise important views?	The proposed signage does not compromise any important views
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signage does not dominate the skyline or reduce quality of vistas.
Does the proposal respect the viewing rights of other advertisers?	The proposed signage does not obscure signage on neighbouring sites.
Streetscape, setting or landscape	
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage contributes to the visual interest of the streetscape.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposal does reduce clutter by rationalising and simplifying existing advertising.
Does the proposal screen unsightliness?	The proposed signs are not considered to be unsightly.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposal does not protrude above buildings, structures or tree canopies in the area in the area or locality
Does the proposal require ongoing vegetation management?	The proposal does not require ongoing vegetation management
Site and building	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposed signage is compatible with the scale, proportion and other characteristics of the site.
Does the proposal respect important features of the site or building, or both?	The site does not contain any important features.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is standard for the type of development.
Associated devices and logos with advertisements and advertising structures	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The flush wall sign will be illuminated.
Illumination	

Would illumination result in unacceptable glare?	No
Would illumination affect safety for pedestrians, vehicles or aircraft?	No
Would illumination detract from the amenity of any residence or other form of accommodation?	No
Can the intensity of the illumination be adjusted, if necessary?	Yes
Is the illumination subject to a curfew?	No
Safety	
Would the proposal reduce the safety for any public road?	The proposal would not reduce the safety for any public road.
Would the proposal reduce the safety for pedestrians or bicyclists?	The proposal would not reduce the safety for pedestrians or bicyclists
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage will not obscure sightlines from public areas

(d) State Environmental Planning Policy No. 55 – Remediation of Land

Pursuant to Clause 7 of SEPP 55, a consent authority is unable to grant development consent unless it has considered whether the land is contaminated and, if so, whether the consent authority is satisfied that the land is suitable in its contaminated state, or can be remediated to be made suitable for the purposes for which the development is proposed to be carried out.

As part of the application a detailed site investigation (DSI). The DSI confirmed the presence of asbestos containing materials around borehole 9 and as a result, the applicant was required to engage the services of a suitably qualified and experienced contaminated land consultant, to carry out an asbestos quantitation assessment located within the vicinity of Borehole 9. The assessment shall ascertain the extent and impact of asbestos containing materials.

Douglas Partners were engaged to respond to the above in a letter (dated 6 June 2017 – project no: 85600.00.R.003). On 2 June 2017, a representative from Douglas Partners carried out an inspection within the vicinity of borehole 9. The inspection was undertaken to assess if the fragment previously observed was part of a wider asbestos contamination at the test location or a sporadic fragment from previous/current structures.

It was revealed that no further asbestos fragments around borehole 9 were observed.

Council's Environment and Health section have reviewed the report and agree that the site is suitable for the proposed development.

Clause 7 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	The DSI concluded that the site is suitable for the proposed development.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	The DSI submitted assessment concludes that the site is not contaminated.

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	Not applicable.
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Given the above, the site is considered to be suitable for the proposed development and meets the requirements of SEPP 55.

(e) Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (now deemed SEPP).

The Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment generally aims to maintain and improve the water quality and river flows of the Georges River and its tributaries.

When a consent authority determines a development application planning principles are to be applied (Clause 7(b)). Accordingly, a table summarising the matters for consideration in determining development application (Clause 8 and Clause 9), and compliance with such is provided below.

Clause 8 General Principles	Comment
When this Part applies the following must be taken into account:	Planning principles are to be applied when a consent authority determines a development application.
(a) the aims, objectives and planning principles of this plan,	The plan aims generally to maintain and improve the water quality and river flows of the Georges River and its tributaries.
(b) the likely effect of the proposed plan, development or activity on adjacent or downstream local government areas,	The proposal provides soil and erosion control measures.
(c) the cumulative impact of the proposed development or activity on the Georges River or its tributaries,	The proposal provides a stormwater management system that will connect to the existing system. The Stormwater concept plan also outlines proposed sediment and erosion control measures.
d) any relevant plans of management including any River and Water Management Plans approved by the Minister for Environment and the Minister for Land and Water Conservation and best practice guidelines approved by the Department of Urban Affairs and Planning (all of which are available from the respective offices of those Departments),	The site is located within an area covered by the Liverpool District Stormwater Management Plan, as outlined within Liverpool City Council Water Strategy 2004.
(e) the <i>Georges River Catchment Regional Planning Strategy</i> (prepared by, and available from the offices of, the Department of Urban Affairs and Planning),	The proposal includes a Stormwater Concept plan. There is no evidence that with imposition of mitigation measures, the proposed development would affect the diversity of the catchment.
(f) whether there are any feasible alternatives to the development or other proposal concerned.	The site is located in an area nominated for residential development and the proposal provides an opportunity to address past potentially contaminating land use practices.

Clause 9 Specific Principles	Comment
(1) Acid sulfate soils	The site is not identified as containing the potential for acid sulphate soils to occur.
(2) Bank disturbance	No disturbance of the bank or foreshore along the Georges River and its tributaries is proposed.
(3) Flooding	The site is not identified as flood prone land.
(4) Industrial discharges	Not applicable.

(5) Land degradation	An erosion and sediment control plan aims to manage salinity and minimise erosion and sediment loss.
(6) On-site sewage management	Not applicable.
(7) River-related uses	Not applicable.
(8) Sewer overflows	Not applicable.
(9) Urban/stormwater runoff	A Stormwater Concept Plan proposes connection to existing services.
(10) Urban development areas	The site is not identified as being located within the South West Growth Centre within the Metropolitan Strategy. The site is not identified as being an Urban Release Area under LLEP 2008.
(11) Vegetated buffer areas	Not applicable
(12) Water quality and river flows	A drainage plan proposes stormwater connection to existing services.
(13) Wetlands	Not applicable.

It is considered that the proposal satisfies the provisions of the GMREP No.2 subject to appropriate sedimentation and erosion controls during construction. The development will have minimal impact on the Georges River Catchment.

(f) Liverpool Local Environmental Plan 2008

(i) Permissibility

As indicated previously in this report the proposed development is being proposed and is permissible under the Seniors Housing SEPP.

(ii) Objectives of the zone

The objectives of the R3 Medium Density zone are as follows;

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development is consistent with the objectives of the R3 zone in that it provides for the housing needs of the community by providing a purpose-built aged care facility to accommodate high care and dementia patients.

The proposal also contributes to the variety of housing types within a medium density environment by providing a unique facility to cater for aged residents. This contributes to the housing diversity within the medium density environment.

The proposal provides for a development that provides specific facilities for the aged care residents that will be cared for within the facility including consulting rooms, physiotherapy rooms, hairdressing salons and commercial kitchens.

The proposed development has been designed to provide a high level of residential amenity for the future residents of the facility while still enabling appropriate levels of privacy, solar access, acoustic amenity for the residents in the immediate vicinity and the surrounding locality.

(iii) Principal Development Standards and Provisions

The application has also been considered against the relevant provisions and principal development standards of the LLEP 2008, which are listed in the table below.

It is noted as the application is proposed under the Seniors Housing SEPP many of the development standards under the LLEP 2008 are not applicable.

Clause	Provision	Comment
Clause 4.1 Minimum Subdivision Lot Size	Minimum lot size of 300m ²	Not Applicable No subdivision proposed
Clause 4.3 Height of Buildings	Maximum height of 8.5m	Not Applicable Height controls under the Seniors Housing SEPP take precedence in this instance.
Clause 4.4 Floor Space Ratio	Maximum FSR of 0.5:1	Not Applicable FSR controls under the Seniors Housing SEPP take precedence in this instance.
Clause 4.6 Exceptions to development standards	Provisions relating to exceptions to development standards	A request to vary Clause 26, Clause 40(4)(a)-(b) and Clause 48(c) of the Seniors Housing SEPP has been provided.

6.2 Section 4.15(1)(a)(ii) - Any Draft Environmental Planning Instrument

There are no draft Environmental Planning Instruments that apply to the site

6.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The application has been assessed against the controls of the LDCP 2008, particularly Part 1 *General Controls for all Development*, and Part 3.7 *Residential Flat Buildings in the R4 Zone*.

The table below provides an assessment of the proposal against the relevant controls of the LDCP 2008.

LDCP 2008 Part 1: General Controls for All Development

Development Control	Provision	Comment
Section 2. Tree Preservation	Controls relating to the preservation of trees	Complies The site does not contain any significant vegetation.
Section 3. Landscaping and Incorporation of Existing Trees	Controls relating to landscaping and the incorporation of existing trees.	Complies A total of 80 trees are proposed to be removed. The arborist report has been provided and identified that the majority of the trees to be of low-moderate value. The proposed landscaping and tree removal plan and Arborist Report has been reviewed by Council's Landscape Officer, who has raised no issues, subject to conditions.
Section 4. Bushland and Fauna Habitat Preservation	Controls relating to bushland and fauna habitat preservation	Not Applicable The development site is not identified as containing any native flora and fauna.

Development Control	Provision	Comment
Section 5. Bush Fire Risk	Controls relating to development on bushfire prone land	Not Applicable The site is not identified as bushfire prone land.
Section 6. Water Cycle Management	Stormwater runoff shall be connected to Council's drainage system by gravity means. A stormwater drainage concept plan is to be submitted.	Complies This aspect has been reviewed by Council's Land Development Engineers, who have raised no issues subject to conditions.
Section 7. Development Near a Watercourse	If any works are proposed near a water course, the Water Management Act 2000 may apply, and you may be required to seek controlled activity approval from the NSW Office of Water.	Not Applicable The site is not within close proximity to a water course.
Section 8. Erosion and Sediment Control	Erosion and sediment control plan to be submitted.	Complies Conditions of consent will be imposed to ensure that erosion and sediment controls measures are implemented during the construction of the development.
Section 9. Flooding Risk	Provisions relating to development on flood prone land.	Not Applicable The site is not identified as flood prone land.
Section 10. Contaminated Land Risk	Provisions relating to development on contaminated land.	Complies As discussed within this report, the site is suitable for development.
Section 11. Salinity Risk	Provisions relating to development on saline land.	Complies The site is identified as containing a low potential for saline soils. Conditions relating to erosion and sediment control measures will be implanted to prevent further spread of potentially saline soils.
Section 12. Acid Sulphate Soils	Provisions relating to development on acid sulphate soils	Not Applicable The development site is not identified as containing the potential for acid sulphate soils to occur.
Section 13. Weeds	Provisions relating to sites containing noxious weeds.	Not Applicable The site is not identified as containing noxious weeds.
Section 14. Demolition of Existing Development	Provisions relating to demolition works	Not Applicable
Section 15. On Site Sewage Disposal	Provisions relating to OSMS.	Not Applicable OSMS is not proposed.
Section 16. Aboriginal Archaeology	An initial investigation must be carried out to determine if the proposed development or activity occurs on land potentially containing an item of aboriginal archaeology.	Not Applicable The site is highly disturbed. As such, it is unlikely that it would contain Aboriginal Archaeology.
Section 17. Heritage and Archaeological Sites	Provisions relating to heritage sites.	Not Applicable The site is not identified as a heritage item or within the immediate vicinity of a heritage item.
Section 18. Notification of Applications	Provisions relating to the notification of applications.	Complies The application was notified in accordance with the LDCP 2008.

Development Control	Provision	Comment
Section 19. Used Clothing Bins	Provisions relating to used clothing bins.	Not Applicable The DA does not propose used clothing bins.
Section 20. Car Parking and Access		Not Applicable Car parking has been provided in accordance with Seniors Housing SEPP is provided with this development.
Section 21. Subdivision of Land and Buildings	Provisions relating to the subdivision of land.	Not Applicable No subdivision proposed as part of development.

The above assessment has found that the development is generally compliant with the LDCP 2008 and is satisfactory.

6.4 Section 4.15(1)(a)(iiia) - Any Planning Agreement or any Draft Planning Agreement

No planning agreement relates to the site or proposed development.

6.5 Section 4.15(1)(a)(iv) – The Regulations

The Environmental Planning and Assessment Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. If approved appropriate conditions of consent will be imposed requiring compliance with the BCA.

6.6 Section 4.15(1)(b) – The Likely Impacts of the Development

(a) Natural and Built Environment

The impacts of the development on the natural environment have been assessed and the development is considered to be acceptable and unlikely to cause adverse impacts. Issues considered included, but were not limited to: soil contamination; earthworks; stormwater management; erosion and sediment control; and landscaping.

The impacts on the built environment have also been assessed and are also considered to be acceptable and unlikely to have significant negative impacts. Issues considered included, but were not limited to: the traffic impacts; adequacy of car parking; built form (height, bulk, scale); streetscape and visual impacts; overshadowing; compatibility with the future character of the locality; design; acoustic impacts; access; site layout; compliance with Building Code of Australia (BCA) and Australian Standards (AS); fire safety requirements; adequacy of site services; waste management; and potential impact on amenity of locality.

(b) Social Impacts and Economic Impacts

The proposal is unlikely to cause any adverse social impacts in the locality. Overall, the proposal is likely to contribute positively to the locality by providing beneficial aged care services to the local and wider community and is acceptable with respect to any potential social impacts.

The potential economic impacts of the development in the locality are acceptable. The development is likely to have a positive contribution to the local economy via the capital investment value associated with the proposal and ongoing employment opportunities.

6.8 Section 4.15(1)(c) – The Suitability of the Site for the Development

The site location and size is considered to be suitable for the proposed development given its characteristics and design.

6.9 Section 4.15(1)(d) – Any submissions made in relation to the Development

(a) Internal Referrals

The following comments have been received from Council's Internal Departments:

Internal Departments	
Department	Comments
Building	Supported, subject to conditions.
Engineering	Supported, subject to conditions.
Health and Environment	Supported, subject to conditions.
Traffic and Transport	Supported, subject to conditions.
Waste Management	Supported, subject to conditions.
Landscape Officer	Supported, subject to conditions.
Street Tree Officer	Supported, subject to conditions.

(b) External Referrals

The DA was referred to the following external Public Authorities for comment:

Authority	Comments
RMS	Supported, subject to recommendations.

(c) Community Consultation

The proposal was notified from 11 May 2017 to 26 May 2017 in accordance with Liverpool Development Control Plan 2008. Due to a minor description error the proposal was re-notified from 15 May 2017 to 30 May 2017. As a result of the public consultation, one submission was received concerning privacy to an adjoining site.

The concerns raised in the submission and the response to the concerns are provided below;

Concern: It would be appreciated if the developer could provide these details particularly eastern boundary wall/fence heights and materials for our information at a later date.

Response: A condition of consent will be imposed requiring all common boundary fencing be constructed at the full cost of the developer and with the full agreement of all residents sharing a common boundary with the development site.

6.7 Section 4.15(1)(e) – The Public Interest

The proposed development is consistent with the zoning of the land and would represent a quality development for the suburb. The development provides additional housing opportunities within close proximity to employment opportunities and public transport.

In addition to the social and economic benefit of the proposed development, it is considered to be in the public interest.

7 CONCLUSION

In conclusion, the following is noted:

- The subject Development Application has been assessed having regard to the matters of consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979 and is considered satisfactory.

- The proposal provides an appropriate response to the site's context and satisfies the applicable provisions of the Seniors Housing SEPP, LLEP 2008 and LDCP 2008. The scale and built form would be consistent with the desired future character of the area.
- The development will generate a social benefit for the community, given the provision of Seniors housing, which will be managed by a not-for-profit social housing provider.
- The proposed development will have positive impacts on the surrounding area.

8 ATTACHMENTS

1. Recommended conditions of consent
2. Architectural Plans
3. Landscape Plans
4. Plans showing development potential of adjoining sites
5. Height exceedance diagrams
6. Tree Removal Plan
7. Statement of Environmental Effects
8. Clause 4.6 Variation – Accessibility
9. Clause 4.6 Variation – Height
10. Clause 4.6 Variation – Landscaping
11. RSA Report dated 24 July 2018
12. Revised RSA Report dated 19 September 2018
13. Traffic Advice dated 3 August 2018
14. Further Traffic Advice dated 20 September 2018
15. Response to RSA dated 7 June 2018
16. Swept Path Analysis
17. Arborist Report
18. Traffic and Parking Assessment
19. Detailed Site Investigation
20. Asbestos Report
21. BCA Report
22. Acoustic Report
23. Waste Water Statement
24. Operational Waste Management Plan
25. Ministerial Direction – Section 94E