

# Assessment report to Sydney Central City Planning Panel

Panel reference: 2018CCI019

## Development application

<b>DA number</b>	SPP-18-01552	<b>Date of lodgement</b>	2 November 2018
<b>Applicant</b>	FDC Construction Pty Ltd (NSW)		
<b>Owner</b>	Seven Hills Nursing Home Pty Ltd		
<b>Proposed development</b>	Demolition of existing dwellings, tree removal and construction of a new Residential Aged Care Facility (RACF) as an extension to an existing RACF		
<b>Street address</b>	80-92 Solander Road and 1 Thomas Street, Seven Hills		
<b>Notification period</b>	11 December 2018 to 23 January 2019	<b>Number of submissions</b>	7 individual submissions and 1 petition containing 26 signatures

## Assessment

<b>Panel criteria</b> Section 7, SEPP (State and Regional Development) 2011	<ul style="list-style-type: none"> <li>Capital investment value (CIV) over \$30 million (DA has CIV of \$ 39,162,970 including GST)</li> </ul>
<b>Relevant section 4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>Environmental Planning and Assessment Act 1979</li> <li>State Environmental Planning Policy (State and Regional Development) 2011</li> <li>State Environmental Planning Policy No. 55 (Remediation of Land)</li> <li>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</li> <li>Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River</li> <li>Blacktown Local Environmental Plan 2015</li> <li>Central City District Plan 2018</li> <li>Blacktown Local Strategic Planning Statement 2020</li> </ul>
<b>Report prepared by</b>	Bertha Gunawan
<b>Report date</b>	21 August 2020
<b>Recommendation</b>	Refuse, based on the grounds listed in the report.

## Attachments

- 1 Location map
- 2 Aerial image
- 3 Zoning extract
- 4 Detailed information about proposal and the applicant's Clause 4.6 variation request
- 5 Development Application plans
- 6 Panel's advice of 24 April 2019
- 7 Assessment against planning controls
- 8 Issues raised by the public

## Checklist

### Summary of section 4.15 matters

Have all recommendations in relation to relevant section 4.15 matters been summarised in the Executive summary of the Assessment report? Yes

### Legislative clauses requiring consent authority satisfaction

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

### Clause 4.6 Exceptions to development standards

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

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (section 7.24)? Not applicable

### Conditions

Have draft conditions been provided to the applicant for comment? N/A

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## 1 Executive summary

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1.1 The proposed grounds for refusal that need to be considered by the Panel in respect of this application are:

- The proposed landscaping provision for the number of beds in the new facility does not meet the minimum requirement prescribed by the Seniors Living SEPP of 25 m<sup>2</sup> per bed. The applicant has a shortfall of 1270 m<sup>2</sup>, which is equivalent to 51 beds, and so only proposes to provide 14.9 m<sup>2</sup> per bed. The proposed shortfall of 10.1 m<sup>2</sup> per bed is considered to be significantly detrimental to the future long-term amenity of the residents.

The applicant has indicated that the existing RACF to the south of the proposed facility will be demolished in the future for the construction of another new facility, and the current landscaping shortfall can be provided in this future development. This approach from the applicant is considered inappropriate and beyond the scope of planning controls for this development. There is no way of making the applicant undertake a Stage 2 development and therefore it cannot be guaranteed that the applicant will ever deliver this significant shortfall.

- Although there is no floor space ratio (FSR) limit stipulated by the BLEP, the proposed floor space ratio provision also does not meet the maximum requirement prescribed by the SEPP of 1:1. The proposed FSR is 1.34:1, consisting of 126 beds. The proposed development therefore exceeds the FSR requirement by approximately 55 beds.
- In this case, the FSR and landscaped area controls go hand in hand in that the minimum landscaped area can only rightfully be provided on the subject site if the FSR is reduced to comply.

1.2 On the basis of the above proposed non-compliant landscaping and FSR provisions, assessment of the DA against the relevant planning framework and consideration of matters by us has concluded that there are serious issues of concern that cannot be dealt with by conditions of consent, rendering the proposal inappropriate for this site as it represents a significant overdevelopment. The application is therefore unsatisfactory when evaluated against section 4.15 of the Environmental Planning and Assessment Act 1979.

1.3 This report recommends that the Panel refuse the application subject to the recommended reasons listed in Section 12 below.

## 2 Location

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2.1 The site is located on the south-eastern side of Solander Road at its intersection with Crews Road, Seven Hills.

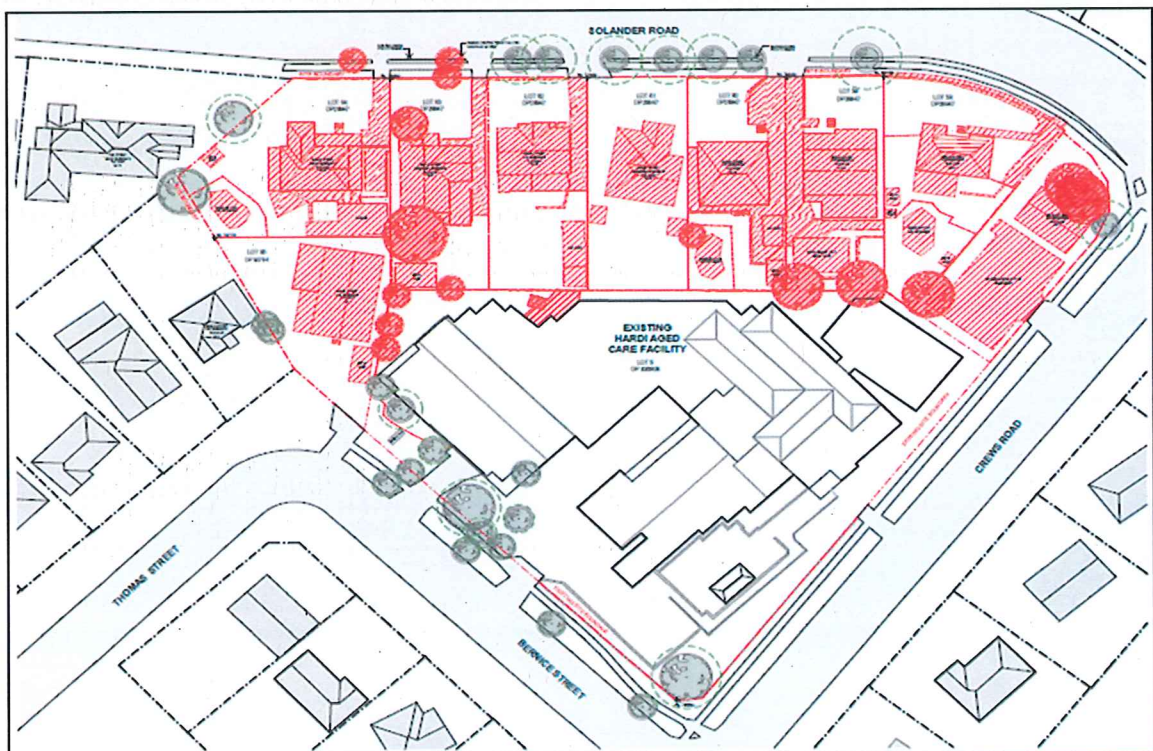
2.2 The location of the site is shown at attachment 1.

2.3 Hardi Aged Care owns and operates an existing aged care facility (Seven Hills Nursing Home) on the southern part of the subject property at 1 Crews Road, Bernice Street and 94 Solander Road, Seven Hills.

2.4 The existing facility is 2 storeys high and provides accommodation for 102 beds. This facility is to remain for the time being, but is planned to be redeveloped in the future after the completion of the construction and operation of the new facility proposed in this DA so that those residents can be moved into the new facility when it is completed. However, to date, no DA for the redevelopment of this existing retained RACF has been lodged.

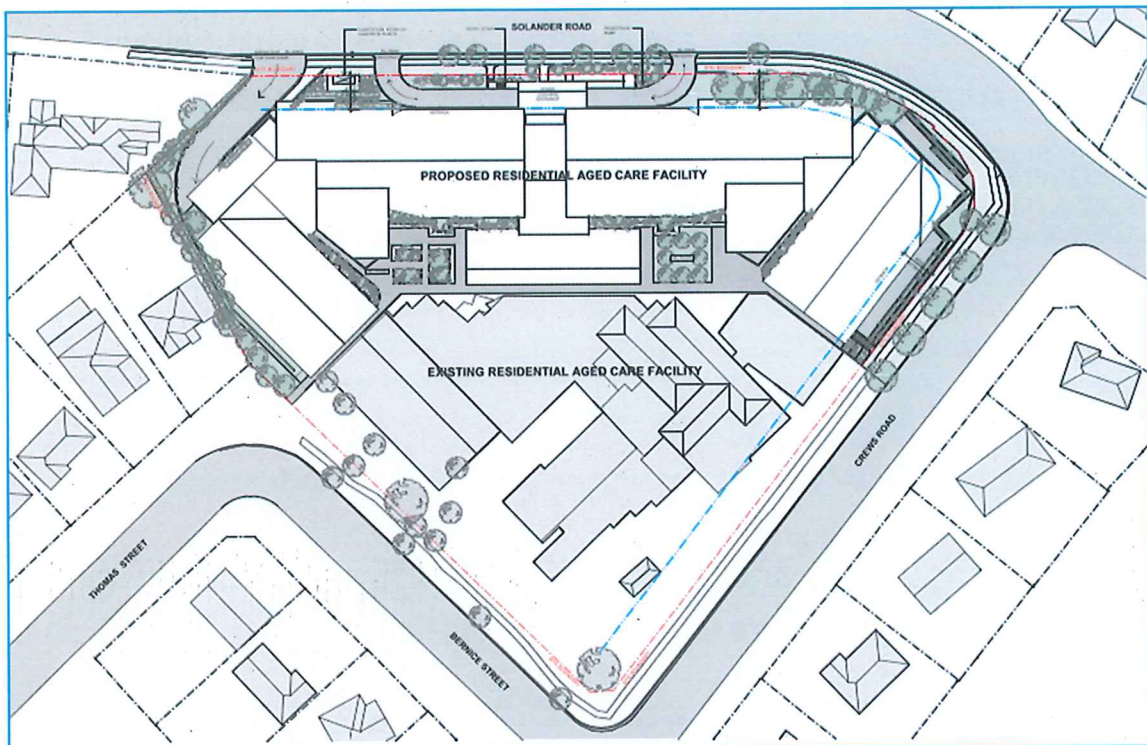
### 3 Site description

- 3.1 The site is legally described as Lots 58 - 64 in DP 29947 and Lot 65 in DP 30784, being 80-92 Solander Road and 1 Thomas Street, Seven Hills.
- 3.2 An aerial image of the site and surrounding area is at attachment 2.
- 3.3 The site is zoned R2 Low Density Residential under Blacktown Local Environmental Plan 2015. The zoning plan for the site and surrounds is at attachment 3. The site is surrounded by R2 zoned properties which comprise single and 2 storey dwelling houses.
- 3.4 The proposed aged care facility is defined as 'seniors housing' and is a permissible form of development in the zone with development consent. State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the SEPP) applies.
- 3.5 There are existing dwelling houses on the site fronting Solander Road which have been purchased and will be demolished, as shown in red below. The proposed demolition also includes the removal of trees and swimming pools.
- 3.6 The current facility on the southern side will be maintained and continue to operate until such time as this development to be situated on the northern side is completed. At that time these residents will be moved into the new completed development that is the subject of this DA.



- 3.7 The whole site is proposed to be consolidated into 1 lot to give a total site area of 9,568 m<sup>2</sup>. The area over which the development proposal is to be located is 4,633 m<sup>2</sup>. The proposed site plan is shown below:





## 4 Background

- 4.1 The proposed development was lodged on 2 November 2018.
- 4.2 It was advertised in the local newspaper for an extended period during Christmas and New Year between 11 December 2018 and 23 January 2019. 7 individual submissions and 1 petition containing 26 signatures objecting to the DA were received.
- 4.3 The applicant was requested to provide a response to the neighbours' objections, including a response in regard to waste matters as required by our internal waste officer.
- 4.4 The Panel was briefed on this proposal on 24 April 2019. Concerns regarding the objections from the neighbours and the proposed non-compliant landscape provision were required by the Panel to be addressed appropriately. Refer to attachment 6. This advice was relayed to the applicant on 3 May 2019, and a couple more times on 16 and 23 October 2019.
- 4.5 The applicant's submission on 23 March 2020 suggested an option of Council accepting a bank guarantee of \$100,000 to be refunded to the applicant once the existing facility is demolished. The Bank Guarantee of \$100,000 was only tokenistic as it does not guarantee the provision of a 1270 m<sup>2</sup> shortfall in landscaped area, and Council could never use the money to do anything for the residents in the event that nothing happened. However, the applicant reiterated at the time that any identified shortfall in landscaped area could simply be conditioned on any future DA for the redevelopment of the existing facility. On this basis, no amended plans were ever submitted by the applicant.
- 4.6 Engineering issues relating to stormwater and civil assets were relayed to the applicant on 18 July 2018. These issues were resolved in late April 2020.

## 5 The proposal

- 5.1 The Development Application has been lodged by FDC Construction Pty Ltd (NSW).
- 5.2 The application seeks approval for a new extended residential aged care facility at 80 - 92 Solander Road, 1 Thomas Street and 1 Crews Road, Seven Hills.

5.3 The scope of works for which consent is sought includes:

5.3.1 Demolition of existing buildings and structures and selective removal of trees (16 trees including 2 street trees for the proposed new driveway)

5.3.2 Excavation and other preparatory site works as required

5.3.3 Construction of a 2-storey building over basement parking, comprising:

- 126 single residential care rooms
- a range of resident facilities, including specialist medical and health care facilities including a GP clinic and physiotherapy, and a hair and nail salon
- ancillary office, administration and storage
- on-site kitchen and laundry facilities
- basement parking for 39 cars and 13 bicycle spaces
- utility services connections
- landscaping area of only 1879 m<sup>2</sup> on the proposed facility site.

5.3.4 Consolidation of the lots where the new facility site is proposed as well as consolidation of this land with the land containing the existing facility.

5.4 Other details about the proposal are at attachment 4 and a copy of the development plans is at attachment 5.

## **6 Assessment against planning controls**

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6.1 A full assessment of the Development Application against relevant planning controls is at attachment 7.

## **7 Grounds for Refusal**

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**7.1 The proposed landscaping provision does not meet the minimum requirements of the SEPP**

7.1.1 The proposed development intends to provide 126 beds which will require a minimum 3,150 m<sup>2</sup> of landscaped area under the SEPP (i.e. 25 m<sup>2</sup> x 126 beds).

7.1.2 It should be noted that the existing facility site was approved under DA-06-01271 with non-compliant landscaping provision of 1,176 m<sup>2</sup> for 102 beds (or 11.5 m<sup>2</sup> per bed). Whilst the minimum requirement of 25 m<sup>2</sup> per bed under the SEPP was already in force at the time, the building was previously utilised as a hospital and so the concession was granted on this basis at the time.

7.1.3 On the development site (excluding the existing facility site and its landscaping area), the proposed development of an additional 126 new beds will only provide an additional 1,879 m<sup>2</sup> of landscaping or 14.9 m<sup>2</sup> per bed (or a non-compliance of 10 m<sup>2</sup> per bed).

7.1.4 The landscaped shortfall for this current application was raised on 24 April 2019 at a briefing meeting with the Panel, which confirmed that the proposal does not comply with Clause 48(c) the SEPP and may constitute an overdevelopment of the site. This advice was relayed to the applicant, and it was recommended to reduce the proposed number of beds or for a concept plan to be submitted for the future refurbishment of the existing facility. No amended plan was ever submitted.

7.1.5 Instead, the applicant has requested that a consent condition be imposed to make up the shortfall of 1270 m<sup>2</sup> required for these beds when the existing facility is demolished. Once the facility proposed in this DA is built it is expected that the



existing residents will be moved into the new facility, and the rebuilding of a new stage of this project over the existing RACF will enable fully compliant landscaping in accordance with provisions of the SEPP for both the new and existing residents. However, there is no guarantee that this will ever happen.

- 7.1.6 In our view, imposing a condition of this nature is invalid as its enforcement cannot be guaranteed without a concept plan approval on which such a condition can rely. Such a condition would also be void as it is too vague and uncertain. Without certainty and a guarantee, it is not considered to be an appropriate solution for the current proposal's significant landscaping shortfall issues.
- 7.1.7 Clause 48 of the SEPP specifies that developments not providing the 25 m<sup>2</sup> of landscaped area per bed can be refused. For the proposal to achieve a compliant landscaping provision, there can only be a total of 75 new beds approved, or a reduction of 51 beds from the currently proposed 126 beds.
- 7.1.8 The proposed shortfall in landscaping area is considered detrimental to the amenity of future residents of the new 126 beds and, with the proposed non-compliant FSR, the proposal constitutes a serious overdevelopment of the site and should not be supported. The proposed development will provide a poor amenity outcome for the residents and is not an appropriate response to a neighbourhood characterised by low density low scale residential development.

## **7.2 The proposed density does not meet the minimum requirements of the SEPP**

- 7.2.1 Under Blacktown Local Environmental Plan 2015 (BLEP), there is no FSR limit on the subject site. According to Clause 48 the SEPP, however, there is a maximum 1:1 FSR requirement for aged care facilities, and the proposed development's FSR, when calculated against the subject site area, does not meet it, proposing an FSR of 1.34:1. The proposed development therefore exceeds the FSR limit by 1,563 m<sup>2</sup>, which constitutes approximately 55 beds (1 bed size is 28 m<sup>2</sup>).
- 7.2.2 In this case, then, the FSR and landscaped area controls go hand in hand and demonstrate a consistency in intended density.

## **8 Issues raised by the public**

- 8.1 The proposal was notified to property owners and occupiers in the locality between 11 December 2018 and 23 January 2019. The Development Application was also advertised in the local newspapers and a sign was erected on the site.
- 8.2 We received 7 individual submissions and 1 petition containing 26 signatures objecting to the DA.
- 8.3 The issues raised by the residents relate to operational issues, safety concerns and the proposal being an overdevelopment. A summary of each issue and our response is at attachment 8.
- 8.4 Some of the objections are considered sufficient to warrant refusal of the Development Application, mainly on the grounds of overdevelopment.

## **9 External referrals**

- 9.1 The Development Application was referred to the following external authority for comment:

Authority	Comments
NSW Police	Acceptable subject to conditions



## 10 Internal referrals

- 10.1 The Development Application was referred to the following internal sections of Council for comment:

Section	Comments
Building	Acceptable subject to conditions
Engineering	Acceptable subject to conditions
Environmental Health	Further assessment on the risk of salinity, hazardous materials during demolition works, as well as details of the proposed salon, are capable of being addressed prior to the Construction Certificate stage, subject to conditions
Traffic	Acceptable subject to conditions
Waste	Acceptable subject to conditions
Street Trees	Acceptable subject to conditions for replacement trees and tree protection measures

## 11 Conclusion

- 11.1 The proposed development has been assessed against all relevant matters and is considered unsatisfactory. It is considered that the likely impacts of the development have not been satisfactorily addressed and that the proposal is not in the public interest. The site is not suitable for the proposed development and should be refused.

## 12 Recommendation

- 12.1 Refuse Development Application SPP-18-01552 as it has failed to adequately address section 4.15 of the Environmental Planning and Assessment Act 1979 for the reasons listed below:
- 12.1.1 The proposal does not satisfactorily address Sections 2(1)(b) and 2(2)(b) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ('the SEPP'), in that the development does not provide the necessary amenity for the residents, and therefore will not achieve a good design outcome given that the key SEPP controls are not being complied with [Section 4.15(1)(a)(i) EP&A Act 1979].
  - 12.1.2 The proposal does not address Section 14 of the SEPP which requires residential aged care facilities to cater for those independent, mobile and active, as there is inadequate provision of landscaped area on the subject site [Section 4.15(1)(a)(i) EP&A Act 1979].
  - 12.1.3 The proposal does not comply with Section 48(b) of the SEPP regarding floor space ratio. The proposed FSR of 1.34:1 is a breach to the SEPP control and so constitutes an overdevelopment of the site [Section 4.15(1)(a)(i) EP&A Act 1979].
  - 12.1.4 The proposal does not comply with Section 48(c) of the SEPP regarding landscaped area of 25 m<sup>2</sup> per bed. The proposed shortfall of landscaped area only provides 14.9 m<sup>2</sup> per new bed and so represents a significant breach of the SEPP control, providing inadequate landscaped amenity for the future residents [Section 4.15(1)(a)(i) EP&A Act 1979].

- 12.1.5 The proposal does not adequately address Objective 3 of the R2 Low Density Residential zone under Blacktown Local Environmental Plan 2015, as it is an overdevelopment of the site. The development is therefore considered to adversely affect the amenity of the neighbourhood [Section 4.15(1)(a)(i) EP&A Act 1979].
- 12.1.6 The development has not satisfactorily addressed its siting, design, bulk and scale and visual impacts. The proposal presents a major shortfall in landscaping provision and is an overdevelopment of the site. The proposal in its current form does not result in a good design with appropriate amenities for the future residents. The proposed development will also result in unfavourable social and environmental impacts [Section 4.15(1)(b) EP&A Act 1979].
- 12.1.7 The proposal in its current form is not suitable for the site. It constitutes an overdevelopment as the required landscaping provision under the SEPP cannot be satisfactorily addressed [Section 4.15(1)(c) EP&A Act 1979].
- 12.1.8 One of the key concerns raised by the community in the public exhibition was that the proposal is an overdevelopment of the site. The proposal is therefore not in the public interest [Section 4.15(1)(d) and (e) EP&A Act 1979].
- 12.1.9 Any approval of the development as proposed would set an undesirable precedent [Section 4.15(1)(e) EP&A Act 1979].
- 12.2 Council officers notify the applicant and submitters of the Panel's decision.



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