

**City of Parramatta Council**

File No: DA/1281/2016

**ADDENDUM ASSESSMENT REPORT
Environmental Planning & Assessment Act 1979****SUMMARY**

Addendum to DA No:	DA/1281/2016 (SCCPP Ref: 2017SWC007 – original assessment report dated 6 December 2017 to SCCPP)
Property:	Lot 30 in DP 1106209 and Lots 6, 7, 8 & 9 in DP 22506, 12 Station Road & 4-10 Wentworth Avenue, TOONGABBIE, NSW 2146
Proposal:	Demolition works, amalgamation of lots and re-subdivision for construction of a 128 bed Residential Care Facility (RCF) at the 'Toongabbie Sports Club', provision of vehicular access, landscaping, signage and ancillary stormwater and civil works (Nominated Integrated Development under the Water Management Act 2000). The application will be determined by the Sydney Central City Planning Panel.
Date of receipt:	23 December 2016
Applicant:	Opal Aged Care
Owner:	Toongabbie Sports & Bowling Club Limited
Property owned by a Council employee or Councillor:	The site is not known to be owned by a Council employee or Councillor
Political donations/gifts disclosed:	None disclosed on the application form
Submissions received:	Nil
Recommendation:	Refusal
Assessment Officer:	Shaylin Moodliar

Legislative requirements

Zoning	RE2 Private Recreation & R3 Medium Density Residential Zones under Parramatta Local
--------	---

Other relevant legislation/state environmental planning policies (SEPP)/policies:	Environmental Plan 2011 (PLEP 2011) Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, SEPP 55 - Remediation of Land, SEPP 64 - Advertising and Signage, SEPP (Infrastructure) 2007, SEPP (Housing for Seniors or People with a Disability) 2004, SEPP (Vegetation in Non-Rural Areas) 2017, SEPP (State and Regional Development) 2011, SREP (Sydney Harbour Catchment) 2005 and Water Management Act 2000.
Planning Controls & Policy	Parramatta Section 94A Contributions Plan 2011 (Outside CBD), Parramatta Development Control Plan 2011, Floodplain Risk Management Policy (Version 2, approved 27 October 2014), Policy for the handling of unclear, insufficient and amended development applications
Heritage / Heritage Conservation Area	No
Integrated development	Yes – NSW Department of Primary Industries (Water)
Designated development	No
Crown development	No
Delegation	Sydney Central City Planning Panel (SCCPP)

EXECUTIVE SUMMARY

Council provided the original assessment report to the Sydney Central City Planning Panel, which was considered at the public meeting of 6 December 2017.

The application proposed demolition, amalgamation of lots and re-subdivision for construction of a 128 bed Residential Care Facility (RCF) at the 'Toongabbie Sports Club', provision of vehicular access, landscaping, signage and ancillary stormwater and civil works on land at 12 Station Road & 4-10 Wentworth Avenue, Toongabbie. The development is nominated "Integrated Development" and requiring separate approval pursuant to Sections 89-91 of the *Water Management Act 2000*.

Prior to submission of this development application (DA), Council provided pre-lodgement advice (under PL/43/2016 & PL/151/2016) to the applicant and their representatives for the construction of a 128-bed RCF. The applicant was advised that the following fundamental issues had been identified and that it was unlikely that the proposal would be supported as the site is flood-prone and the RCF is incompatible with Council's Floodplain Matrix under PDCP 2011.

The DA was submitted in contravention to the advice and the proposed development exceed the maximum 8 metre building height development standard under Clause 40(4) of SEPP (Housing for Seniors or People with a Disability) 2004 by 5.6 metres (70% variation).

At the Sydney Central City Planning Panel meeting, the Panel deferred the determination of the application and resolved the following at that meeting:

1. *A briefing has occurred between the Council and Applicant in which the flooding experts of each part endeavour to reach a consensus. If a consensus cannot be reached, the Panel may request an independent expert to assess the flooding concerns on the Panel's behalf.*
2. *The Applicant is to make a written response to be provided to both Council and the Panel which addresses the 34 reasons of refusal listed in the Council assessment report.*
3. *The Applicant is required to provide to Council and the Panel, in writing, a justification of the height breach.*
4. *The Applicant is to address the Panel's concerns regarding the development's interface with the adjoining residential flat building to the south-west.*

When this information has been received, the panel will hold a supplementary public determination meeting.

Below is a supplementary report which assesses the proposal against the above requirements.

PROPOSED DEVELOPMENT

A detailed summary of the proposal is provided in the original assessment report.

No amended architectural, landscape, engineering plans or new documentation has been provided to Council.

ASSESSMENT OF DEFERRED MATTERS

1. Meeting between flood experts

On 8 February 2018, a meeting was held between Council's flood engineer/experts and the applicant along with their representatives.

Discussions focussed on the design of the residential care facility (RCF) and the flood events along Girraween Creek. The applicant group advised Council they had not conducted any pre-development, post-development, 100-year flood and larger flood events modelling within the site and across the catchment. The applicant group stated there will be fill between 0.8m to 1.2m above the natural ground level across the development site including the carpark and landscaped areas (see **Figure 1**) which covers approximately 4,887.4m² of flood-prone land resulting in modified ground levels above the flood planning level.

Council does not allow any fill in the floodplain as this creates a loss of flood storage or flood conveyance capacity elsewhere either upstream or downstream.



Figure 1 – Subject site (red) and proposed development zone and location of the RCF (blue). Source: *SEE prepared by BBC Consulting Planners*

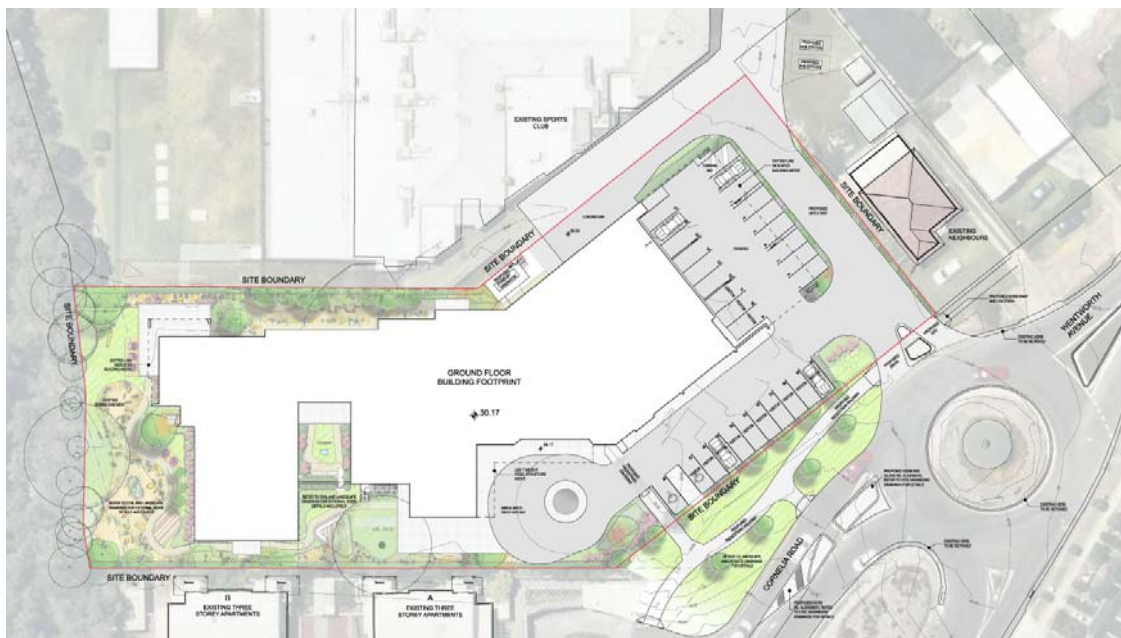


Figure 2 – Site plan of proposed RCF. Source: *Calder Flower Architects*

The applicant group stated that the RCF will have control over who enters/exits the RCF in a flood event by mitigating the potential risk through limiting/cutting off access entirely as opposed to evacuation management plan / refuge-in-place strategy. This rationale is not supported by Council as in hazardous situations, there cannot be as assumed degree of control when dealing with a vulnerable population and the risk of flooding and other associated impacts are generally greater in flood prone land than non-flood prone land.

Further, Council advised the applicant group that it is unlikely to support the proposed RCF as this site is within flood prone land and unreasonably creates an unnecessary layer of risk to vulnerable people (less able-bodied/mobile persons, rescue personnel and emergency staff) in a dangerous situation. The proposed RCF is a sensitive land use and according to table 2.7 floodplain matrix of the PDCP 2011, such uses in flood zones are discouraged and are to be avoided.

2. Provide written response addressing Council's 34 reasons of refusal

Council has not received written response from the applicant addressing Council's 34 reasons for refusal.

3. Provide written justification of the height breach

Council has not received appropriate written justification from the applicant the breach to the building height.

Council notes that the relevant definition used in calculating *height* is clause 3 of the SEPP (Housing for Seniors or People with a Disability) 2004 **not** the definition used in PLEP 2011.

A typographical error in the original report referred to the building height definition in PLEP 2011 rather than the height definition of SEPP (Housing for Seniors or People with a Disability) 2004. In the calculating the height of the RCF the following definition is used:

"...distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point."

The proposed RCF building height is **10.4m** (north-eastern end of the RCF) and up to **13.6m** (western and central parts of the RCF) which does not comply with the maximum 8 metre building height development standard as prescribed by Clause 40(4) of the SEPP (Housing for Seniors and Persons with a Disability) 2004.

The development proposal exceeds the maximum permissible building height by 5.6m which is a **70% variation** to the development standard.

The applicant's original Clause 4.6 justification is not supported, and the variation to the height is not supported for the reasons outlined in the original report.

4. Interface with the adjoining residential flat building at 2 Wentworth Avenue, Toongabbie

Council has not received written response or documentation regarding the RCF interface with the adjoining south-western residential flat building at 2 Wentworth Avenue, Toongabbie.

FURTHER MATTERS FOR CONSIDERATION

State Emergency Service (SES)

Due to the increased risks the proposed RCF places upon the community, the application was referred to the SES for comment.

The SES reviewed the proposal and noted that “...at the 1%AEP...the site practically is a low flood island...”. The SES stated that it creates an unsafe environment for its personnel and does not support the proposed RCF within this location.

CONCLUSION

The application has not been amended to comply with the Panel’s resolution of 6 December 2017.

The public benefit of providing seniors living accommodation on this site does not outweigh the concerns in relation to the built and natural forms of the proposal and the impacts that the proposal would have on the locality. Accordingly, the proposed development is not in the overall public interest as the development results in adverse impacts on the built and natural environments that the community can reasonably expect to be provided on this site.

EPIs and DCPs should be the focal point of any development assessment and although the applicant may disagree with the flood planning controls, this is not a sufficient reason to deviate from the NSW Flood Plain Development Manual 2005 and Parramatta City Council’s Floodplain Risk Management Policy (version 2, approved 27 October 2014).

The proposed RCF is a *sensitive land use* and, according to the floodplain matrix within the PDCP 2011, sensitive land uses (such as RCFs, child care centres, schools, hospitals and seniors housing) on flood risk land are *unsuitable* and are to be avoided.

The site is significantly constrained wherein the location of the creek which runs along the 219m western boundary length of the site, poses significant and life-threatening flood mitigation challenges which cannot be supported and therefore deems the site as unsuitable for the proposed RCF. Furthermore, the SES does not support a residential care facility within this site due to the uncertainty of floodwaters and the inherent risk to its personnel during a rescue operation.

As such, it is recommended that the Sydney Central City Planning Panel (SCCPP) refuse the application.

OFFICER RECOMMENDATION

Pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act, 1979:

- i. That SWCPP as the consent authority refuse development consent to DA/1281/2016 for the demolition works, amalgamation of lots and re-subdivision for construction of a 128 bed Residential Care Facility (RCF) and existing registered club ‘Toongabbie Sports Club’, provision of vehicular access, landscaping, signage and ancillary stormwater and civil works on land at Lot 30 in DP 1106209 and Lots 6, 7, 8 & 9 in DP 22506, 12 Station Road & 4-10 Wentworth Avenue, TOONGABBIE, NSW 2146 for the following reasons:

Height

1. The proposed development does not comply with the development standard of Clause 40(4) 'Height in zones where residential flat buildings are not permitted' of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 as the proposal will result in a building height of 13.6m exceeding the maximum building height by 5.6m (70%). The variation under the provisions in Clause 4.6 of PLEP 2011 is not supported.
2. The proposal breaches the number of storeys control stipulated in Clauses 40(4)(b) and 40(4)(b) of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
3. The proposed height breaches the Parramatta Development Control Plan 2011 Clause 3.2.1, P1 in that the building height fails to respond to the topography of the site.

Site Suitability

4. The site is not suitable for the scale of development due to its proximity to the high hazard flooding impacts of Girraween Creek particularly:
 - a) The proposal is inconsistent with Parramatta Local Environmental Plan 2011, Clause 1.2(2)(e) 'Aims of Plan' as the site is in a low, medium and high hazard flood prone area and the development increases the risk to the community as a result of flooding impact.
 - b) The proposal is inconsistent with the following City of Parramatta Council/State government plans/policies:
 - i. The NSW Flood Plain Development Manual 2005, Appendix J2.1.2 *Development Controls* and J2.1.3 *Aspects dealt with in Individual Development Application*;
 - ii. Floodplain Risk Management Plan 2005, Section 7.1.4 *Planning Matrix for Lower Parramatta River*, Section 7.1.5 *Implementation of the Planning Matrix Approach* and Figure 7-5 *Floodplain Matrix of the Lower Parramatta River Catchment*; and
 - iii. Parramatta City Council's Floodplain Risk Management Policy (Version 2, approved 27 October 2014), Policy Principles and Application of Principles No. 1-4.
 - c) The proposal is inconsistent with the Parramatta Development Control Plan 2011, Section 2.4.2.1 Flooding as the development results in increased risk to human life and does not provide a satisfactory evacuation method and area.
 - d) Pursuant to Section 79C (1) (b) Environmental Planning and Assessment Act 1979, the site is substantially affected by flood risk and adjoins a high hazard flood way (Girraween Creek) where a combination of floodwater velocity and depth creates highly dangerous conditions in and around the site.
 - e) Pursuant to Section 79C (1) (e) Environmental Planning and Assessment Act 1979, the proposed use as residential accommodation is categorized as a 'sensitive land use' in accordance with Table 2.4.2.1.1 of Parramatta Development

Control Plan 2011 and is not suitable on the site due to flood risk in accordance with Table 2.4.2.1.2 of Parramatta Development Control Plan 2011.

- f) Pursuant to Section 79C (1) (b) Environmental Planning and Assessment Act 1979, the proposed building siting in the floodway will cause displacement of floodwaters.
 - g) Pursuant to Section 79C (1) (a) (i) of the *Environmental Planning and Assessment Act, 1979* and Clause 14 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, the proposed development is not suitably located and designed to be consistent with the objective of the chapter.
5. The proposal fails the medium density residential zone objectives bullet point one of Clause 2.3 Parramatta Local Environmental Plan 2011 in the R3 Medium Density Residential zone in that it does not satisfactorily (and safely) provide for the housing needs of the community.

Biodiversity

6. Pursuant to Section 91 of the *Environmental Planning and Assessment Act, 1979*, the NSW DPI (Water) have outstanding matters regarding the width of the vegetated riparian zone within the Girraween Creek riparian corridor and the General Terms of Approval that are required in order for the development application to be consented to.
7. The proposal is inconsistent with Parramatta Local Environmental Plan 2011, Clause 6.4 'Biodiversity Protection' as the RCF adversely impacts native ecological communities and significant species of fauna and flora or habitats within the Girraween Creek riparian corridor.
8. Pursuant to Section 79C (1) (a) (i) of the *Environmental Planning and Assessment Act, 1979* and Clause 3 of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*, the proposed development is not considered to be consistent with the Aims of the policy.

Safety

9. Pursuant to Section 79C (1) (b) Environmental Planning and Assessment Act 1979, access for emergency teams and vehicles to the occupants of the site would be unacceptably hazardous, as would attempts at evacuation, particularly given the increased number of frail aged and disabled people needing assistance.
10. Pursuant to Section 79C (1) (b) Environmental Planning and Assessment Act 1979, the proposal would have adverse safety impacts for persons entering and exiting the site onto Wentworth Avenue due to the ratio of velocity and depth of flood waters at the entrance to the site in the event of an emergency evacuation during a flood event.
11. Pursuant to Section 79C (1) (b) Environmental Planning and Assessment Act 1979, the proposal has unsatisfactory egress in the event of a flood.

Overdevelopment of the site

12. The proposal breaches Clause 1.2(h) of Parramatta Local Environmental Plan 2011 as the proposed development does not enhance the amenity and characteristics of the established area.
13. The proposal fails to provide adequate landscaped area in accordance with Clause 48(c) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 in that the proposal provides 1,318.7m² of landscaped area where 3,200m² is required for the proposed number of residents.
14. The elevation of the building does not satisfactorily maintain reasonable neighbourhood amenity and appropriate residential character as the proposal does not provide building setbacks to reduce bulk, use siting to relate to the site's landform, and does not consider the impact of the location of the building on the boundary in accordance with Clause 33(c), 33(f) and 33(g) of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004.
15. Pursuant to Section 79C (1) (a) (i) of the Environmental Planning and Assessment Act, 1979 and the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, the proposed development is inconsistent with the following clauses of this SEPP:
 - a) Clause 40 Development Standards – minimum sizes and building height,
 - b) Clause 48 Standards that cannot be used to refuse development consent for residential care facilities.

Urban Design

16. The proposal fails the objectives and design principles of Section 3.2.1 Building Form and Massing in Parramatta Development Control Plan 2011 as follows:
 - a) The development is not of compatible form relative to the spatial characteristics of the local area;
 - b) The building mass and form does not complement or enhance the visual character of the street;
 - c) The distribution of building height and mass does not preserve or enhance neighbourhood amenity, site characteristics and environmental constraints;
 - d) The proposed building scale, mass and height is not sensitive to amenity issues of surrounding or nearby development; and
 - e) The building height and mass results in unreasonable loss of visual amenity to the adjacent public domain.

Amenity

17. Pursuant to Section 79C (1) (a) (i) of the *Environmental Planning and Assessment Act, 1979* and the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, the proposed development is inconsistent with the following clauses of this SEPP:
 - a) Clause 33 Neighbourhood amenity and streetscape
 - b) Clause 34 Visual and acoustic privacy
 - c) Clause 35 Solar access and design for climate

18. The proposal is inconsistent with the objectives of the Parramatta Development Control Plan 2011, Part 3.3.2 private and communal open space as the development does not provide a satisfactory design for balconies, terraces and communal areas to be usable outdoor areas.

Poor relationship to the public domain

19. The proposal breaches Clause 1.2(l) of Parramatta Local Environmental Plan 2011 in that the development does not protect, conserve or enhance natural resources, including waterways, riparian land, surface and groundwater quality and flows and dependent ecosystems.
20. Pursuant to Section 79C (1) (a) (i) of the *Environmental Planning and Assessment Act, 1979* and Clause 38 of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, the proposed development is inconsistent with the intent of the accessibility requirements and for the services to be utilised in a safe and controlled environment.

Insufficient information

Public Domain

21. The proposal breaches development control 2.4.8, of Parramatta Development Control Plan 2011 in that there is no information on the public domain and roundabout works.

Stormwater/Flooding

22. Insufficient information and details are submitted demonstrating that retaining walls along common boundary lines will not impact on neighbouring properties in accordance with Section 3.3.6.1, P6 of Parramatta Development Control Plan 2011.
23. Insufficient information is submitted demonstrating that the building incorporates the following flood mitigation measures:
- a) Satisfactory Draft Flood Emergency Detailed Response Plan;
 - b) Closure methods for all openings necessary to mitigate flood effects;
 - c) Methods of providing safe back-up emergency electrical power in the event of a flood to protect the proposed OSD system;
 - d) Sewage tank details to hold sewage for a sufficient amount of time in the event of a flood;
 - e) Installation of a potable water tank for back-up water supply in a flood event; and
 - f) A suitably designed lift that mitigates flood effects to the ground floor of the building.
24. Insufficient information is submitted demonstrating that performance modelling using Model for Urban Stormwater Improvement Conceptualisation (MUSIC) software for the proposed Water Sensitive Urban Design treatment will achieve the pollution reduction targets outlined in Table 3.30 - *Stormwater Treatment Targets for Development* of Parramatta Development Control Plan 2011.

25. Insufficient information is submitted regarding the proposed changes to the access to the adjoining strata-titled residential flat building with 60 units (2 Wentworth Ave, Toongabbie).
26. Pursuant to Section 79C (1) (a) (i) of the *Environmental Planning and Assessment Act, 1979* and Clause 36 of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, the proposed development is inconsistent with the intent of the stormwater requirements.

Safety

27. Insufficient information is submitted demonstrating that:
- a) A flood warning system will function as intended in the flash flood environment of Girraween Creek providing adequate warning as required by the Flood Emergency Response Plan.
 - b) That the flood warning system will be installed in accordance with Australian Standard AS-3745.
28. Pursuant to Section 79C (1) (b) Environmental Planning and Assessment Act 1979, insufficient information is submitted regarding the details of the outdoor areas and the flood evacuation process.
29. Pursuant to Section 79C (1) (a) (i) of the *Environmental Planning and Assessment Act, 1979* and Clause 37 of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, the proposed development is inconsistent with the intent of the safety measures.

Waste

30. Pursuant to Section 79C (1) (b) Environmental Planning and Assessment Act 1979 and Clause 39 of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, insufficient information is submitted regarding the waste management.

Public Interest

31. The proposal fails to satisfy the relevant considerations under Section 79C(1)(c) Environmental Planning and Assessment Act 1979 for suitability of the site, built environment, and the public interest.
32. Pursuant to Section 79C (1) (a) (i) of the *Environmental Planning and Assessment Act, 1979* and Clause 2(1) (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, the proposed development is not considered to be consistent with this Aim of the policy.
33. Pursuant to Section 79C (1) (a) (i) of the *Environmental Planning and Assessment Act, 1979* and Clause 2 of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*, the proposed development is not considered to be consistent with the Aims of the policy.

34. The proposal fails to satisfy the relevant considerations under Section 79C(1)(e) Environmental Planning and Assessment Act 1979 in that the adverse impacts by the development due to non-compliances with the applicable planning controls are not beneficial for the local community and as such, are not in the wider public interest.