



## SYDNEY CENTRAL CITY PLANNING PANEL

### COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2017SWC007
<b>DA Number</b>	DA/1281/2016
<b>LGA</b>	City of Parramatta Council
<b>Proposed Development</b>	Demolition works, amalgamation of lots and re-subdivision for construction of a 124 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.
<b>Street Address</b>	Lot 30 in DP 1106209 and Lots 6, 7, 8 & 9 in DP 22506, 12 Station Road & 4-10 Wentworth Avenue, TOONGABBIE, NSW 2146
<b>Applicant</b>	Opal Aged Care
<b>Owner</b>	Toongabbie Sports & Bowling Club Limited
<b>Date of DA lodgement</b>	23 December 2016
<b>Number of Submissions</b>	Nil
<b>Recommendation</b>	Refusal
<b>Regional Significant Development {Schedule 7 of the SEPP (State and Regional Development) 2011}</b>	Clause 2 of Schedule 7 of the Environmental Planning and Assessment Act 1979 as the development has a Capital Investment Value (CIV) in excess of \$30 million. The proposed development has a CIV of \$34,446,500
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> <li>• Environmental Planning and Assessment Regulation 2000</li> <li>• State Environmental Planning Policy 55 – Remediation of Land</li> <li>• State Environmental Planning Policy 64 – Advertising and Signage</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</li> <li>• State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</li> <li>• Water Management Act 2000</li> <li>• Parramatta Local Environmental Plan 2011</li> </ul>

	<ul style="list-style-type: none"> <li>• Parramatta Development Control Plan 2011</li> <li>• Floodplain Risk Management Policy (Version 2, approved 27 October 2014)</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Original assessment planning report (for 6 December 2017 SWCPP meeting)</li> <li>• Addendum report (for 7 March 2017 SCCPP meeting)</li> <li>• Architectural Plans;</li> <li>• Clause 4.6 variation – Height of Building;</li> <li>• Stormwater Plans;</li> <li>• Landscape Plans;</li> <li>• NSW State Emergency Services statement;</li> <li>• Independent Flood Risk Assessment Report; and</li> <li>• Supplementary planning response letter;</li> </ul>
<b>Report prepared by</b>	Shaylin Moodliar, Senior Development Assessment Officer
<b>Report date (to SCCPP)</b>	18 July 2018

#### **Summary of s4.15 matters**

**Yes**

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

#### **Legislative clauses requiring consent authority satisfaction**

**Yes**

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?

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

#### **Clause 4.6 Exceptions to development standards**

**Yes**

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?

#### **Special Infrastructure Contributions**

**No**

Does the DA require Special Infrastructure Contributions conditions (s7.24)?

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

#### **Conditions**

**No (refusal recommendation)**

Have draft conditions been provided to the applicant for comment?

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

**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 124 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 Environmental Plan 2011 (PLEP 2011)
Other relevant legislation/state environmental planning policies (SEPP)/policies:	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, Local Government Act 1993 and Water Management Act 2000.
Planning Controls & Policy	Parramatta Section 94A Contributions Plan 2011 (Outside CBD), Parramatta Development Control Plan 2011, NSW Floodplain Development Manual 2005, 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 Industry (Lands & 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 was deferred on the second referral to the Sydney Central City Planning Panel, which re-considered the proposal at the public meeting of 7 March 2018.

The application proposed demolition, amalgamation of lots and re-subdivision for construction of a 124 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 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 PDGP 2011. The proposal seeks to modify the land by filling 600-1130mm of the development site (approximately 4,887.4m<sup>2</sup>) within the floodplain to meet the flood planning levels, resulting in the displacement of floodwaters over a large area and increasing the risk to life to those occupants and staff within the RCF to an unacceptable degree.

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 on 6 December 2017, the Panel deferred the determination of the application and resolved the following:

- 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.*

At the second Sydney Central City Planning Panel meeting on 7 March 2018, the Panel deferred the determination of the application and resolved:

- 1. The Panel supports the applicant's request for deferral.*
- 2. The Panel asks the Council to respond in writing to the additional material provided by the applicant and ask the applicant to respond to the SES letter.*
- 3. Further, the Panel seeks a report from an independent flooding expert in relation to the impacts of flooding on the development*
- 4. The Panel request the Council to obtain the report at the expense of the applicant.*

Council is a representative on the local emergency management committee and has a role in the preparation of the local flood plan under the guidance of the SES and supporting SES with resources during flood emergencies in accordance with the NSW Floodplain Development Manual 2005. Having fully assessed the application, Council has concluded that placing a vulnerable population in flood prone land cannot be accepted and refuses to support an application for housing for seniors or persons with a disability on the subject site. Council is advised that this view is shared by State Emergency Service and NSW Health. Council holds significant concerns, first and foremost, for potential impact on future residents and occupiers. The other significant concern relates to Council's responsibility under the NSW Floodplain Development Manual 2005 and the Local Government Act 1993.

Below is a supplementary report which assesses the proposal against the above requirements and the amended set of plans and supporting documentation.

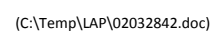
## **PROPOSED DEVELOPMENT**

Approval is sought for demolition works and construction of a 4-storey, 124-bed Residential Care Facility (RCF) including tree removal, earthworks and at-grade car parking and associated infrastructure works and upgrades within Wentworth Avenue.



DA/1281/2016 – 2<sup>nd</sup> addendum report to SCCPP

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A detailed summary of the proposal is provided as follows:

#### Retention of Toongabbie Sports Club owned buildings

- Retention of the registered club 'Toongabbie Sports Club', two (2) bowling greens and car park with access from 12 Station Road; and
- Retention of a dwelling house on land at Lot 6 in DP 22506, No.10 Wentworth Avenue, Toongabbie.

#### Demolition works

- Demolition of three (3) dwelling houses and on-site structures on land at Lots 7-9 in DP 225064, 4, 6 & 8 Wentworth Avenue, Toongabbie; and
- Demolish part of the rear yard fence on land at Lot 6 in DP 22506, No.10 Wentworth Avenue, Toongabbie.

#### Earthworks

- Fill the proposed building footprint (including the car park and public domain works for the footpath and roundabout) of approximately 600-1130mm across 4,887.4m<sup>2</sup> within the development site.

#### Tree Removal

- Removal of all vegetation including twelve (12) trees within the south-western portion of the development site.

#### Civil works & improvements

- New access road from the Wentworth Avenue roundabout intersection; and
- New public domain works including a change in the access arrangements to the strata-titled 60-unit residential flat building at 2 Wentworth Avenue, Toongabbie.

#### Site facilities & improvements

- Associated site works, on-site detention pond, stormwater pipes/ pits and landscaping along western, eastern and southern boundaries.

#### Construction

- Construction of 4-storey residential care facility (RCF) containing 124 beds including:

##### *Ground Floor (RL 30.17)*

- Construction of ground floor RCF building including fifteen (15) single residential care bedrooms with ensuites for patients with dementia, 2 courtyards, nurse stations, reception, lounge room, dining room, café, hair salon, multi-purpose room, interview room, stairs, staff room, communication room, kitchen, laundry rooms, entry foyer and 2 lift core; and
- At-grade car park for 28 vehicles with an undercroft area for 17 vehicles and a turning bay, ambulance bay, loading bay and loading dock.

##### *Level 1 (RL 33.37)*

- Construction of level 1 RCF building including thirty-nine (39) single residential care bedrooms with ensuites, 4 lounge rooms/areas, nurse stations, servery

area, dining room, 2 lift cores, 2 balconies, storerooms, bathroom, sitting area, linen room, treatment room and cleaning rooms.

*Level 2 (RL 36.57)*

- Construction of level 2 RCF building including thirty-nine (39) single residential care bedrooms with ensuites, 4 lounge rooms/areas, nurse stations, servery area, dining room, 2 lift cores, 4 balconies, storerooms, bathroom, sitting area, linen room, treatment room and cleaning rooms.

*Level 3 (RL 99.64)*

- Construction of level 3 RCF building including thirty-one (31) single residential care bedrooms with ensuites, 2 lounge rooms/areas, nurse stations, servery area, dining room, 2 lift cores, 4 balconies/terraces, storerooms, bathroom, sitting area, linen room, treatment room and cleaning rooms; and
- Part rooftop landscape terrace accessible from eastern lounge/activity area.

Signage

- Three (3) signs are proposed: building identification sign, entry sign and building wall signs with single sided non-illuminated powder coated aluminium lettering reading 'Opal Aged Care Toongabbie' with a white emblem behind the logo.

Amalgamation of lots and subdivision

- Amalgamation of Lots 7, 8 & 9 in DP 22506 and Lot 30 in DP 1106209;
- Re-subdivision into 2 lots comprising a residual northern lot approximately 16,330m<sup>2</sup> and a southern lot approximately 4,887.4m<sup>2</sup>; and
- Re-subdivision including boundary adjustment of Lot 6 in DP 22506, 10 Wentworth Avenue, Toongabbie into approximately 694.8m<sup>2</sup>.

Staff use of the RCF

- Approximately thirty (30) full-time and part-time staff will be employed for the RCF within the development site.

**Amended plans**

Salient differences between the original application lodged on 23 December 2016 and the current proposal are as follows:

- Reduction in the number of RCF by 4 beds (from 128-bed to a 124-bed RCF) and by removing 3 RCF beds from the ground floor and 1 RCF bed from the first floor level.
- Provision of a 7.9-11.9m ground floor setback to the southern boundary.
- Removal of the communal café bathroom from the ground level to incorporate a modified ground floor multi-purpose room.
- Deletion of the first floor level RCF bed from the southern elevation and south-facing communal balcony.
- Inclusion of an extended south-facing first floor level communal terrace overlooking part of the car park and roundabout.
- Deletion of the second floor level RCF bed from the southern elevation.



- Inclusion of an extended south-facing second floor level communal terrace overlooking part of the car park and roundabout.
- Deletion of the third floor level RCF bed from southern elevation and south-facing communal balconies to incorporate 2 RCF beds.
- Reduction of the west-facing RCF bed.
- Extension of the third floor level lounge room and incorporate third floor level communal terrace overlooking part of the car park and roundabout.
- Relocation of the fire stairs to the roof.
- Revision of landscaping and stormwater plans.



**Figure 3** – Photomontage of development site looking south-east from Girraween Creek boundary. *Source: Calder Flower Architects*



**Figure 4** – Photomontage of development site looking south-west from the car park between the proposed development and the Toongabbie Sports Club. *Source: Calder Flower Architects*



**Figure 5** – Photomontage of development site looking north from the Wentworth Avenue streetscape. Source: Calder Flower Architects

## EXISTING SITE AND CONDITIONS

The subject site is legally known as Lots 6, 7, 8 & 9 in DP 22506 and Lot 30 in DP 1106209, and is known as 4, 6, 8 & 10 Wentworth Avenue & 12 Station Road, Toongabbie. The site is located on the western side of Wentworth Avenue and the southern side of Station Road in Toongabbie. The site adjoins the Girraween Creek to the west, Station Road to the north and Wentworth Avenue to the east and south.

The subject site is an irregular shape comprising of approximately 21,912.2m<sup>2</sup> (see **Figure 1**). The site has a northern frontage to Station Road of approximately 72.8m, a combined eastern boundary of approximately 135.2m, a combined southern frontage to Wentworth Avenue of approximately 72.9m (for properties at 4, 6, 8 & 10 Wentworth Avenue), a southern boundary to the 2 Wentworth Avenue of approximately 74.4m and an irregular western boundary to Girraween Creek of approximately 219.6m.

The site is surrounded by residential flat buildings to the south-west and south and detached style dwelling houses to the east and south-east along Wentworth Avenue. The 'Toongabbie Sports and Bowling Club' is located on Lot 30 in DP 1106209 within the northern portion of the site.

The southern portion of the Toongabbie Sports Club site comprises a covered BBQ area, an existing formed vehicle access way, a fire hydrant, electricity substation and a grassed area. This part of the site also contains significant mature trees located along the southern and western boundaries.

The four (4) adjoining residential lots 6, 7, 8 & 9 in DP 22506 contain single-storey dwelling houses with tiled roofs, detached rear yard structures which were built in the 1950s and 1960s and all owned by Toongabbie Sports Club. Between 2000 and 2003, the rear yards of No.6 & 8 Wentworth Avenue (Lots 7 & 8 in DP 22506) were converted into hard-surfaced overflow car parking and vehicular turning area for the Toongabbie Sports Club and the rear boundary fences of No.6 & 8 Wentworth Avenue were modified to reflect this.

## ASSESSMENT OF DEFERRED MATTERS

### 1. The Panel supports the applicant's request for deferral

Noted. Council and the applicant group have addressed all deferred matters as contained within this report. Refer to this report, original assessment report and previous addendum report for detailed assessment.

## **2. Council's response to the additional information**

On 13 June 2018, a meeting was held between Council's planner and the applicant group. The applicant group confirmed the provision of revised architectural plans with a revised date and issue, revised stormwater plans and landscape plans that relate to the revised 124-bed RCF.

Discussions focussed on the design of the RCF and DPI (Water) general terms of approval and the setback to the western boundary. The plans show services such as stormwater pipes and on-site detention tanks within the vegetated riparian corridor which does not seek the approval of the benefitted lot which it traverses (Sydney Water) and cannot achieve a minimum 10 metres setback and an average of 20 metres vegetated riparian corridor.

It is noted the applicant group has not provided revised architectural plans with a revised date and issue, revised stormwater plans and landscape plans that relate to the revised 124-bed RCF.

## **3. Applicant's response to the NSW State Emergency Services (SES) letter dated 28 February 2018**

In a letter and report dated 31 May 2018, the applicant's engineer, Molino Stewart Pty Ltd, responded to the SES letter, dated 28 February 2018.

Steven Molino (of Molino Stewart Pty Ltd) concludes the following:

*"Flood modelling shows that the site will not be affected at all by flooding in the 1% AEP flood and only by a small area of low hazard floodwater in events up to and including the 1 in 2,000 (0.05%) AEP flood.*

*The proposed development will be constructed in such a way that the building itself will be flood free and will be contiguous with adjacent flood free land in all floods including the PMF. This flood free area will only be isolated by flooding in events larger than the 1% AEP flood and in such events will become what the NSW SES refers to as a "high flood island".*

*The high flood island of which the development will be part will have the same risk of isolation from access by emergency services or supply of power as the whole of the suburb of Girraween which itself will become a high flood island.*

*Residents can be kept safe within the building if they are isolated and sheltering in place is the most appropriate response to flooding at this location.*

*The proposed development is therefore at no greater risk from the direct or indirect effects of flooding than any other site within Girraween that is above the level of the PMF. The development will not cause unacceptable flood impacts on neighbouring properties."*

Council does not endorse shelter in place for a vulnerable population and does not generally agree with the report by the applicant's engineer, Molino Stewart Pty Ltd, dated 31 May 2018 and its conclusions. The NSW SES has independently identified these problems and does not support the application.

## **4. Independent flood risk expert response to the impacts of flooding on the RCF**

On 19 June 2018, a meeting was held between Council's flood engineer, planner and the independent flood risk engineer, Drew Bewsher (of Bewsher Consulting Pty Ltd).

Discussions focussed on the design of the residential care facility (RCF) and the flood events along Girraween Creek. Mr Bewsher was advised that there will be fill between 0.6m to 1.2m above the natural ground level across the development site including the carpark and landscaped areas (see **Figure 1**) which covers approximately 4,887.4m<sup>2</sup> 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.

Bewsher provided an 'Independent Review of Flood Risks' response, dated 5 July 2018 and concluded:

*"Having regard only to flood risks, including the risks posed by isolation of the proposed development during floods, the reviewer supports the Application. This support is contingent upon conditions being provided (if required) to ensure the facility is self-sufficient for the period of any isolation."*

The findings of Mr Bewsher's report does not change the NSW SES or Council's position in that the proposed RCF is not a suitable development for the site. The proposed RCF increases risk to the site that is unacceptable and is not in the public interest of the community.

## **5. Traffic comments from Blacktown City Council and Cumberland Council**

As requested by the Panel, feedback from the adjacent Councils' traffic teams regarding the proposed change to the roundabout under this DA was sought. Both Blacktown City Council and Cumberland Council's traffic sections declined to provide any comment as the roundabout is within City of Parramatta Council LGA.

## **PLANNING CONSIDERATION**

The proposal, as amended, has been assessed under the provisions of the *Environmental Planning and Assessment Act 1979*. The matters below are those requiring the consideration of the Sydney Central City Planning Panel (SCCPP).

### **SECTION 4.15(1) – MATTERS FOR CONSIDERATION – GENERAL**

#### **Section 4.47 Development that is Integrated Development**

The proposal is defined as a 'Nominated Integrated' development under the provisions of Section 4.46 of the *Environmental Planning and Assessment Act 1979*, as an approval is required from the NSW Department of Industry (Lands & Water), in accordance with the requirements of the *Water Management Act 2000*.

The application was referred to the NSW Department of Industry (Lands & Water) pursuant to Section 4.47(2) of the *Environmental Planning and Assessment Act 1979*.

The NSW Department of Industry (Lands & Water) issued General Terms of Approval (GTA) for works requiring a controlled activity approval under Section 91 of the *Water Management Act 2000*.

Section 4.47(3) of the *Environmental Planning and Assessment Act 1979* reads:

*“A consent granted by the consent authority must be consistent with the general terms of any approval proposed to be granted by the approval body in relation to the development and of which the consent authority is informed. For the purposes of this Part, the consent authority is taken to have power under this Act to impose any condition that the approval body could impose as a condition of its approval.”*

The NSW Department of Industry (Lands & Water) noted that the GTA is not the consent for controlled activity (CAA) and the applicant “...*must apply to NSW Department of Industry (Lands & Water) for a controlled activity approval after consent has been issued by Council and before the commencement of any work or activity on waterfront land.*”

The NSW Department of Industry (Lands & Water) confirmed that Girraween Creek is a 2<sup>nd</sup> order stream and a 20 metre riparian corridor applies.

In accordance with the GTA and the document titled ‘Controlled activities on waterfront land - Guidelines for riparian corridors on waterfront land’ issued by the NSW Department of Industry (Lands & Water) correspondence between the City of Parramatta Council and NSW Department of Industry (Lands & Water) occurred and on 9 October 2017, the NSW DPI (Water) revised the required width of the vegetated riparian zone within the Girraween Creek riparian corridor with the following comments “...*in addition to our discussion today about the condition of GTA related to maintaining riparian corridor, NSW Department of Industry (Lands & Water) guideline provides flexibility. So the applicant can provide minimum 10 metres and average of 20 metres for 2nd order Girraween Creek...*”.

The applicant has been advised of NSW Department of Industry (Lands & Water) requirements. As proposed the development does not achieve the required riparian corridor setback. A cross-section plan through the creek to depict the top of the eastern bank of Girraween Creek has not been provided to Council since the DA was lodged. Structures, including components of the RCF building, are within 10 metres from the western boundary abutting Girraween Creek. The proposal therefore does not satisfy the riparian corridor issue.

Were the application recommended for approval, the general terms of approval conditions from NSW Department of Industry (Lands & Water) would be imposed resulting in the applicant applying for a Controlled Activity Approval (CAA) from the NSW Department of Industry (Lands & Water).

## **PROVISIONS OF ENVIRONMENTAL PLANNING INSTRUMENTS (Section 4.15(1)(a)(i))**

### **State Environmental Planning Policy No.55 - Contaminated Land (SEPP 55)**

An assessment of the application has been undertaken on the basis of Clause 7(1), 7(2) and 7(3) of SEPP 55 and the Managing Land Contamination Planning Guidelines 1998 for assessing potential contamination of a site. The following is a checklist for the evaluation:

- Is the planning authority aware of any previous investigations about contamination on the land? What were the results including any previous evaluations?

Comment: Council records show no evidence in previous investigations for contamination of the land the subject of this application.

- Do existing records of the planning authority show that an activity listed in Table 1 has ever been approved on the subject land? (The use of records held by other authorities or libraries are not required for an initial evaluation).
- Comment: Council and applicant records show that no uses identified in the table below that may result in contamination were present on the site.

Acid/alkali, plant and formulation	Landfill sites
Agricultural/horticultural activities	Metal treatment
Airports	Mining and extractive industries
Asbestos production and disposal	Oil production and storage
Chemicals manufacture and formulation	Paint formulation and manufacture
Defence works	Pesticide manufacture and formulation
Drum re-conditioning works	Power stations
Dry cleaning establishments	Railway yards
Electrical manufacturing (transformers)	Service stations
Electroplating and heat treatment premises	Sheep and cattle dips
Engine works	Smelting and refining
Explosives industry	Tanning and associated trades
Gas works	Waste storage and treatment
Iron and steel works	Wood preservation

*Table 1: Some Activities that may cause contamination*

- Was the subject land at any time zoned for industrial, agricultural or defence purposes?

Comment: Council's records show that the site was not used for residential purposes prior to being a recreation club.

- Is the subject land currently used for an activity listed in Table 1 above?

Comment: Council records and a site inspection reveal that the land is not currently used for a purpose identified at Table 1 above.

- To the planning authority's knowledge was, or is, the subject land regulated through licensing or other mechanisms in relation any activity listed in Table 1?

Comment: No.

- Are there any land use restrictions on the subject land relating to possible contamination such as notices issued by the EPA or other regulatory authority?

Comment: No.

- Does a site inspection conducted by the planning authority suggest that the site may have been associated with any activities listed in Table 1?

Comment: A number of site inspections were undertaken during the course of assessment. No activities in Table 1 were identified.



- Is the planning authority aware of information concerning contamination impacts on land immediately adjacent to the subject land which would affect the subject land?

Comment: No. The adjoining sites are currently being used for low density residential development.

- Has the applicant for development consent carried out the investigation required by subclause 7(2) of SEPP 55 and provided a report on it to the consent authority.

Comment: Yes.

Concluding comments: In view of the above evaluation, and considering the requirements of SEPP 55 and the Managing Land Contamination Planning Guidelines 1998, a 'Detailed site and contamination investigation' report, Project number: 85056.00.Rev1, dated November 2015, prepared by Douglas Partners was submitted and assessed by Council's Environmental Health Officer. Subject to standard and special conditions, the site is suitable for its proposed use and Clause 7 of SEPP 55 is satisfied.

Were the application recommended for approval standard, asbestos, site audit statement, site investigation and contamination conditions would be incorporated into a notice of determination. It is therefore considered that the site poses no risk of contamination and as such no further consideration is required under Clause 7 of the SEPP.

### **State Environmental Planning Policy No.64 – Advertising and Signage**

The application proposes the construction and display of the following signage:

- Site entry signage affixed to a free-standing 300mm high brick wall near the driveway/roundabout entrance along Wentworth Avenue. The site entry sign will be a single-sided non-illuminated powder coated aluminium lettering, measuring 2000mm wide x 800mm long reading 'Opal Specialist Aged Care Toongabbie' with a white emblem behind the logo approximately 1.2-1.5 metres above the existing Wentworth Avenue footpath;
- Building wall sign with single sided non-illuminated powder coated aluminium lettering measuring 3000mm wide x 1500mm long reading 'Opal Specialist Aged Care Toongabbie' with a white emblem behind the logo. The sign will be affixed to the new Wentworth Avenue building approximately 10.5-12 metres above the existing ground level along Wentworth Avenue; and
- Building entry sign affixed to the southern elevation of the building entrance at the western end of the Wentworth Avenue car park. The entry sign will be a single-sided non-illuminated powder coated aluminium lettering, measuring 1500mm wide x 750mm long reading 'Opal Specialist Aged Care Toongabbie' with a white emblem behind the logo approximately 2 metres above the existing Wentworth Avenue footpath.



**Figure 6** – Proposed signage along the Wentworth Avenue building, entry and wall façade. *Source: Calder Flower Architects*

SEPP 64 was gazetted on 16 March 2001 and aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.

Clause 8 of SEPP 64 states the following:

*A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:*

- (a) *that the signage is consistent with the objectives of this Policy as set out in clause 3*
- (1) (a), and
- (b) *that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.*

### Aims and Objectives

The proposed signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations is of high quality design and finish, and is therefore consistent with the aims and objectives of Clause 3 of SEPP 64.

### Assessment Criteria

The following table outlines the manner in which the proposed signage satisfies the assessment criteria of SEPP 64.

Consideration	Comment
<b>1 Character of the area</b>	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Yes. The proposed non-illuminated building, wall and entry signage are compatible with the existing building identification signage in the locality.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Yes. The content of the proposed signage is consistent with the character of the existing building identification signage along Wentworth Avenue and the Toongabbie locality.
<b>2 Special areas</b>	
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?	No. The proposal does not 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.
<b>3 Views and vistas</b>	
Does the proposal obscure or compromise important views?	No. The proposal does not obscure any views.
Does the proposal dominate the skyline and reduce the quality of vistas?	No.

	The proposal does not dominate the skyline or reduce the quality of vistas.
Does the proposal respect the viewing rights of other advertisers?	Yes. The proposed sign respects the viewing rights of other advertisers.
<b>4 Streetscape, setting or landscape</b>	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Yes. The scale, proportion and form of the proposed signage is appropriate for the streetscape and setting and are consistent with that of similar building identification signage along Wentworth Avenue.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Yes. The proposed signage serves to identify the existing retail premise and contributes to the visual interest of the streetscape.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	N/A.
Does the proposal screen unsightliness?	N/A. The proposed signage will be attached to the new RCF building fronting Wentworth Avenue and near the modified roundabout intersection without creating adverse traffic impacts.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No. The proposed sign does not protrude above buildings, structures or tree canopies.
Does the proposal require ongoing vegetation management?	N/A. The proposed signage will not require ongoing vegetation management.
<b>5 Site and building</b>	
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?	Yes. The proposed signage is of an acceptable sizing and scale.
Does the proposal respect important features of the site or building, or both?	Yes. The signs do not significantly protrude from the existing building, are of an appropriate size and scale and adopts an acceptable colour scheme, thereby respecting the important features of the site and surrounding buildings.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Yes. The signage demonstrates innovation and imagination.
<b>6 Associated devices and logos with advertisements and advertising structures</b>	
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?	Yes. The 'Opal Aged Care Toongabbie' logo has been included on all proposed signage structures.  No safety devices or platforms are proposed.
<b>7 Illumination</b>	
Would illumination result in unacceptable glare?	No illumination is proposed.
Would illumination affect safety for pedestrians, vehicles or aircraft?	No illumination is proposed.
Would illumination detract from the amenity of any residence or other form of accommodation?	No illumination is proposed.
Can the intensity of the illumination be adjusted, if necessary?	N/A. No illumination is proposed.
Is the illumination subject to a curfew?	N/A. No illumination is proposed.
<b>8 Safety</b>	
Would the proposal reduce the safety for any public road?	No. The proposed signage would not reduce the safety for any public road, as it is of an acceptable size, design and scale.

Would the proposal reduce the safety for pedestrians or bicyclists?	No. The proposed signage would not reduce the safety for pedestrians or cyclists, as it is of an acceptable size, design and scale.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No. The proposed signage will not reduce the safety for pedestrians, particularly children, as it is of an acceptable size, design and scale.

## **State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 {SEPP (HSPD) 2004}**

The provisions of SEPP (HSPD) 2004 have been considered in the assessment of the development application.

### Chapter 1 Preliminary

#### *Clause 2 Aims of Policy*

The aims of the policy are as follows:

*(a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*

The proposed development is consistent with the aims of the policy, in that the proposed development will increase the supply and diversity of residences to meet the needs of seniors or people with a disability.

*(b) make efficient use of existing infrastructure and services, and*

In terms of the availability of infrastructure, public transport, community facilities and environmental quality, the site is located within an established residential area and would be supported by the relevant providers (i.e. telecommunications, water, electricity etc.).

The site abuts Wentworth Avenue and is adequately serviced by continuous bus routes. Community facilities (including Toongabbie Railway station, shopping area, sports clubs and medical centres) are located within close proximity of the site.

The proposed development is considered to be consistent with the aims of the policy.

*(c) be of good design.*

When assessing the development against the aim of achieving good design, the development must be considered in context with the other provisions of the PLEP 2011 and PDGP 2011. In this regard, in the context of the built environment, the development proposes the construction of 4-storey RCF development (adjoining Girraween Creek). The development has not been designed in order for buildings and works to be integrated into the site to minimise disturbance of vegetation and landforms.

In addition to the above, the development is not located and designed in a manner particularly suited to the environmentally sensitive nature of the site.

For the above reasons, the proposed development is inconsistent with the aims of the SEPP and this issue has been included as a reason for refusal.

### *Clause 3 Land to which Policy applies*

Clause 3 defines an "existing registered club" as a 'registered club in existence on land immediately before the date on which State Environmental Planning Policy (Seniors Living) 2004 (Amendment No 2) commences.' The 'Toongabbie Sports Club' has been in operation from the 1970s and was in existence at the time of the amending legislation, therefore meeting the definition.

### *Clause 4 Land to which Policy applies*

Clause 4(5) provides, that the SEPP (Housing for Seniors or People with a Disability) 2004 does not apply to land being used for the purposes of an 'existing registered club' and that a consent authority must not treat that land as being zoned primarily for urban purposes thereby enabling this SEPP on adjoining land, *unless* it is satisfied that most of the club land adjoins land zoned for urban purposes. As more than 50% of the boundary abuts land zoned for urban purposes the proposal complies with this sub-clause.

Clause 4(6)(a) of this SEPP refers to Schedule 1 in which certain types of development exclude the application of this SEPP. Parts of the site are classified as "floodway" and "high flooding hazard" under the PDCP 2011. This SEPP does not apply to development described as 'environmentally sensitive land' as listed in Schedule 1 of this SEPP which includes the following words such as 'open space', 'floodway', 'high flooding hazard', 'natural hazard' and 'water catchment' as 'environmentally sensitive land.' None of the above terms are identified under the PLEP 2011. Having regard to 'open space' and the interchangeable RE2 Zone, and under normal circumstances, development could not proceed under the Schedule 1 of this SEPP. However, an exception is made under clause 4(7) of the SEPP (Housing for Seniors or People with a Disability) 2004 when land is being used for the purposes of an 'existing registered club.' With regard to the above and the site compatibility certificate issued by the NSW Department of Planning and Environment, the site is partly used as an existing registered club and is zoned RE2 'Private Recreation'.

In these circumstances, the site does not fall within any of the exemptions listed in the Schedule and the SEPP (Housing for Seniors or People with a Disability) 2004 applies.

## Chapter 2 Key Concepts

The proposed development comprises the redevelopment of the site to accommodate a RCF which includes the following:

- Meals and cleaning services;
- Personal care or nursing care or both; and
- Appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care.

Accordingly on this basis, the proposed development is consistent with the provisions outlined in Chapter 2 of this SEPP.

## Chapter 3 Development for seniors housing

### *Clause 14 Objective of Chapter*

The objective of this chapter is as follows:

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

The proposed development will create a RCF to accommodate very vulnerable occupants, including frail, aged and people with dementia, on a site next to Girraween Creek that is flood affected during extreme events. The proposed RCF relies on filling the development site above the flood planning level and a stay-in-shelter practice which is not supported by NSW Health and the NSW State Emergency Service as the subject site will be inaccessible during a extreme flood event. The proposed RCF is not suitably located and not designed in a manner particularly suited to the environmentally sensitive nature of the site.

For the above reasons, the proposed development is inconsistent with the objective of this chapter and this issue has been included as a reason for refusal.

#### *Clause 15 What Chapter does*

The majority of the development site is zoned RE2, however, in accordance with clause 15 the proposed RCF is permissible as the site is located on land that is zoned primarily for urban purposes and development for the purpose of dwelling houses is permitted on part of the site (Lots 7, 8 & 9 in DP 22506) are zoned R3.

#### *Clause 21 Subdivision*

Consolidation of the existing five (5) allotments and re-subdivision into two (2) lots are proposed under this application. Were the application recommended for approval, conditions pertaining to subdivision will be incorporated into the Notice of Determination.

#### *Clause 22 Fire sprinkler systems in residential care facilities for seniors*

Were the application recommended for approval, conditions pertaining to fire sprinkler systems will be incorporated into the Notice of Determination.

#### *Clause 23 Development on land used for the purposes of an existing registered club*

Part of the site has an existing registered club ‘Toongabbie Sports Club’. The proposal is physically separated from the ‘Toongabbie Sports Club’ building and thus complies with this clause.

#### *Clause 24 Site compatibility certificates required for certain development applications*

Under this clause, if a development site has an existing registered club the applicant must apply to the Department of Planning and Environment for a site compatibility certificate. On 5 May 2017, the applicant lodged an application for a site compatibility certificate with the NSW Department of Planning and Environment for a RCF relating to Lot 30 in DP 1106209, 12 Station Road, Toongabbie. The proposal complies with this clause.

#### *Clause 25 Application for site compatibility certificate*

On 5 May 2017, the applicant lodged an application for a site compatibility certificate with the NSW Department of Planning and Environment, dated 16 August 2016, issued by the Minister,



(or his delegate), was issued for the proposed development site. In summary, the site compatibility certificate is valid and the development is permissible with consent under the SEPP (Housing for Seniors or People with a Disability) 2004.

A site compatibility certificate issued by the NSW Department of Planning and Environment enables the lodgement of a development application with the consent authority, it does not preclude a full merit assessment under the Section 79C of the Environmental Planning & Assessment Act 1979. The NSW Department of Planning and Environment acknowledged that flooding is an issue within the site, however, the 'opinion' was formed under clause 25, that flooding *may* be dealt with by an evacuation plan when the Development Application is assessed on its merits. The evacuation plan, assessed in this report is unsatisfactory.

#### *Clause 26 Location and access to facilities*

The site is within 400m walking distance of shops in Toongabbie. This shopping precinct comprises restaurants, banks and supermarkets. The proposed development includes ancillary services to the proposed seniors housing use such as a hair salon, café and health shop.

Suitable paved pathways for access for electric wheel chairs and motorised carts and the lift are provided from the subject site to the bus stops on Wentworth Avenue.

The average gradients of these pathways do not exceed the acceptable maximum gradient.

#### *Clause 27 Bush fire prone land*

The site is not located within bushfire prone land.

#### *Clause 28 Water and Sewer*

The site is located within the Sydney Water service area and is required to connect to the required services. If the application recommended for approval, conditions of consent would be included to this effect.

#### *Clause 29 Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply*

This clause is not applicable as clause 24 applies.

#### *Clause 30 Site analysis*

A site analysis diagram was submitted with the application and thus complies with this clause.

#### *Clause 31 Design of in-fill self-care housing*

The development provides on-site support services (including meals, cleaning services, nursing and personal care) and therefore is not self-care housing.

#### *Clause 32 Design of residential development*

Refer to assessment of clauses 33-39 (inclusive) below.

#### *Clause 33 Neighbourhood amenity and streetscape*

The size and scale of the built form of the development as presented along Wentworth Avenue is in keeping with the size and scale of the built forms comprising the existing development in the area. The visual pattern of the development is consistent with the predominant character of surrounding development. The development is consistent with the prevailing setback of adjoining properties to the south.

Cross-section plans through the creek showing the top of the eastern bank of Girraween Creek has not been provided, therefore, it is unclear whether the proposal is designed so that no part of the building is constructed in a riparian zone. For the above reason, the proposed development is inconsistent with clause 33(g) and this issue has been included as a reason for refusal.

#### *Clause 34 Visual and acoustic privacy*

Appropriate separation and location openings (i.e. windows & balconies) have been provided in the design and location of the RCF beds. Despite a number of outdoor spaces (i.e. terraces and balconies) facing south adequate separation between buildings is provided. The proposal complies with this clause.

#### *Clause 35 Solar access and design for climate*

The proposed development aligns with adjacent buildings along the Wentworth Avenue frontage. The proposal provides adequate separation from the existing registered club allowing for sufficient solar access and more outdoor space within the development site.

The provision of appropriate sunshade devices to windows needs more consideration, particularly for the west-facing rooms. At-grade car parking without adequate tree plantings to provide shade in summer to reduce heat loading from expansive paved areas is problematic.

Were the application recommended for approval, conditions pertaining to sunshade devices to windows and tree plantings in the car park could be incorporated into the Notice of Determination.

#### *Clause 36 Stormwater*

Revised stormwater plans were submitted demonstrating all stormwater run-off excluding overland flow will be directed to Wentworth Avenue. Were the application recommended for approval, conditions pertaining to stormwater/civil works could be incorporated into the Notice of Determination.

#### *Clause 37 Crime Prevention*

The proposed development does not incorporate CPTED principles in the following manner:

- The main lobby is not clearly visible from the street; and
- The entries are not clearly distinguishable.

For the above reasons, the proposed development is inconsistent with this clause and this issue has been included as a reason for refusal.

#### *Clause 38 Accessibility*

The development provides for adequate footpaths to public transport and services. Pedestrian access to the site is provided via pathways and vehicles have separate access to the proposed RCF. The building is provided with a double lift core from the ground floor. However, the proposed RCF is within flood-prone land, which does not allow for these services to be utilised in a safe and controlled environment. The proposed development is inconsistent with this clause and this issue has been included as a reason for refusal.

#### *Clause 39 Waste Management*

Council's Environmental Health Officer (Waste) has reviewed the proposal and noted the following deficiencies:

*"The location of the proposed waste storage. This must be clearly shown on the architectural and/or floor plans. Details of how building residents will transfer waste from their apartments to the building waste store area. Details of how waste will be collected from the building by a private contractor and the proposed collection point shown on the architectural plans."*

Were the application recommended for approval, conditions pertaining to waste management could be incorporated into the Notice of Determination.

#### *Clause 40 Development Standards – minimum sizes and building height*

The development site where the proposed RCF will be located is approximately 4,887m<sup>2</sup> which meets the minimum requirement of 1,000m<sup>2</sup>. Further, the site has a frontage of approximately 72.9m to Wentworth Avenue which achieves the minimum requirement of 20m. The proposal complies with the minimum site and frontage requirements of this clause.

The proposed RCF building height is **13.6 metres** (to the top of the eastern fire stairs) and the rear 25% of the development site is also 4 storeys in height and therefore does not comply with Clause 40(4). Refer to the Clause 4.6 variation to the 8 metre height development standard as contained in clause 40(4) within the 'Parramatta Local Environmental Plan 2011' section below.

#### *Clause 41 Standards for hostels and self-contained dwellings*

There are no hostels or self-contained dwellings proposed as part of this development.

#### *Clause 42 Serviced Self Care Housing*

The development does not propose any self-contained dwellings.

#### *Clause 43 Transport services to local centres*

Given that 15 single bedrooms will be allocated for persons with dementia, insufficient information has been provided to ascertain if a bus capable of carrying at least 10 passengers will be provided to the residents. Were the application recommended for approval, conditions pertaining to a private bus service to the Toongabbie shopping area could be incorporated into the Notice of Determination.

#### *Clause 44 Availability of facilities and services*

The residents will have opportunities to occupy housing when available. Were the application recommended for approval, conditions of consent would be included to this effect.

#### *Clause 45 Vertical Villages*

Residential flat buildings are not permitted on the site and therefore this clause is not applicable.

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

The proposal provides at-grade car parking for 28 vehicles and an ambulance space which complies with clause 48(d).

As mentioned above, the proposed RCF building height is 13.6m and does not comply with clause 48(a). Refer to discussion on height within the Clause 4.6 of the 'Parramatta Local Environmental Plan 2011' section of this report.

The RCF sited on Lots 7-9 in DP 22506 has a total area of approximately 2,537.8m<sup>2</sup> and doesn't include the RCF across the existing Lot 30 in DP 1106209 which is zoned RE1 with no height of building and FSR development standards. The proposed RCF on Lots 7-9 in DP 22506 has a gross floor area of 3,025.9m<sup>2</sup>, which equates to a FSR of 1.19:1 and does not comply with clause 48(b). As the application is lodged pursuant to this SEPP and not the PLEP 2011, and Clause 48 is not a development standard where a Clause 4.6 variation request under PLEP 2011 is sought, no further assessment of this breach is required. As the proposal seeks FSR greater than 1:1, this has been included as a reason for refusal.

The proposal provides approximately 1,388.6m<sup>2</sup> of landscaping (excluding areas used or to be used for driveways or parking areas) which does not comply with the minimum 25m<sup>2</sup> of landscaped area per residential care facility bed which equates to 3,100m<sup>2</sup> of landscaped areas. The development is deficient by approximately 1,711.4m<sup>2</sup> of minimum requirement for landscaping and does not comply with clause 48(c).

The proposed development has been found to be inconsistent with clause 48(a), 48(b) and 48(c) and this has been included as a reason for refusal.

#### Chapter 4 – Miscellaneous

The proposed development is consistent with the provisions contained in Chapter 4. The site is not located on environmentally sensitive land (as defined by Schedule 1 of this SEPP), is not affected by amendments to other SEPPs, and the special provisions do not apply to this land. However, the requirement of Clause 55 is applicable to the proposed development, which states:

*“A consent authority must not grant consent to the carrying out of development for the purpose of a residential care facility for seniors unless the proposed development includes a fire sprinkler system”.*

The SEE indicates that this requirement should be deferred as a condition of consent. Accordingly, this requirement can be addressed by way of conditions should the application be approved. Accordingly, no further assessment of the application is required under Chapter 4 of the SEPP.

## **State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)**

The provisions of ISEPP have been considered in the assessment of the development application.

### Endeavour Energy

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or
- immediately adjacent to an electricity substation, or
- within 5m of an overhead power line.

The application was referred to Endeavour Energy on 5 January 2017 for comment. Endeavour Energy raised no objections subject to network capacity/connection, earthing, safety clearances, vegetation management, noise, dial before you dig, demolition, public safety and emergency contact comments which will be included as a condition of consent should the application be approved.

### Roads and Maritime Service (RMS)

The application is not subject to clause 101 of the ISEPP as the site does not have frontage to a classified road. The application is not subject to clause 102 of the ISEPP as the average daily traffic volume of Wentworth Avenue is less than 40,000 vehicles.

With regards to requirements of Clause 104(2)(b) and, Schedule 3 of the ISEPP, the development does not have a capacity for 200 or more motor vehicles. Therefore, the ISEPP does not apply in this respect.

## **State Environmental Planning Policy (State and Regional Development) 2011**

This application is captured by Clause 2 of Schedule 7 and Clause 20(1) of this SEPP which provides that the SCCPP is the consent authority for this application.

## **State Environmental Planning Policy (Vegetation in Non-Rural areas) 2017**

The application has been assessed against the requirements of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017. This Policy seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The application proposes the removal of trees from the site. Council's Tree and Landscape Officer has reviewed the application and raise no objections to the removal of the vegetation from the subject site subject to conditions.

## **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)**

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP.

The Sydney Harbour Catchment Planning Principles must be considered and where possible achieved in the carrying out of development within the catchment. The key relevant principles include:

- Protect and improve hydrological, ecological and geomorphologic processes;
- Consider cumulative impacts of development within the catchment;
- Improve water quality of urban runoff and reduce quantity and frequency of urban runoff; and
- Protect and rehabilitate riparian corridors and remnant vegetation.

The site is not located on the foreshore. The site is located adjacent to the Girraween Creek which is a natural waterway along the length of the development site within the wider subject site. The site and the surrounding area are subject to major low, medium and high hazard flooding. Girraween Creek is mostly a natural waterway upstream and is a concrete channel further downstream where Girraween Creek merges with Pendle Creek. Therefore, flow volumes are high and at times of concentration are shortened with flood peaks travelling rapidly downstream, resulting in short warning times, high intensity and potential for high peak floods.

Girraween Creek is subject to severe floods during extreme events of the upper Parramatta River catchment, resulting in flood hazard conditions for a majority of the site area.

The application subject to this review was assessed by Council's Catchment Engineer, who concluded that the proposed use of the site would expose occupiers of the building to the risks and hazards of flooding on the site.

For the above reasons, the proposed development has been found to be inconsistent with the aims of the SEPP and this issue has been included as a reason for refusal.

### **State Environmental Planning Policy No 1 – Development Standard**

Refer to the Clause 4.6 variation within the 'Parramatta Local Environmental Plan 2011' section below for the breach to the 8 metre height development standard under clause 40(4) of the SEPP (Housing for Seniors or People with a Disability) 2004.

### **Parramatta Local Environmental Plan 2011 (PLEP 2011)**

The DA is not made pursuant to the PLEP 2011, however, any inconsistencies between the SEPP (Housing for Seniors or People with a Disability) 2004 and the PLEP 2011 are noted.

The relevant matters considered under PLEP 2011 and pursuant to Clause 5(3) of the SEPP (Housing for Seniors or People with a Disability) 2004 for the proposed development are outlined below:

#### *Clause 1.2 Aims of Plan*

One of the aims of the PLEP 2011 is “...to minimise risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by restricting development in sensitive areas.”

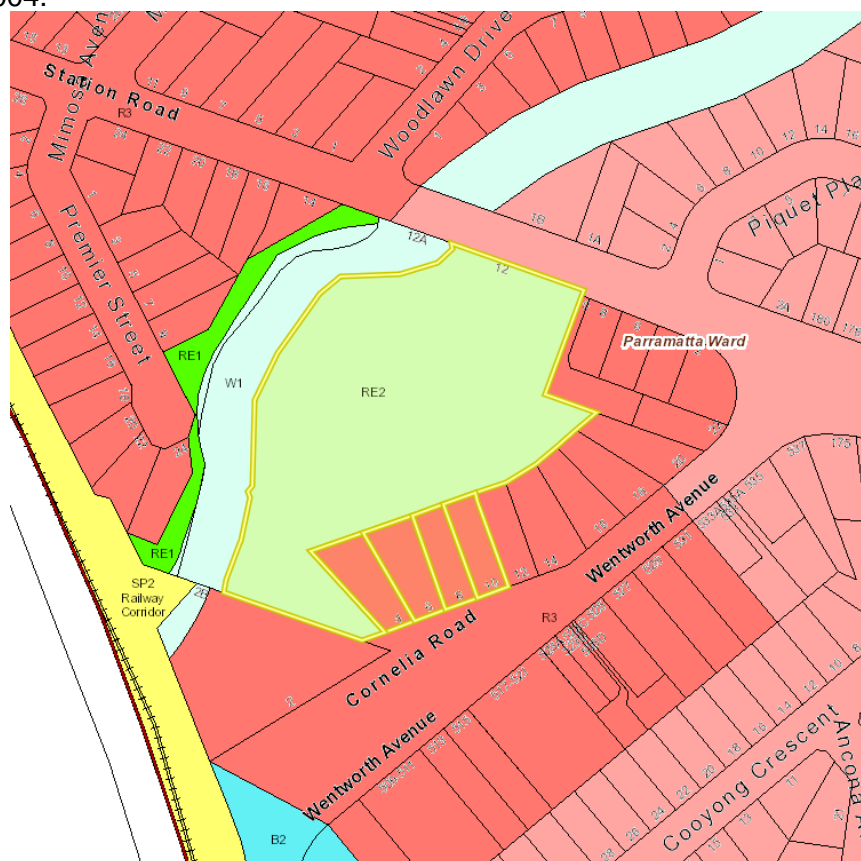
The subject site is considered to be sensitive in terms of flooding and as such Council could not support any development which increases the risk to the community as a result of flooding. The proposed development is considered to be such a development and is therefore not consistent with the aims of the PLEP 2011.



### Clause 2.3 Zone objectives and Land Use Table

The site is zoned RE2 Private Recreation & R3 Medium Density Residential under the provisions of PLEP 2011. Seniors housing is permissible within the R3 Medium Density Residential zone allotments (4-10 Wentworth Avenue, Toongabbie). The development site includes works on Lot 30 in DP 1106209, 12 Station Road, Toongabbie which is zoned RE2 Private Recreation, of which, *seniors housing* is a prohibited land use.

Notwithstanding PLEP 2011 zoning provisions, seniors housing is permissible with consent in a RE2 Private Recreation zoning under the SEPP (Housing for Seniors or People with a Disability) 2004.



**Figure 7** – Dual R3 Zone (dark red) and RE2 Zone (light green) map of the subject site (highlighted) and locale.

### Clause 2.6 Subdivision – consent requirements

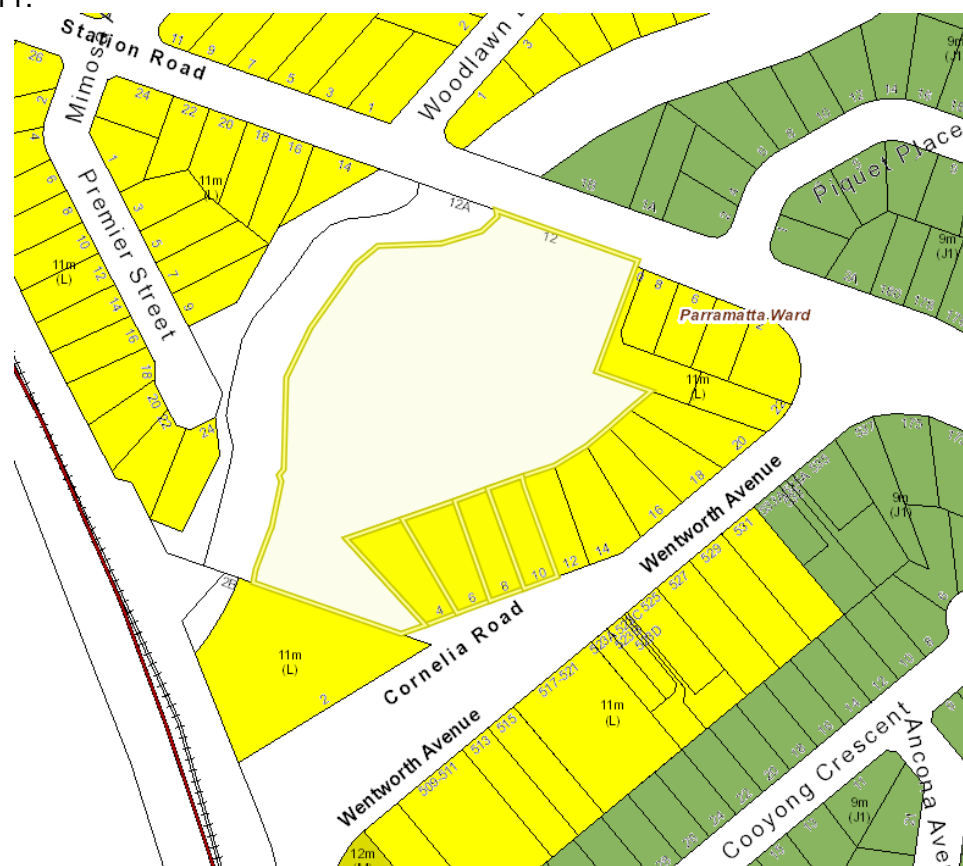
The proposal satisfies this clause. Refer to discussion under Clause 21 of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 above in this report.

### Clause 2.7 Demolition requires development consent

Clause 2.7 of PLEP 2011 states that the demolition of a building or work may be carried out only with development consent. Approval is sought for demolition works. Council's standard conditions relating to demolition works can be included if this application were recommended for approval.

### Clause 4.3 Height of Buildings

The maximum building height limit of 11 metres may apply to the R3 Zoned portion of the site (Lots 6, 7, 8 & 9 in DP 22506 fronting Wentworth Avenue). As shown in **Figure 8** below, the proposed new four-storey RACF is partially on land where the maximum height of building control does not apply. The DA is not made pursuant to the Parramatta Local Environmental Plan 2011.



**Figure 8** – Maximum height of building map of the subject site (highlighted) and locale. Note the application is lodged pursuant to SEPP (Housing for Seniors and Persons with a Disability) 2004.

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.

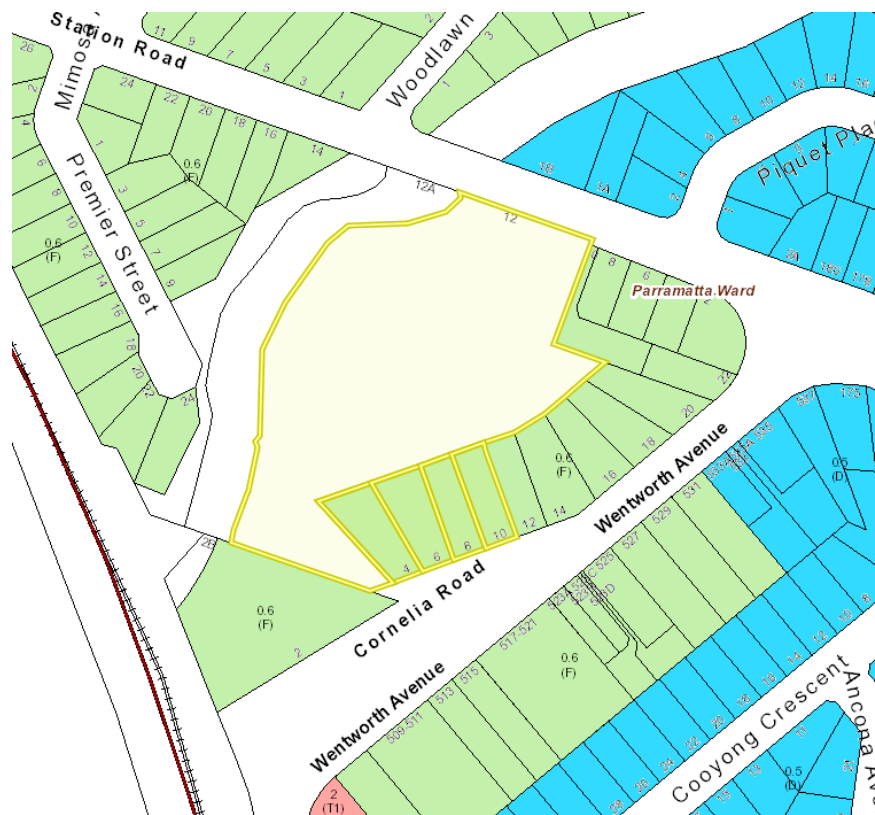
The development proposal exceeds the maximum permissible building height by 5.6m which is a **70% variation** to the development standard.

The applicant's Clause 4.6 justification is not agreed with, and the variation to the height is not supported for the reasons outlined in this report. Refer to Clause 4.6 below.

#### *Clause 4.4 Floor Space Ratio*

The maximum FSR control applies only to the four (4) lots fronting Wentworth Avenue (Lots 6, 7, 8 & 9 in DP 22506 fronting Wentworth Avenue). As shown in **Figure 9** below, the proposed RCF building is, across the three (3) lots which front Wentworth Avenue (Lots 7, 8 & 9 in DP 22506, No.4, 6 & 8 Wentworth Avenue, Toongabbie), on land where a maximum FSR control applies.

As mentioned above, the DA is made pursuant to SEPP (Housing for Seniors or People with a Disability) 2004 and not the PLEP 2011. Refer to discussion above under Clause 48 of the 'SEPP (Housing for Seniors or People with a Disability) 2004' section of this report.



**Figure 9** – Dual maximum FSR map of the subject site (highlighted) and locale.

#### *Clause 4.6 Exceptions to Development Standards*

Clause 4.6 of PLEP 2011 allows Council to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes.

The proposal does not comply with the maximum 8m building height development standard Clause 40(4) of the SEPP (Housing for Seniors and Persons with a Disability) 2004. 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).

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

In the absence of objectives for Clause 40(4) of the SEPP (Housing for Seniors and Persons with a Disability) 2004 the objectives of clause 4.6 of the PLEP 2011 are considered as follows:

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

The operation of clause 4.6 is not limited by the terms of Clause 4.6(8) of this LEP, or otherwise by any other instrument.

Clause 4.6(3) requires that the applicant provide a written request seeking to justify contravention of the development standard. The request must demonstrate that:

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

The applicant has submitted a written request justifying the variation to the height of building development standard. In the justification the applicant states:

- *“The development will be visually attractive and sympathetic to the existing and emerging character of the area.*
- *The development will maintain the neighbourhood amenity and character of the local area.*
- *The development is 4 storeys in height which is consistent with the neighbouring development to the south.*
- *The development reflects the DFC of the area as reflected in Council’s exhibited strategic planning documents.*
- *The development has an attractive and appropriate presentation to the street.*
- *The bulk and scale of the building is considered appropriate as outlined in the SOEE accompanying the DA.*
- *The site is of sufficient size to accommodate the proposed development.*
- *The proposed RACF will meet an important social need in providing aged care services in the local community.”*

**Comment:** An assessment has been undertaken to determine whether compliance with the standard is ‘unreasonable and unnecessary’ and there are ‘sufficient planning ground’ as follows:

An assessment against the relevant case law established in the NSW Land and Environment Court has been undertaken below. These cases establish tests that determine whether a variation under Clause 4.6 of an LEP is acceptable and whether compliance with the standard is unreasonable or unnecessary.

#### Wehbe v Pittwater Council

Case law in the NSW Land & Environment Court has considered circumstances in which an exception to a development standard may be well founded. In the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827 the presiding Chief Judge outlined the following five (5) circumstances:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

#### Height of Buildings

- “(a) To permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.”*

**Comment:** The key constraints of the site are its irregular shape, topography, natural hazards, proximity to Girraween Creek, street frontages, existing registered club and shared boundaries. The proposed height is considered excessive and will set an undesirable precedent for the locality that envisages low-to-medium density residential buildings interspersed with building heights essentially 2-3 storeys.

The purpose of a 2-storey building height under Clause 40(4)(c) of SEPP (Housing for Seniors and Persons with a Disability) 2004 is “...to avoid an abrupt change in the scale of development in the streetscape.” Accordingly, the height of the proposed 4-storey RCF building is not compatible with the 1-to-2-storey nature of buildings along the northern side of Wentworth Avenue and would be excessive in terms of its scale as compared to other housing developments. Developments along the southern side of Wentworth Avenue consist of 1-to-2-storey nature of buildings with attics.

The adjoining development at 2 Wentworth Avenue consists of 4 x multi-storey residential buildings with 60 dwellings is the anomaly within the immediate context and cannot be reasonably argued that this built form is the predominant nature of Wentworth Avenue. The combination of the vertical and horizontal massing of the side elevations of the building in conjunction with the proposed setbacks results in visually dominant building bulk that has no sympathy or relationship to the bulk of surrounding residential development.

The non-compliant building height is further indicative of the visual dominance of the development and, given the proposed setbacks, could result in an unreasonable sense of enclosure to the established neighbouring dwellings and that of residents within the RCF.

2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

**Comment:** The non-compliance with the height standard will result in inconsistencies with this objective as the flood prone site is not appropriate for a RCF building.

However, it is noted that the impacts associated with this proposal have not been “minimised” and a compliant building would achieve greater consistency with this objective which on merit does outweigh strict compliance with the building height development standard. The visual impact of the development is found to be unacceptable in its current form.

3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

**Comment:** The applicant does not suggest that the objective would be thwarted if compliance was required; rather that the objective is achieved despite the breach of the height of buildings development standard.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

**Comment:** The standard has not been abandoned within the site itself or within the Toongabbie area as this DA is the first proposal for seniors housing. It is considered that compliance with the standard in this case is reasonable and necessary as the

proposal:

- Is inconsistent with the aims and relevant clauses of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;
- For a RCF within flood-prone land is not suitable and the potential loss of life outweighs any public benefit for the community;
- For a 4-storey building height is excessive and not compatible within the Wentworth Avenue streetscape;
- Is located within the Girraween Creek riparian buffer corridor; and
- Results in an unsatisfactory relationship to adjoining developments.

Compliance with the development standard in this instance is reasonable and necessary given the above. The risk to life both within the building and within the landscaped settings of the site cannot be appropriately mitigated as the flood-prone site is not suitable for a RCF.

5. *The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.*

**Comment:** The applicant does not challenge that the zoning is inappropriate or that the standard is unreasonable or unnecessary.

#### Four2Five Pty Ltd v Ashfield Council

The proposal has been assessed on merit and having regard to the principles in *Four2Five v Ashfield Council* [2015] NSWLEC 90. The judgement suggests that 'sufficient environmental planning grounds' is more onerous than compliance with zone and standard objectives. The commissioner also established that the additional grounds had to be particular to the circumstances of the proposed development, and not merely grounds that would apply to any similar development.

In this instance, it is deemed reasonable and necessary to restrict all building structures to a height of 8 metres. The applicant's justification above is not supported in this instance.

Clause 4.6(4) of PLEP 2011 outlines that development consent must not be granted for development that contravenes a development standard unless:

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

**Comment:** The matters of clause 4.6(4)(a)(i) have been dealt with in the preceding section.

#### Public Interest

Clause 4.6(4)(a)(ii) of PLEP 2011 states:



*“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”.*

**Comment:** 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.

#### Concurrence

Clause 4.6(4)(b) of PLEP 2011 states:

*“The concurrence of the Secretary has been obtained”.*

**Comment:** Such concurrence is assumed (refer to the Planning Circular).

**Conclusion:** In summary, it is considered that breaching the building height control would not result in a better provision of the built form across the subject site. A RCF within flood-prone land is not suitable and the potential loss of life outweighs any public benefit for the community. Further, the 4-storey building height is excessive and not compatible within the Wentworth Avenue streetscape. As such, the request to vary the height standard is not supported.

#### *Clause 5.10 Heritage Conservation*

The subject site is not identified as a heritage item, however, is identified as being of high significance by Council's Aboriginal Heritage Sensitivity Database (see **Figure 10**). The application was referred to the local Deerubbin Aboriginal Land Council, however, no response has been received. Were the application recommended for approval with any significant excavation, a referral response from the local Deerubbin Aboriginal Land Council would be requested prior to Determination.



**Figure 10** – Part of the site has a high (red) Aboriginal sensitivity. Source: City of Parramatta's GIS Online

## Clause 6.2 Earthworks

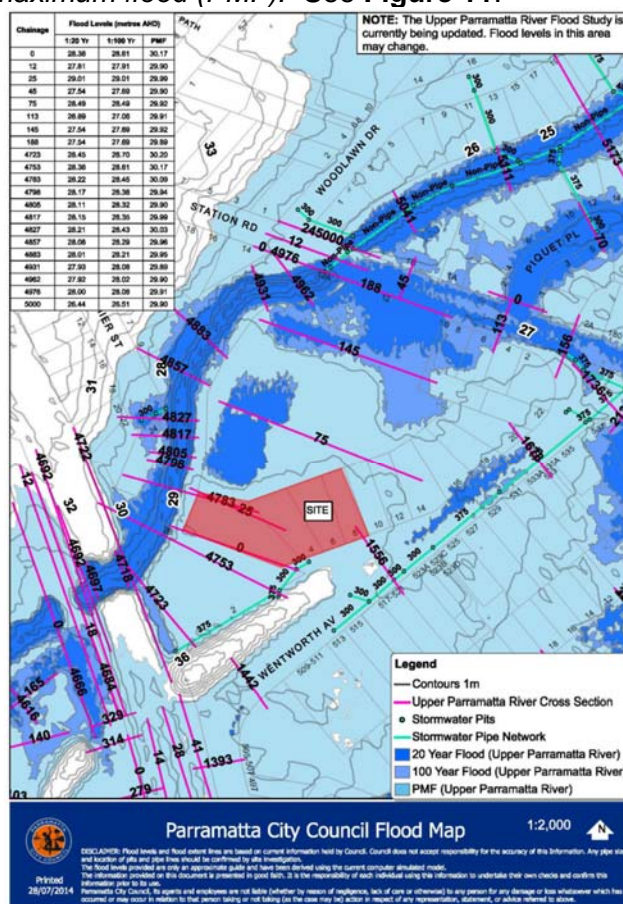
Minimal excavation of the site is proposed and it is noted that the applicant has not submitted a geotechnical assessment report for the site. Were the application recommended for approval suitable conditions of consent will be imposed regarding excavation works.

## Clause 6.3 Flood Planning

The proposal increases the flood risk to life and property associated with the use of land as a RCF. The proposal does not satisfy objectives (a), (b) or (c) of clause 6.3 of the PLEP 2011.

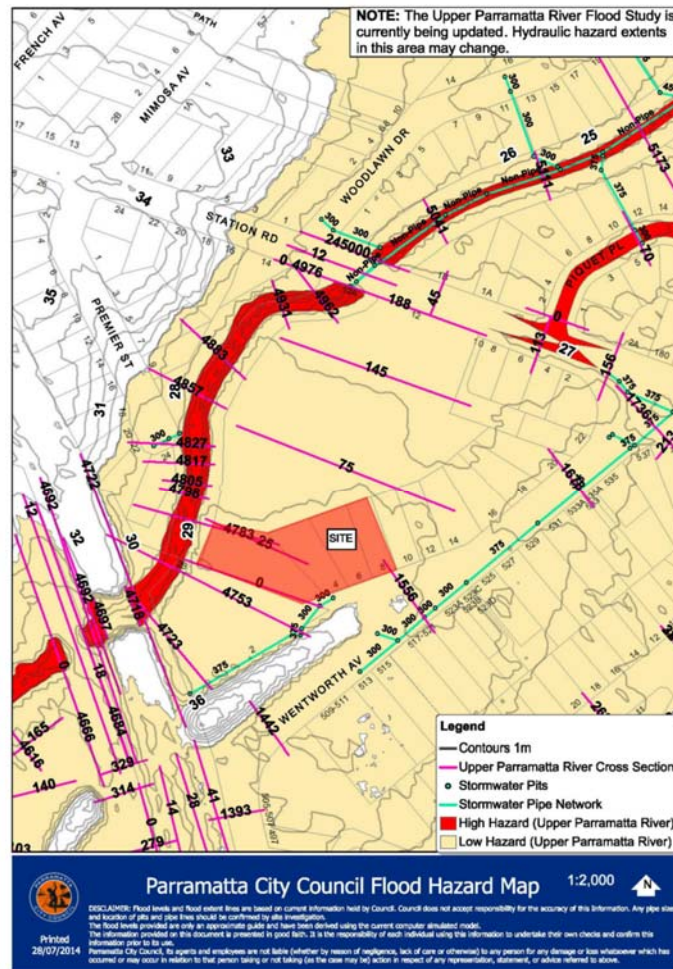
Council's Catchment Engineer has reviewed the proposal and advised that:

*“... this site is subject to flooding from Girraween Creek. The Applicant has accepted Council's flood levels as supplied by a Flood Enquiry and has done further 'Drains' modelling from these. Council modelling indicates the building footprint avoids the 1% AEP (100 year) flooded area, although this is subject to modelling accuracy. In addition to the above, the proposed building footprint is subject to higher level flooding up to the probable maximum flood (PMF).” See Figure 11.*



**Figure 11** – City of Parramatta Council flood map for the subject site (highlighted). Source: Flood Impact Report, Revision 4, dated 14 December 2016, prepared by Martens & Associates Pty Ltd

Similarly, Council's model indicates the high hazard flows are contained within the normal creek banks and do not overtop onto the adjoining, relatively flat floodplain area where the building would be sited (see **Figure 12**).



**Figure 12** – City of Parramatta Council flood hazard map for the subject site (highlighted). *Source: Flood Impact Report, Revision 4, dated 14 December 2016, prepared by Martens & Associates Pty Ltd*

The proposed RCF is a 'sensitive use' and for even low flood hazard would be an 'unsuitable land use' in accordance with the PDCP 2011 and the Floodplain Development Matrix. Consequently, Council has carried out a merit, evidence based assessment of the proposal in accordance with the NSW Floodplain Development Manual 2005.

Council's Catchment Engineer further advises that:

*"...the Applicant's architectural designs, flood submission and Flood Emergency Response Plan recognise the site's flooding environment constraints and seek to do a risk management assessment of the site conditions and use. The proposal is heavily reliant on evacuation planning based on a flood warning system. The Floodplain Development Manual does not support granting consent based on a Flood Emergency Response Plan.*

*The Girraween Creek system may not be amenable to flood warning given the short warning times available, the lack of proven flood warning technology and the difficulty in achieving response – particularly for frail-aged, demented and bedridden occupants and their support staff.*

*Of particular concern is the volume of floodwaters travelling down the Girraween Creek catchment. The Applicant predicts a flow of some 100 m<sup>3</sup>/s in a 1% event. This is a*

*very substantial flow. It is questionable whether such a flow would be contained by the creek banks.*

*The predicted PMF flow is extreme with a volume of over 600m<sup>3</sup>/s. The corresponding predicted flow path width at the site for this flow is approximately 550 m. This represents catastrophic circumstances.*

*The proposal is to accommodate very vulnerable occupants, including frail, aged and demented people, on a site next to Girraween Creek that is catastrophically flood affected during extreme events. The combination of the RCF use and the site results in an unacceptably high risk profile which should not be pursued.*

*From a flood risk management perspective, a different use of this site by other more able-bodied occupants would enable a more acceptable risk profile to be created. This would include emergency escape access for the lower floods, say up to the 1% AEP event and 'shelter in place' strategies to be implemented for more severe floods up to the PMF. (There would need to be some flexibility and careful thought in combining these.) But for this use and these occupants, as proposed in this DA, such opportunities are not available and it is likely that there would be significant loss of life in severe floods as a result. Consequently, the development in its present form is not supported.*

The site is subject to flooding from Girraween Creek which cannot be designed against without comprising the life of, and amenity of, the future RCF occupants and in Council's view flood mitigation on this site for the RCF is untenable. This issue has been included as a reason for refusal.

#### *Clause 6.4 Biodiversity protection*

The 219.6 metre length of the western boundary to Girraween Creek is currently occupied by native vegetation and the proposed development will result in a significant impact upon the site including its natural drainage features, vegetation and topography.

Council's Natural Area and Open Space Officer has reviewed the proposal and provided the following:

*"Girraween Creek flow through the reserve and it is zoned Natural Waterways (W1) under the Parramatta Local Environmental Plan 2011. The public reserve is classified as 'community land' under the Local Government Act 1993 and Council is only permitted to grant easements for stormwater infrastructure to connect into an existing 'facility' as per Section 46 (a)(a1) of the Act. It is noted that no existing facilities exist in proximity to the subject property.*

*Furthermore, a review of the 'Arboricultural Impact Assessment' prepared by Tree IQ indicates the presence of stands of *Eucalyptus tereticornis* (Forest Red Gum) accompanied by *Acacia parramattensis* (Parramatta Wattle) within the public reserve along the boundary with the subject site. Whilst the site has been subject to past disturbance, riparian vegetation is present along the creek corridor in historical aerial photos. Vegetation within the adjoining reserve is therefore considered to meet the NSW Scientific Committee determination for Critically Endangered Cumberland Plain Woodland; however, is restricted to overhanging canopy along the western boundary within the subject site...In consideration of this and the above, the proposed stormwater drainage is NOT supported by Open Space & Natural Resources."*

Further, there are proposed structures, including components of the RCF building within 10 metres from the western boundary abutting Girraween Creek which is not in accordance with the NSW Department of Industry (Lands and Water). Insufficient information has been provided in this regard and this issue has been included as a reason for refusal.

**Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (Section 4.15(1) (a)(ii))**

There are no draft Environmental Planning Instruments applying to this proposal.

**Provisions of Development Control Plans (Section 4.15(1)(a)(iii))**

**Parramatta Development Control Plan 2011 (PDCP 2011)**

The proposal has been assessed against the objectives and controls under PDCP 2011 and associated documents. The relevant matters to be considered under PDCP 2011 for the proposed development are outlined below:

<b>Development Control</b>	<b>Comment</b>	<b>Comply</b>
2.4.1 Views and Vistas	The building has been designed to protect views to and from the public domain and the heritage items through the varied setbacks to the floor levels across the two streetscapes.	Yes
2.4.2 Water Management	The site is identified in Council's database as being flood prone from the adjoining Girraween Creek.  The proposal is inconsistent with this section of the DCP. The risk of life issues identified within this section of the DCP deem the site unsuitable for any sensitive land use such as a RCF.  Council's Development Engineer, Open Space & Natural Area Planner and Property Officer have reviewed the proposal and fundamental site planning flaws and insufficient information with regard to flooding and water management.	No
2.4.3 Soil Management	An erosion and sedimentation and acid sulfate soils management plan have not been submitted with the application. Were this application recommended for approval, conditions would have been imposed to ensure that this development will minimise sedimentation of waterways and not unduly contribute to wind-blown soil loss.	No
2.4.4 Land Contamination	Refer to assessment under SEPP 55.	Yes
2.4.5 Air Quality	Were this application recommended for approval, standard conditions have been imposed to ensure that the potential for increased air pollution has been minimised during construction.	Yes
2.4.6 Development on Sloping Land	The development responds to the topography of the site. The building is stepped and appropriate excavation and fill is proposed enabling an adequate building platform.	Yes
2.4.7 Biodiversity	Council's Landscape Officer has raised concerns with regards to the Landscape Plan. The landscape plan submitted does not propose species nominated in Appendix 3 of DCP 2011. The site does not adjoin bushland. The site adjoins land zoned W1. The site is adjacent to Girraween Creek to the west. The proposal will adversely affect the following: <ul style="list-style-type: none"> <li>o native vegetation;</li> <li>o soil erosion;</li> <li>o siltation of streams and waterways; spreading of weed sand exotic plants; overshadowing;</li> </ul>	No



	<ul style="list-style-type: none"> <li>○ stormwater runoff or removal; or</li> <li>○ degradation of existing vegetation on this land.</li> </ul> <p>The NSW Department of Industry (Lands &amp; Water) have raised concerns regarding the inadequate width of the vegetated riparian zone within the Girraween Creek riparian corridor and the proposal is inconsistent with this section of the DCP.</p>	
2.4.8 Public Domain	Insufficient public domain and roundabout work plans and an absence of any approval or notification to and from the adjoining residential flat building with 60 units (2 Wentworth Ave, Toongabbie) regarding the proposed changes to the access to their property.	<b>No</b>
3.1.3 Preliminary Building Envelope Tables (Height)	Refer to Clause 40 of SEPP (Housing for Seniors or People with a Disability) 2004 section above.	<b>No</b>
3.1.3 Preliminary Building Envelope Tables (Floor Space Ratio)	Refer to Clause 48 of SEPP (Housing for Seniors or People with a Disability) 2004 section above.	<b>No</b>
3.1.3 Preliminary Building Envelope Tables (minimum site frontage)	Refer to Clause 40 of SEPP (Housing for Seniors or People with a Disability) 2004 section above.	Yes
3.1.3 Preliminary Building Envelope Tables (landscaped area)	Refer to Clause 48 of SEPP (Housing for Seniors or People with a Disability) 2004 section above.	<b>No</b>
3.2.1 Building Form and Massing	The bulk and scale of the proposed development is inconsistent with the desired future character of the area. The proposed development (including the proposed height variation) will adversely impact the existing streetscape as due to insufficient setbacks, building articulation and stepping of the building reduce the building's bulk and scale. The building form and massing is inconsistent with similar development types along the street.	<b>No.</b> Clause 33 of SEPP (Housing for Seniors or People with a Disability) 2004 prevails.
3.2.2 Building Façade and Articulation	The development is not designed with multiple recesses to create articulation, improve solar access to adjoining properties and create visual interest. As such, there will be unreasonable amenity loss to adjoining properties. The proposal has been designed as a very bulky and institutional looking building with somewhat imposing facades. The proposal does not include measures to break down the massing of the building into smaller components to a more domestic scale with vertical articulation and detailing.	<b>No</b>
3.2.3 Roof Design	The roof design appropriately responds to contemporary design.	Yes
3.2.5 Streetscape	The proposed 4-storey RCF is inconsistent with the current and future desired character of the locality. Further to the non-compliance with the building height and floor space ratio controls which apply to development, there is a lack of inter-relationship between the RCF building and the existing and proposed landscape and open spaces within the site. Insufficient information has been provided to assess the public domain.	<b>No</b>
3.2.6 Fences	No fences are proposed.	N/A
3.3.1 Landscaping	Refer to Clause 48 of SEPP (Housing for Seniors or People with a Disability) 2004 section above.	<b>No</b>
3.3.2 Private and Communal Open Space	Common open space is provided for the development on each floor level. Numerical requirements are not specified for seniors housing development.	Yes
3.3.3 Visual and Acoustic Privacy	Refer to Clause 34 of SEPP (Housing for Seniors or People with a Disability) 2004 section above.	<b>No</b>
3.3.4 Acoustic Amenity	No major roads or railway lines adjoin the site.	Yes
3.3.5 Solar Access and Cross Ventilation	Refer to Clause 35 of SEPP (Housing for Seniors or People with a Disability) 2004 section above.	<b>No</b>

3.3.6 Water Sensitive Urban Design	Insufficient information has been provided to assess the proposed RCF against this clause.	<b>No</b>
3.3.7 Waste Management	Refer to Clause 39 of SEPP (Housing for Seniors or People with a Disability) 2004 section above.	<b>No</b>
3.4.1 Culture and Public Art	An arts plan is not required as the application does not have a CIV of more than \$5,000,000.00 and is not located within: - A local town centre - Land zoned B2 Local Centre or B4 Mixed Use - Land with a site area greater than 5000m <sup>2</sup>	N/A
3.4.2 Access for People with Disabilities	The proposed RCF has a double lift core from the ground floor to the fourth storey. Were the application to be recommended for approval a condition would be included to reflect compliance with the Disability Discrimination Act 1992 (DDA) requirements.	Yes, subject to conditions
3.4.3 Amenities in Buildings Available to the Public	The proposal is not a public building.	N/A
3.4.4 Safety and Security	Refer to Clause 35 of SEPP (Housing for Seniors or People with a Disability) 2004 section above.	<b>No</b>
3.4.5 Housing Diversity and Choice	The proposal provides a RCF which will provide equitable access to new housing.	Yes
3.5 Heritage	Refer to PLEP 2011 section of this report above.	Yes
3.6.1 Sustainable Transport	The development contains more than 50 dwellings. As the development is for seniors living and provides sufficient parking, car share spaces are not necessary.	N/A
3.6.2 Parking and Vehicular Access	No parking rates or controls are provided within the PDOP 2011. Refer to Clause 40 of SEPP (Housing for Seniors or People with a Disability) 2004 section above.	Yes
3.6.3 Accessibility and Connectivity	The site is considered to be of a size that could create opportunities for a pedestrian through site link, however, insufficient information has been provided regarding the public domain works.	<b>No</b>
3.7.1 Residential Subdivision - general	Refer to Clause 21 of SEPP (Housing for Seniors or People with a Disability) 2004 section above.	Yes
3.7.2 Site Consolidation and Development on Isolated Sites	The proposal does not result in the isolation of any adjoining properties.	Yes

## OTHER MATTERS

### Parramatta Design Excellence Advisory Panel (DEAP)

The development application was considered by the DEAP on 9 March 2017, who provided the following advice:

- *“The application for amalgamation of lots and subdivision and the development of an aged care facility is a significant development for the local precinct with potential to provide substantial revitalisation of derelict buildings and neglected land in close proximity to a railway station.*
- *Having regard to the above, the application is lacking in detail with regard to the surrounding context. There is insufficient context analysis and the plans, elevations and sections do not show the surrounding context to enable proper assessment of the development.*
- *In addition, the Panel considers such a proposal worthy of more extensive preliminary design consultation with a view to discussing options for the development of the site along with potential scenarios for future development of the adjacent land, sports club and bowling greens.*
- *Further to the above, the Panel recommends a masterplan is prepared for the site and adjacent land including the sports club, bowling greens and parking areas. The plan is*

*to consider the relationship of this land to the surrounding residential sites, street pattern, pedestrian and open space networks and nearby train station.*

- A design consultant with experience in urban design and planning should be engaged to assist in preparing the masterplan, with the aim of providing a more integrated plan for the site taking into account the surrounding context and adjacent land uses. The plan should also consider potential future development such as the re-use or redevelopment of the adjacent club house and bowling greens.*
- The Panel notes that number 10 Wentworth Avenue is proposed to be partially used for vehicle access to the bowling club site and for electricity sub stations. As part of the more detailed context analysis, and examination of development options the applicant may consider moving the development further east utilising number 10 to pull the building further away from Girraween Creek and from the apartments at 2 Wentworth Avenue.*
- In addition, the Panel recommend all the trees on the subject site adjacent to the boundary with 2 Wentworth Avenue are retained and incorporated in the landscape plan for the development. Along with increased setbacks in this area, the retention of the trees will assist in addressing privacy and overshadowing impacts.*
- With regard to any electrical substations on site or at the rear of 10 Wentworth Avenue, the applicant needs to incorporate suitable screening and landscaping to ensure surrounding land is safe and useable whether it be for private or public use.*
- With regard to the streetscape, the proposal has been designed as a very bulky and institutional looking building with somewhat imposing facades. In this regard, the applicant should consider ways to make the development more in-keeping with the surrounding residential character. This may include measures to break down the massing of the building into smaller components to a more domestic scale with vertical articulation and detailing.*
- The opportunity to move the building further east (as suggested above) and to move it closer to Wentworth Street to align with adjacent houses should also be considered. This would allow the development to read more as a continuation of the streetscape rather than a completely separate development. In this regard, further consideration needs to be given to the parking arrangement on site. Options to remove the parking from the front of the development into an area behind and/or underneath the building should be considered. Any exposed parking areas should include a grid of trees to provide shade in summer to reduce heat loading from expansive paved areas. Moving the development closer to Wentworth Avenue will also provide greater separation from the existing club house and any future development of that site allowing for better solar access and more outdoor space to the north of the development.*
- The Panel regards the site and associated sports club and greens as highly significant land with significant potential for the revitalisation of the area with good access to public transport via the train line. For this reason, any masterplan prepared for the site should consider potential development opportunities (particularly in conjunction with the Bowling Club) including built form, pedestrian, cycle and vehicle circulation, and potential recreation use of Girraween Creek such as cycle paths and other environmental improvements.*
- The proposed development has many units as well as a number of outdoor spaces facing south. The applicant is advised to consider switching the orientation of the development so that the majority of units, in particular the living and dining spaces as well as balconies and courtyards, primarily face north.*
- The provision of appropriate sunshading to windows needs more consideration, particularly for the west facing rooms.”*



Concluding comments: The applicant has been advised to incorporate all properties owned by Toongabbie Sports Club, which includes the 4 dwelling houses on land at Lots 6-9 in DP 22506 No.4-10 Wentworth Avenue. Insufficient information including contextual analysis and the surrounding built form are not shown on the plans, elevations and sections. The trees along the southern boundary are proposed to be removed. The applicant has not provided a master plan for the Toongabbie Sports Club.

#### **Parramatta Section 94A Contributions Plan 2011 (Outside CBD)**

The proposal is subject to the application of Council's Section 94A Contributions Plan 2011. A monetary contribution is applicable, and it will be included as a condition of consent should the application be approved. A condition requiring payment of 1% of the total development cost of \$34,446,500 is to be imposed if this application is approved.

#### **Bonds**

In accordance with Council's 2017/2018 Schedule of Fees and Charges, the developer would be obliged to pay Security Bonds to ensure the protection of civil infrastructure located in the public domain adjacent to the site should the application be approved.

#### **Any 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)(iiia))**

The proposal does not include any Voluntary Planning Agreements (VPAs) and section 7.4 does not apply to the application.

#### **Provisions of Regulations (Section 4.15(1)(a)(iv))**

Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601-1991: *The Demolition of Structures*. This matter may be addressed via a condition of consent should this application be approved.

Clause 98 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. A condition of consent could be included in the consent if the application was worthy of approval that all works to be consistent with the provisions of the Building Code of Australia.

#### **Impacts of the Development (Section 4.15(1)(b))**

The environmental impacts of the proposed development on the natural and built environment are addressed in this report. A number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the built environment is not acceptable.

The development will provide housing designed specifically for seniors or people with a disability. The proposed development will therefore not have a detrimental social impact on the locality.

The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.

#### **Suitability of the Site (Section 4.15(1)(c))**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the in this report. Whilst the site can accommodate a senior's housing development, the site is not considered to be suitable for this type of development which renders the development to be inconsistent with its current and desired future character. The constraints of the site together with the design issues have been assessed and it is considered that the subject site is unsuitable for the proposed development.

### **Public submissions (Section 4.15(1)(d))**

In accordance with Council's notification procedures that are contained in Appendix 5 of PDCP 2011 and in accordance with Integrated Development, owners and occupiers of adjoining and surrounding properties were given notice of the application for a 30-day period between 18 January 2017 and 21 February 2017. No submissions were received.

### **Public Interest (Section 4.15(1)(e))**

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. The proposed development is for a Seniors Housing Development which will assist in meeting the demands of Sydney's ageing population. However, as discussed in this report, the overall impact of the proposal is found to be inconsistent with the applicable planning controls for this site. Consequently, it is considered that a development, of this scale is not serving the broader and sectionalised public interest as the development is fundamentally not suited to the site in terms of the built and natural forms.

Due to the unacceptable increased risks associated with 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 (28.5m AHD)....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.

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.

## **CONCLUSION**

The proposal has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979. This assessment has taken into consideration the submitted plans, the Statement of Environmental Effects and all other documentation supporting the application, internal and external referral responses.

The application has been amended to comply with the SCCPP's resolutions of 6 December 2017 and 7 March 2018.

The public benefit of providing seniors living accommodation on this site does not outweigh the irrevocable steps taken in siting a RCF and placing a vulnerable population in a potential life-threatening situation in the future. The public benefit of providing housing for seniors on this site cannot outweigh the future issues 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. Case by case decision making or isolating issues cannot account for the cumulative impacts on flood behaviour and risks, caused by inappropriate proposals such as this. Notwithstanding, a merit assessment of the proposal against the relevant legislation including seeking advice from specialist technical authorities such as the NSW State Emergency Service concludes that the proposal contravenes the principles of the NSW Flood Plain Development Manual 2005.

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 NSW State Emergency Service and NSW Health do not support a residential care facility within this site due to the 'stay-in-place' evacuation plan for a vulnerable population (i.e creating an isolated 'island' site), uncertainty of floodwaters and the inherent adverse 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 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979:

- i. That SCCPP 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 124 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:

### Site Suitability

1. The site is not suitable for housing for seniors or persons with a disability due to its proximity to the high hazard flooding impacts of Girraween Creek particularly:
  - a) Pursuant to Section 4.15(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.

- 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) Pursuant to Section 4.15(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 the uncertainty of floodwater velocity and depth creates highly dangerous conditions in and around the development site within the subject site.
  - d) Pursuant to Section 4.15(1)(b) Environmental Planning and Assessment Act 1979, the proposed building footprint being raised by up to 1.2m above the natural ground level adjacent to the floodway (i.e. Girraween Creek) will cause displacement of floodwaters.
  - e) The proposal is inconsistent with Parramatta Local Environmental Plan 2011, Clause 1.2(2)(e) 'Aims of Plan' as the subject site is in a low, medium and high hazard flood prone area and the development will adversely increase the risk to the community as a result of flooding impact.
  - f) The proposal is inconsistent with the Parramatta Development Control Plan 2011, Section 2.4.2.1 Flooding as the development results in an unacceptable increased risk to human life and does not provide a satisfactory evacuation method and area (i.e. stay-in place practice) and is not supported by NSW Health or NSW State Emergency Service.
  - g) Pursuant to Section 4.15(1)(e) Environmental Planning and Assessment Act 1979, the proposed use as residential accommodation is categorised 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. A merit assessment has been completed and concludes that the site is not suitable for any housing for seniors or people with a disability.
2. 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.

### Safety

- 3. Pursuant to Section 4.15(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.

4. Pursuant to Section 4.15(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.
5. Pursuant to Section 4.15(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 uncertainty of flood waters in the event of an emergency evacuation during a flood event.
6. Pursuant to Section 4.15(1)(b) Environmental Planning and Assessment Act 1979, the proposal has unsatisfactory egress and no flood warning system in the event of a flood.
7. Pursuant to Section 4.15(1)(b) Environmental Planning and Assessment Act 1979, insufficient information is submitted regarding the details of the outdoor areas and the flood evacuation process.

#### Public Interest

8. The proposal fails to satisfy the relevant considerations under Section 4.15(1)(c) Environmental Planning and Assessment Act 1979 for suitability of the site, built environment, and the public interest.
9. The proposal fails to satisfy the relevant considerations under Section 4.15(1)(e) Environmental Planning and Assessment Act 1979 in that the adverse impacts by the development due to non-compliance with the applicable planning controls are not beneficial for the local community and as such, are not in the wider public interest.

#### Biodiversity

10. 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.

#### Height

11. 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.
12. 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.

13. 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 natural topography of the site and the extensive fill across the development site is unacceptable.

#### Overdevelopment of the site

14. 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 1,388.6m<sup>2</sup> of landscaped area where 3,100m<sup>2</sup> is required for the proposed number of residents.
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.

#### Relationship to the public domain

16. 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.
17. Pursuant to Section 4.15(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

##### *Riparian Corridor*

18. A cross-section plan through the creek to depict the top of the eastern bank of Girraween Creek has not been provided, therefore, in accordance with Clause 33(g) of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004*, it is unclear whether the proposal is designed so that no building works are constructed in a riparian zone.

##### *Public Domain*

19. 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.
20. Insufficient information is submitted regarding the proposed civil works changes to the public domain and to the access of the adjoining strata-titled residential flat building with 60 units (2 Wentworth Ave, Toongabbie).

#### Stormwater/Flooding

21. Insufficient information is submitted demonstrating that the building demonstrating how the occupants and staff will be safe (including their health and well-being protected) during a severe flood events, noting the advice of SES, letter dated 28 February 2018.