

## SYDNEY NORTH PLANNING PANEL ASSESSMENT REPORT

<b>Panel Reference</b>	PPS-2018SNH033
<b>DA Number</b>	DA/235/2018
<b>LGA</b>	Hornsby Shire Council
<b>Proposed Development</b>	Demolition of existing dwellings and structures, construction of a 3 storey residential aged care facility comprising 100 beds and 3 storey residential building containing 13 independent living units with basement car parking.
<b>Street Address</b>	Nos. 461-473 Pacific Highway Asquith
<b>Applicant/Owner</b>	Chinese Australian Services Society Ltd c/o Urbis Pty Ltd
<b>Date of DA lodgement</b>	14 March 2018
<b>Number of Submissions</b>	15
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	General development over \$30 million
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</li> <li>• Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River</li> <li>• Biodiversity Conservation Act 2016</li> <li>• Hornsby Local Environment Plan 2013</li> <li>• Hornsby Development Control Plan 2013</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Locality Plan</li> <li>• Architectural Plans</li> <li>• Landscape Plans</li> <li>• Flora and Fauna Report</li> <li>• Water Sensitive Urban Design Strategy Report</li> </ul>

	<ul style="list-style-type: none"> <li>• Survey Plans</li> <li>• Arboricultural Impact Assessment</li> </ul>
<b>Report prepared by</b>	Stephen Dobbs
<b>Report date</b>	9 January 2020

### Summary of s4.15 matters

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

### Legislative clauses requiring consent authority satisfaction

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

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

### Clause 4.6 Exceptions to development standards

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

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

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

### Conditions

Have draft conditions been provided to the applicant for comment? **No**

*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*

## ASSESSMENT REPORT AND RECOMMENDATION

### EXECUTIVE SUMMARY

- The application involves the demolition of existing dwellings and structures, construction of a 3 storey residential aged care facility comprising 100 beds and 3 storey residential building containing 13 independent living units with basement car parking.
- The proposal does not comply with the maximum height of buildings development standard of 10.5m under Clause 4.3 Height of Buildings in the *Hornsby Local Environmental Plan 2013 (HLEP)*. The applicant has not made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the *HLEP* to vary the height of buildings development standard.
- The proposal does not comply with access requirements prescribed within Clause 26 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.
- The proposal does not demonstrate that adequate regard has been given to the design principles set out in Division 2 (Clauses 33 to 39) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.
- The proposal is inconsistent with the non-discretionary development standards contained within Clause 48 and 50 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.
- The proposal contains insufficient information in order to undertake an assessment against Clause 101 of *State Environmental Planning Policy (Infrastructure) 2007* and concurrence has not been issued from Transport for NSW.
- The proposal is inconsistent with biodiversity, scale, setback, and landscaping controls within the Hornsby Development Control Plan 2013.
- 15 submissions have been received in respect of the application by way of objection.
- It is recommended that the application be refused.

### RECOMMENDATION

THAT Development Application No. DA/235/2018 for the demolition of existing dwellings and structures, construction of a 3 storey residential aged care facility comprising 100 beds and 3 storey residential building containing 13 independent living units with basement car parking at Lot 15 DP 14476, Lot 16 DP 1003192, Lot 17 DP 1003192, Lot 18 DP 1003192, Lot 19 DP 1003192, Lot 1 DP 1003107, Lot 1 DP 120748, Nos. 461-473 Pacific Highway Asquith be refused subject to the reasons detailed in Schedule 1 of this report.

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### BACKGROUND

The site has a history of residential use and was re-zoned from Residential A (Low Density) to Residential B (Medium Density) as part of the Townhouse Planning Proposal gazetted on 10 June 2011. The site was subsequently rezoned to the current R3 Medium Density Residential zone under *Hornsby Local Environmental Plan 2013 (HLEP)*.

On 17 March 2017 and 24 November 2017, Council provided written pre-lodgement advice (PL/13/2017) for the demolition of structures and construction of a 3 storey residential aged care facility containing 102 beds and a 3 storey residential flat building comprising 13 independent living units. Council raised specific concerns with access to public transport, maximum building height, rear building setbacks, excessive tree removal, lack of landscaping, lack of building articulation and stormwater drainage.

On 14 March 2018, the subject application was lodged.

On 20 April 2018, Council requested an external urban design review of the application. On 26 June 2018, an urban design assessment was provided to Council by GM Urban Design & Architecture.

On 27 June 2018, the Roads and Maritime Services (RMS) wrote to Council to advise that they do not support the development in regard to the proposed dual vehicle crossings.

On 4 July 2018, Council requested a meeting with the applicant to discuss the following matters of concern; the maximum building height and number of storeys, the building platform and façade treatment, setbacks, apartment design, privacy, neighbourhood amenity, landscaping, tree preservation, materials and finishes, and RMS concurrence. On 17 July 2018, Council met with the applicant to discuss the abovementioned issues and advised that amended plans would be required in order for Council to support the proposal.

On 4 November 2019, an amended set of plans and reports were submitted to Council. The amended application is the subject of this report.

## **SITE**

The site comprises 7 existing residential allotments located on the western side of Pacific Highway Asquith.

The site is generally regular in shape other than the frontage of No. 461 Pacific Highway which extends forward of the frontage of the adjoining lots which have been subject to resumption for road widening purposes. The site has an area of 5,034.5m<sup>2</sup>, with a frontage of 115m to the Pacific Highway and an average depth of 44m.

A Council stormwater drainage line and easement traverses the site along the southern boundary of No. 471 Pacific Highway through Asquith Park to Wall Avenue and Mills Avenue.

The southern and western boundaries of the site adjoin RE1 Public Recreation zoned land comprising Asquith Park. The section of the park adjoining the southern boundary includes remnant Sydney Turpentine Ironbark Forest. The park consists of a sports field, amenities and open space recreation areas.

The northern boundary of the site adjoins an approved townhouse development comprising nine dwellings (DA/279/2016).

The site includes seven existing dwelling houses. There are no current development consents for development of the existing lots. The site and immediate adjoining land include significant locally indigenous trees. The site has an average fall of 6% to the western boundary of the site and Asquith Park.

The road reserve frontage of the site includes a table drain. The Pacific Highway is generally elevated to the site and consists of a four lane highway. The eastern side of the highway adjoins the Great Northern Railway Corridor.

The residential area south of the site fronting the western side of the Pacific Highway is within an R4 High Density Residential zone and is being redeveloped for five storey residential flat buildings with most buildings now completed.

The site is located 620m north of Asquith Railway Station.

## PROPOSAL

The proposal involves demolition of the existing dwelling houses and associated structures and construction of the following:

- A three storey residential aged care facility (RACF) comprising 100 beds. The RACF would have a gross floor area of 5,078m<sup>2</sup> and would utilise a range of finishes including face brick, rendered brick and metal and cement cladding.
  - The ground floor would comprise 33 bedrooms, several common lounge and dining rooms, service rooms, hairdresser, doctors' room, nurse room, three rear (western) facing balconies and three front (eastern) facing courtyards.
  - The first floor would comprise 37 bedrooms, several common lounge and dining rooms, service rooms, nurse room, three rear (western) facing balconies and two front (eastern) facing courtyards.
  - The second floor would comprise 30 bedrooms, three lounge rooms, one dining room, service rooms, nurse room, three rear (western) facing balconies and two front (eastern) facing balconies.
- A three storey independent living unit (ILU) residential flat building comprising 13 units. The ILU would have a total gross floor area of 1,813m<sup>2</sup> and would utilise a range of finishes including face brick, rendered brick and metal and cement cladding.
  - The ground floor would comprise three units (1x bedroom and 2 x 2 bedroom) as well as a communal area with a foyer, community care services rooms, activity lounge, kitchenette, terrace and communal garden.
  - First floor would comprise 6 units (2 x 1 bedroom and 4 x 2 bedroom).
  - The second floor would comprise 4 units (1 x 1 bedroom and 3 x 2 bedroom).
- A basement carpark comprising 44 spaces with 30 dedicated to the RACF and 14 to the ILU. The basement would include a loading area, service rooms, staff amenities, waste rooms, store rooms, kitchen, and storage cages for the ILU.

The existing Council stormwater drainage line and easement would be re-located to parallel with the northern boundary of the site.

The development would remove the existing 7 vehicle crossings onto Pacific Highway and construct a single new vehicular access point.

An at-grade waste holding area, booster pumps and a substation would be located along the Pacific Highway frontage.

The *Tree Retention and Removal Plan* (sheet 05) lists 33 trees to be retained and 57 trees to be removed (including 25 palm trees). The submitted landscape plan indicates the planting of 84 trees

ranging in mature height from 4m to 30m, and 1,518 shrubs ranging in mature height from 0.4m to 4-7m.

## **ASSESSMENT**

The development application has been assessed having regard to *the Greater Sydney Region Plan*, *'A Metropolis of Three Cities'*, *the 'North District Plan'* and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

### **1. STRATEGIC CONTEXT**

#### **1.1 Greater Sydney Region Plan – A Metropolis of Three Cities and North District Plan**

*A Metropolis of Three Cities* has been prepared by the NSW State Government to guide land use planning decisions to the year 2056. The population of Greater Sydney is expected to grow by 3.2 million people by 2056. The Plan sets a strategy for accommodating Sydney's future population growth and demographic change, while improving liveability.

The Plan identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government uses the District planning process to define objectives and set goals for job creation, housing supply and choice in each District. The *North District Plan* is a 20 year plan to manage growth in the context of economic, social and environmental matters to achieve the 40 year vision for Greater Sydney.

Council has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Northern Beaches, Ryde, and Willoughby LGAs to form the North District. The *North District Plan* will be reviewed and the Government will set housing targets and monitor supply to ensure planning controls are in place to stimulate housing development. The *Metropolis of Three Cities* sets a District 20 year strategic housing target of 92,000 dwellings over the next 20 years.

The proposed application would be generally consistent with *'A Metropolis of Three Cities'* and the *'North District Plan'* by providing additional dwellings and care facilities in the locality for seniors and people with a disability. Notwithstanding, the proposal is not supported by Council for the reasons outlined in this report.

### **2. STATUTORY CONTROLS**

Section 4.15(1)(a) requires Council to consider *"any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations"*.

#### **2.1 Hornsby Local Environmental Plan 2013**

The proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

##### **2.1.1 Zoning of Land and Permissibility**

The subject land is zoned R3 Medium Density Residential under the *HLEP*. The objectives of the zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is defined as 'Seniors Housing.' Seniors Housing is a permissible land use with consent under the *HLEP* in the R3 zone. The development is considered to generally meet the objectives of the zone as it would provide housing for seniors or people with a disability.

## **2.1.2 Height of Buildings and Exceptions to Development Standards**

### Maximum height

Clause 4.3 of the *HLEP* provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height pursuant to Clause 4.3 for the subject site is 10.5m. The RACF would have a maximum height of 12.12m and the ILU would have a maximum height of 11.59m and would not comply with the development standard.

### Exception to development standards

Clause 4.6 of the *HLEP* provides flexibility in the application of the development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objectives of the zone.

The objective of the Height of buildings control is to permit building heights that are appropriate for the site constraints, development potential and infrastructure capacity of the locality.

The applicant has not made a submission in support of a variation to Council's development standards in accordance with Clause 4.6 of the *HLEP*. The applicant states that "*there is no maximum height of building under the Seniors SEPP on this site, and a merit assessment is required*". Notwithstanding, Council's assessment of the proposed height is discussed below.

### Assessment

The submitted Statement of Environmental Effects (SEE) suggests that the maximum height of building breach is as a result of the sites topography, existing overland flow conditions, and internal requirements. Further, the SEE maintains that the development would not result in any unacceptable environmental impacts on the site or adjoining property and provides greater housing choice for the Hornsby locality.

In assessing the appropriateness of the proposed height in the context of the locality, the desired future character must be considered. Part 3.2.1 of the Hornsby Development Control Plan (*HDCP*) describes the desired future character of the R3 zoned precinct. Areas designed with 10.5m height limits are envisioned as medium density housing comprising 2 storey buildings in a landscaped setting where additional floor space is contained wholly within a roofscape.

Both the proposed buildings present as 3 storeys in height, and as discussed in Section 2.7.5.1 of this report, have several setback and building separation non-compliances. The scale of the buildings are further exaggerated on the western elevation as the finished floor level of the ground floor would be situated up to 1.65m above the existing ground level. In lieu of any *HLEP* Floor Space Ratio (FSR) control applying to the site, Council must rely on maximum height, minimum building separation, and



minimum boundary setbacks in order to promote appropriate building scale. The 3 storey buildings, along with setback and building separation non-compliances render the proposal an overdevelopment of the site and not in keeping with Council's desired future character of the area. Council also maintains that the proposal could comply with the 10.5m height limit if the buildings were to be the *HDCP* envisioned 2 storeys, regardless of the slope toward the rear of the site.

This view is supported within the independent urban design assessment provided to Council by GM Urban Design & Architecture which states:

*"The site has a 10.5m building height limit according to the Hornsby Local Environmental Plan 2013. As per the HDCP this should be expressed as a 2 storey. The proposal exceeds the building height control by 1.62m resulting in 12.12m in height to the top of the lift overrun for the RACF and by 1.09m for the ILUs resulting in 11.59m in height. The HDCP Part 3.2.3 Desired Outcome, a, recommends "a built form not exceeding 2 storeys + attic in height comprising town houses and residential flat buildings in areas designated K (10.5m – 2 storeys) on the HLEP Height of Building Map.*

*As per the HDCP 3.2.3 Prescriptive Measures, b, "basement car parking that protrudes more than 1m above the existing ground level is counted as a storey". The proposal presents the basement level protruding 1.65m above existing ground level along the western elevation. The applicant argues that this is the result of the topography and overland flow path affecting the site, however, this will impact the overall height of the building and its contextual fit.*

*The site's adjacent context generally complies with LEP and DCP height controls of 2 storeys + attic as per the HDCP and it is GMU's opinion that the proposal should follow the height control in order to provide a better design outcome and contextual fit".*

### **2.1.3 Heritage Conservation**

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for the Hornsby Shire with an objective being to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.

Whilst the site does not contain a heritage listed item and is not within a heritage conservation area, it is within the vicinity of heritage listed house located at No. 466A Pacific Highway Asquith. The house is listed as being of local significance under the *HLEP* and is located north-east of the site on the eastern side of Pacific Highway.

Given the proposed development would be separated by the Pacific Highway, the proposal is unlikely to result in a detrimental impact to the items heritage significance and no further heritage assessment is required.

### **2.1.4 Earthworks**

Clause 6.2 of the *HLEP* states that consent is required for proposed earthworks on site. Before granting consent for earthworks, the consent authority is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

The application proposes excavation to a depth of 4m. The intent of the excavation is to facilitate the construction of a basement carpark and driveway, which incorporates a lift to provide an accessible path of travel to the units above. Although the excavation is considered substantial, the basement level would allow for the proposed development to provide accessible parking on the site that would otherwise be located at grade at the ground floor level. The site only directly adjoins residential lands



to the north which is located at a higher elevation. Council's considers that the excavation is unlikely to cause detrimental impacts on the amenity of adjoining lands, is unlikely to disturb sensitive areas or relics and would not restrict future use of the land.

If approval were recommended, conditions of consent would be recommended requiring the submission of dilapidation reports assessing the impact of the excavation on the adjoining residential properties and compliance with the recommendations contained within the submitted geotechnical report.

## **2.2 Biodiversity Conservation Act 2016**

The NSW *Biodiversity Conservation Act 2016 (BC Act)* commenced on the 25 August 2017 and includes the Biodiversity Offset Scheme (BOS), which provides for biodiversity assessment and biodiversity offsetting of a range of developments in NSW according to a new method, known as the Biodiversity Assessment Method or 'BAM'.

The BOS applies to local development assessed under Part 4 of the *Act* that is likely to significantly affect ecological communities or threatened species listed under Schedules 1 and 2 of the *BC Act* as determined by mapping, clearing thresholds or the application of a five-part-test of significance.

The site is not mapped on the Biodiversity Values Map and would not exceed the clearing threshold of 2,500m<sup>2</sup>.

The development site is located adjacent to Asquith Park with remnant vegetation directly to the south and west. Remnant and planted trees are also located within the surrounds of the playing fields, road reserve and the subject site. Vegetation in the park and site is characteristic of Sydney Turpentine Ironbark Forest (STIF) which is listed as a Critically Endangered Ecological Community under the *BC Act*.

The application includes a flora and fauna assessment (F&F) report prepared by Narla Environmental, dated November 2018 that confirms the presence of STIF trees on the site and Asquith Park to the west. The report includes a five-part-test of significance and concludes that the development would not likely have a significant impact on threatened or endangered species or populations and therefore, the implementation of the BOS is not required. Accordingly, no further assessment under the *BC Act* is required.

Further discussions regarding biodiversity are provided under Section 2.12.1 of this report.

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

*State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)* commenced 25 August 2017 and aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3, Clause 9(2) of the *Vegetation SEPP* states that a Development Control Plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the Hornsby Development Control Plan 2013 (*HDCP*) prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation. The application seeks consent to remove trees requiring consent under the HDCP. An assessment of tree removal is provided under Section 2.7.5.1 (Neighbourhood Amenity and Streetscape) of this report.

## **2.4 State Environmental Planning Policy No. 55 – Remediation of Land**

The application has been assessed against the requirements of *State Environmental Planning Policy No. 55 (SEPP 55)*. This Policy provides State-wide planning controls requiring that consent must not be granted to the carrying out of development on land unless it has considered whether the land is contaminated or requires remediation for the proposed use.

A search of Council's records and aerial images reveals that the property has been historically used for residential purposes with no record of any site contamination. Given this, the site would be suitable for the proposed use and no further assessment in relation to this policy is required.

It is also noted that due to the age of the existing dwelling houses and the associated outbuildings, there is potential for the existing buildings to contain asbestos. Accordingly, if approval were recommended conditions of consent would require all asbestos to be removed from the site. Furthermore, considering the excavation required to accommodate the proposed basement car park and the levelling, much of the existing soil would be removed from the site during construction works.

## **2.5 State Environmental Planning Policy (Building Sustainability Index – BASIX)**

The application has been assessed against the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*. The proposal includes a BASIX Certificate for the ILU building and is considered to be satisfactory.

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

The application has been assessed against the requirements of *State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)*. This Policy contains State-wide planning controls for developments adjoining busy roads. The development is located immediately adjoining a classified road corridor (Pacific Highway). The following matters are required to be considered pursuant to the policy.

### **2.6.1 Development with Frontage to a Classified Road**

The proposal has been assessed against the requirements of Clause 101 as the site has frontage to the Pacific Highway.

The objective of this Clause is:

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

The compliance of the proposal with the objectives of this Clause is discussed below.

#### **2.6.1.1 Frontage to Classified Road**

Regarding traffic generation, the traffic and parking report submitted with the application, prepared by Traffix predicts that the proposal would result in 25 vehicle trips per hour, an increase in 18 trips over the existing traffic generation. The net traffic generation is estimated to be one additional trip per 3 minutes within peak periods and is considered negligible on the existing road network. Accordingly, Council raises no objections on traffic generation grounds.

Regarding vehicle access to the site, the original proposal was referred to the Roads and Maritime Services (RMS), (now known as Transport for NSW (TfNSW)) under the provisions of Section 138 of the *Roads Act 1993* on 20 April 2018. A formal response from TfNSW was provided to Council dated 27 June 2018. The response raised objections to the proposal in its original form and requested a reduction in vehicle access points and swept paths showing how vehicles could enter and exit in a forward direction.

In response to these objections, amended plans were provided to Council in November 2019 that reduced the number of vehicle crossings to one in the form of a 6m-9m dual crossover. An amended traffic and parking report was also provided. An amended response from TfNSW was provided to Council dated 13 December 2019. The response states the following:

*TfNSW has reviewed the submitted application and notes the amendments for the provision of single driveway access to the proposed development. However, the swept path plans need to be amended to include line marking for the Pacific Highway to show the largest vehicle can manoeuvre in and out of the site without encroaching on the opposite lane.*

*TfNSW has also previously requested that access is restricted to left-in/left-out access arrangement. Concept civil design plans are to be submitted that physically restrict right turn movements into the site.*

*TfNSW will not provide concurrence in accordance with the Roads Act 1993 until amended plans that reflect the comments above are received. Once received, a further review will be undertaken and responded to accordingly.*

Council has not requested additional information from the applicant to address concerns raised by TfNSW due to the other substantive issues of concern raised in the assessment of the application.

In addition, Council's engineering assessment notes that the longitudinal sections of the proposed vehicular crossing would have to be amended as the footpath grade and nature strip is required be re-graded. This matter is discussed further in Section 2.7.5.4 of this report.

#### **2.6.1.2 Impact of Vehicle Emissions**

The proposed development would have frontage to a State Road and the impact of vehicle emissions on sensitive land uses is required to be considered.

The current improvements on the site include dwelling houses that would currently be impacted upon by vehicle emissions and airborne dust particles due to the current traffic flow. The rezoning of the land to R3 - Medium Density Residential pursuant to Council's Housing Strategy was the subject of consultation with the RMS and endorsed by the Department of Planning, who have not raised concern with regard to air quality in this area.

As detailed above, the proposed development would result in the net increase of 18 vehicles trips per hour and therefore, the additional impact due to vehicle emissions would be largely negligible.

Given that the proposed development does not significantly alter the current traffic conditions, no further assessment in this regard is necessary. The application is assessed as satisfactory in this regard.

## **2.6.2 Impact of Noise**

Regarding road noise, an assessment of the impact of road noise on a residential use is required pursuant to Clause 102 of *SEPP Infrastructure* where a development fronts a road with an annual average daily traffic volume of more than 40,000 vehicles. The subject site has a frontage to Pacific Highway. However, the average daily traffic volume on the Pacific Highway in the vicinity of the site does not exceed 40,000 vehicles and therefore, this clause does not apply to the proposal. Notwithstanding, if approval were recommended, conditions of consent would ensure that the development is capable of achieving reasonable amenity and acoustic privacy in accordance with the requirements within “*Development Near Rail Corridors and Busy Roads – Interim Guidelines 2008*”.

## **2.6.3 Traffic Generating Developments**

The development is not classified as a Traffic Generating Development in accordance with Clause 104 and Schedule 3 of *SEPP Infrastructure* as it would not result in more than 75 dwellings fronting a classified road.

## **2.6.4 Development Adjacent to Rail Corridors**

The application was referred to Sydney Trains pursuant to Clause 85 of *SEPP Infrastructure*. Sydney Trains wrote to Council on 10 May 2018 stating no objections to the proposal on noise and vibration grounds. Sydney trains recommended conditions of concurrence be imposed including the submission of an acoustic assessment, electrolysis risk assessment, and a geotechnical report prior to the issuance of a Construction Certificate. These conditions would be included as conditions of concurrence if approval were recommended.

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

*State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD)* is the overriding planning instrument for the development of housing for aged and disabled people in NSW and provides for hostels, residential care facilities (nursing homes) self-contained dwellings and multi-storey buildings. *SEPP HSPD* is comprehensive in scope including land use planning provisions, design principles, development standards and standards specifically to meet the housing needs of aged and disabled people. The assessment of the proposal in accordance with the relevant requirements of *SEPP HSPD* is provided as follows:

### **2.7.1 Clause 11 – Residential Care Facilities**

The *SEPP HSPD* includes the flowing definition for “*residential care facility*”:

“*In this Policy, a residential care facility is residential accommodation for seniors or people with a disability that includes -*

- (a) *meals and cleaning services, and*
- (b) *personal care or nursing care, or both, and*
- (c) *appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, not being a dwelling, hostel, hospital or psychiatric facility”.*

For the purposes of assessment against *SEPP HSPD*, the proposed RACF development is defined as a “*residential care facility*” comprising 100 bedrooms.

### **2.7.2 Clause 13 – Self Contained Dwellings**

The *SEPP HSPD* includes the following definitions for “self-contained dwellings”:

*General term: “self-contained dwelling”*

*In this Policy, a self-contained dwelling is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.*

Whilst the application does not expressly define the type of self-contained dwellings it is assumed that the proposal meets the definition of “serviced self-care housing” as meals, cleaning services, and personal care services are proposed on-site.

*Example: “serviced self-care housing”*

*In this Policy, serviced self-care housing is seniors housing that consists of self-contained dwellings where the following services are available on the site: meals, cleaning services, personal care, nursing care.*

For the purposes of assessment against *SEPP HSPD*, the proposed ILU development is defined as “serviced self-care housing” comprising 13 “self-contained dwellings”.

### **2.7.3 Clause 26 – Location and Access to Facilities**

The *SEPP HSPD* includes mandatory standards for accessibility and useability for seniors living to ensure wheelchair accessibility throughout the development and to a public road. Moreover, Clause 26 states that a consent authority must not consent to a seniors housing development if the site is located more than 400m from facilities and services, or a bus stop or train station that provides a frequent daily connection to these services.

The application maintains that the site would be within 180m of a bus stop on southern side of Mills Avenue where the State Government run 598 bus would provide direct access to Hornsby Shopping Centre. The application states that the bus service currently runs 13 services on each weekday, 4 services on Saturday and 2 services on Sunday.

The *SEPP HSPD* requires that the facilities and services be accessible by means of a ‘suitable access pathway’ (sealed footpath) and the overall average gradient for the pathway is to be no more than 1:14, although the following gradients along the pathway are also acceptable:

- A gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,
- A gradient of no more than 1:10 for a maximum length of 5 metres at a time,
- A gradient of no more than 1:8 for distances of no more than 1.5 metres at a time

The applicant submitted an accessibility long section survey confirming that the bus stop on the southern side of Mills Avenue would meet the above-mentioned grade requirements. Notwithstanding, there is not currently a footpath on the southern side of Mills Avenue. The applicant asserts that a footpath and new bus stop are to be constructed in accordance with Condition No. 19 of DA/723/2016 located at Nos. 457-459 Pacific Highway. As a suitable access pathway does not currently exist, and is

not proposed as part of this application, the consent authority is unable to grant consent to the proposal as it cannot be assured that a suitable access pathway will be available.

Further, Clause 26(2)(b)(iii) of *SEPP HSPD* requires a public transport service that is available to and from the development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday. Whilst the 598 bus service produces sufficient weekday and services, the NSW Transport for NSW bus timetable, accessed 19 December 2019 indicates the 598 bus does not provide a service between 8am and 12pm on Saturdays, Sundays and public holidays as the loop services currently depart Mills Ave after 12pm.

Given the above, the proposal does not comply with the provisions of Clause 26 and consent cannot be granted.

#### **2.7.4 Clause 30 – Site Analysis**

The application includes a site analysis plan and accompanying information in accordance with the requirements of the *SEPP HSPD*. The proposal is assessed as satisfactory in this regard.

#### **2.7.5 Clause 32 – Design of Residential Development**

In determining a development application, a consent authority must not grant consent to a development unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 (Clauses 33 to 39). As discussed below, Council is not satisfied that the proposal demonstrates sufficient regard for the design principles and maintains that consent cannot be granted.

##### **2.7.5.1 Clause 33 – Neighbourhood Amenity and Streetscape**

Council's assessment against the relevant requirements of Clause 33 is provided as follows.

*The proposed development should -*

*(a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area*

*Comment:* In response to Clause 33(a), the desired future character of the site as described in the *HDCP* is medium density housing development comprising 2 storey buildings in a landscaped setting where additional floor space is contained wholly within a roofscape.

As discussed within Section 2.1.2 of this report, the scale of the proposed buildings are considered excessive for the site constraints and it is considered that the proposal would not contribute positively to the streetscape character.

Further, the deep soil areas provided in the front setback are small and fragmented and would be compromised by a large driveway, bin enclosure, electricity substation and fire hydrant booster. Consequently, if the proposal were to proceed, a landscaped setting would not be achieved.

*(c) maintain reasonable neighbourhood amenity and appropriate residential character by -*

*(i) providing building setbacks to reduce bulk and overshadowing, and*

*(ii) using building form and siting that relates to the site's land form, and*



(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development.

Comment: In response to Clause 33(c), a discussion regarding each setback is provided below.

Eastern, front setback: Amended plans submitted to Council in November 2019 have provided a slightly larger front setback to Pacific Highway for the southern portion of the RACF building. Notwithstanding, there are small portions of the building that would not comply with the 9m *HDCP* control.

Regarding the building form, the *HDCP* recommends “*articulated buildings that are limited in width and depth and separated by gardens*”. The RACF building would be approximately 76m in length and despite the proposed indentations, would present as extensive in length given there would be limited opportunity within the front section to provide landscape separation. Further, given the large basement, no deep soil zones would be located between the two buildings to enable a landscape separation.

Regarding the building height, as discussed in Section 2.1.2 of this report, the 3 storey building is not compatible with the desired future character of the locality.

Western, rear setback: The *HDCP* encourages 6m rear setbacks for buildings and 4m setbacks for basements for the subject site. Both the RACF and ILU building fail to comply with the rear building setback control with a minimum of 2.2m to balconies. Further, there would be several basement setback non-compliances with a minimum setback of 2.6m. The insufficient rear setbacks do not allow for sufficient private open space and landscaping and would likely result in a loss of amenity for both Asquith Park users and future residents.

Regarding the building form and height, the ground floor of the RACF building would be situated up to 1.65m above the existing ground level. The height of the ground floor would further exaggerate the overall bulk of 3 storey buildings when viewed from Mills Park and are not considered to maintain reasonable neighbourhood amenity.

Northern, side setback: The *HDCP* encourages 6m side setbacks which can be reduced to 3m for a maximum of 1/3 the building length and 3m basement setbacks. Majority of the ILU building would have a northern setback of 3m which does not comply with the *HDCP* control. As discussed in Section 2.9.4 of this report, the proposed setback does not provide sufficient building separation between the townhouse development to the north and would not maintain reasonable neighbourhood amenity.

The basement maintains a 3m side setback and no objections are raised in this regard.

Southern, side setback: The *HDCP* encourages 6m side setbacks which can be reduced to 3m for a maximum of 1/3 the building length and 3m basement setbacks. The proposal would be compliant with these controls and no objections are raised in this regard.

In summary, the proposal does not demonstrate that adequate regard has been given to Clause 33 of *SEPP HSPD* and consent cannot be granted. Council engaged GM Urban Design & Architecture to undertake an urban design review of the proposed development. Their assessment of the proposal notes the following:

*“The State Environmental Planning Policy for Seniors 2004 Division 2 Design Principles clause 33 c recommends “providing building setbacks to reduce bulk and overshadowing” as one of the objectives of setbacks.*

*As per the HDCP 2013, the proposed development should have 9m front setback, 6m side setbacks and 6m rear setback. The proposal does not comply with the HDCP controls of basement and above*



*ground setbacks and presents reduced setbacks on all sides. We strongly recommend the proposal provides appropriate setbacks especially on the front and side setbacks and provides sufficient green open spaces for the future recreational needs of residents”.*

*(e)embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and*

Comment: Council’s Landscape Architect is of the view that the proposed building and basement setbacks do not allow for sufficient or suitable vegetation planting areas. Space for sufficient vegetation planting is further reduced by the location of services such as stormwater lines, pits and the OSD tank which straddle the southern and western boundaries. Further, the entire 3m northern boundary setback is proposed as a stormwater easement containing a 750mm diameter stormwater pipe.

The Deep Soil and Landscape Area Plan by Calderflower indicates a total deep soil planting area of 1,033m<sup>2</sup>. Council notes that this number does not consider stormwater services, or the footpath proposed around the perimeter of the site.

Along with shrubs, the Planting Plan by TaylorBrammer indicates the planting of the following trees within the 115m frontage to Pacific Highway: 1x Australian Tree Fern 5x Red Bloodwood trees, 11x Gordonia trees, 4x Blueberry Ash trees, and 5x Ornamental Plum trees. Council notes that majority these trees would be located within small pockets between the Pacific Highway and the internal driveway. These pockets also include the electricity substation, water hydrant, and bin enclosure and it is questionable if all of the proposed planting can be achieved.

Regardless of whether all trees can be planted and grow effectively, the proposed planting schedule is not considered consistent with the existing and desired future streetscape character and the existing site conditions. Part 3.2.6 of the *HDGP* encourages canopy trees within the front setback that reach a mature height of at least 10-12m. The 10x Gordonia trees would only reach a mature height of 4m. Moreover, the proposed landscaping is inconsistent with the recommendations contained within the submitted flora and fauna report which advises 24 new advanced trees typical of the STIF vegetation community should be planted to offset tree loss.

Overall, the development fails to satisfactorily consider and contribute to the desirable landscape elements of the locality.

*(f)retain, wherever reasonable, major existing trees*

Comment: The Arboricultural Impact Assessment Report (AIA) prepared by Urban Arbor, dated 26 June 2019 has undertaken an assessment of 79 trees (including trees in Asquith Park) and describes the potential impacts on those trees as a result of the proposed development. The AIA lists 55 trees to be removed and 11 trees to be retained with encroachments in their respective tree protection zones. In contrast to the AIA, the Tree Retention and Removal Plan by Calderflower lists 33 trees to be retained, 32 trees to be removed and 25 palm trees to be removed.

The scope of the AIA states that the report has been undertaken to meet the following:

- 2.1.3 *Provide an assessment of the potential impact the proposed development is likely to cause to the condition of the subject trees in accordance with AS4970 Protection of trees on development sites (2009).*
- 2.1.4 *Specify tree protection measures for trees to be retained in accordance with AS4970-2009.*

These statements suggest that the report has been undertaken to provide an assessment of the impacts of the development on trees rather than providing guidance for the appropriate retention of trees where reasonably possible. The AIA has mapped and assessed 79 trees and the Tree Retention and Removal Plan lists 90 trees across the site. The AIA lists 55 trees to be removed and the Tree Retention and Removal Plan lists 57 trees to be removed. The AIA lists 23 trees to be retained and the Tree Retention and Removal Plan lists 33 trees to be retained. Of those trees to be retained, 18 of the 23 in AIA and 29 of the 33 in the Tree Retention and Removal Plan are not located within the development site and are to be retained regardless of the proposal. Of those trees to be retained, including trees in Asquith Park, 11 trees would be impacted by encroachment into their tree protection zones, and 4 trees would have a major encroachment of more than 10%. A total of 22 trees proposed for removal have been assessed as being important for retention.

While the specific number of trees to be removed and retained may differ between the submitted documents, Council is of the view that no reasonable attempt has been made to retain trees on the development site. Further, 11 of the trees proposed to be retained would also be impacted by the proposal.

A specific example of the failure to reasonably retain trees are trees 44 and 46 in the AIA (*Eucalyptus paniculate* and *Angophora costata*). Both trees are listed as having retention values of A1 within the AIA. The trees are listed to be removed due to being within the footprint of the waste storage area fronting Pacific Highway. Council considers that the retention of these trees would be possible if the waste storage area were to be re-located.

In summary, the proposal does not seek to “*retain, wherever reasonable, major existing trees*” and cannot be supported.

#### **2.7.5.2 Clause 34 – Visual and Acoustic Privacy**

Clause 34 states that development should consider the visual and acoustic privacy of neighbours in the vicinity and the proposed residents by appropriate design of windows, balconies and landscaping, as well as ensuring acceptable noise levels.

The ILU building would provide a mostly non-compliant 3m northern boundary setback. Given the 3m wide stormwater easement would be located within this setback area, there would not be sufficient space to provide for meaningful landscaping to separate the ILU building from the adjoining development at Nos. 475-477 Pacific Highway.

Further, the proposed building separation of 8.4m between the ILU and RACF building is not considered sufficient with regard to acoustic privacy. Both ILU dwellings and RACF rooms would overlook the separation area with dwelling bedrooms located directing adjoining the common terrace and the vehicle turning area.

#### **2.7.5.3 Clause 35 – Solar Access and Design for Climate**

Clause 35 requires seniors living developments to provide adequate daylight to the main living areas of neighbouring properties and adequate sunlight to areas of private open space.

The proposal would not unreasonably obstruct sunlight access for adjoining development as it would only directly adjoin residential development to the north.

The submitted shadow diagrams indicate that 77% of the proposed dwellings within the ILU would receive solar access for 3 hours between 9am and 3pm during winter solstice.

The proposal complies with the provisions of Clause 35 of the *SEPP HSPD* and is assessed as satisfactory in this regard.

#### **2.7.5.4 Clause 36 – Stormwater**

Clause 36 requires development to minimise the disturbance and impacts of stormwater runoff on adjoining properties and include, wherever practical on-site stormwater detention or stormwater re-use.

The application is supported by a Water Sensitive Urban Design Strategy Report (WSUD, prepared by ACOR Consultants. An assessment regarding stormwater is provided below.

##### Existing Stormwater and Site Conditions

The WSUD report provides a useful summary of the existing site conditions and states the following:

*An existing 1.83m wide stormwater drainage easement traverses the site along the southern boundary of No. 471 Pacific Highway, which extends through Asquith Oval to Wall Avenue and Mills Avenue. The easement contains a 450mm diameter RCP stormwater pipe which conveys stormwater flows from the upstream Pacific Highway road catchment, Pacific Highway road verge and residential properties north of Rupert Street.*

*The Pacific Highway road verge along the subject site frontage generally grades from the edge of bitumen towards the site boundary. The road verge includes an existing table drain which collects and conveys stormwater from the upstream catchment to a sag point outside No 471 Pacific Highway. A surcharge inlet pit is located at the table drain sag point, which collects and conveys stormwater through the Council easement pipe towards Asquith Oval as described above.*

*Roads & Maritime Services NSW (RMS) has identified that the Pacific Highway frontage is subject to road widening for new kerb and gutter and road shoulder.*

##### Proposal

The existing Council stormwater pipe would be re-located from within No. 471 Pacific Highway to parallel with the northern boundary of No. 473 Pacific Highway. A 3m wide easement would be created to accommodate a new 750mm diameter pipeline. The pipeline would connect into the road verge that is to be constructed as part of the approved townhouse development at No. 475-477 Pacific Highway. The WSUD report notes that the re-aligned stormwater pipe would not result in any overland surface flow and would negate the need for an overland flow study.

The WSUD report indicates that stormwater runoff from proposed pervious and impervious surfaces would be collected within an in-ground pit and gravity pipe system. Roof water from the RACF building would be collected by eave gutters and downpipes before being connected to the in-ground stormwater system. Roof water from the ILU building would be directed into a 10,000L underground rainwater tank to satisfy BASIX requirements before being directed into the in-ground system. The in-ground pipe system would then be directed into a 77m<sup>3</sup> capacity on-site detention (OSD) tank before being directed into the existing stormwater system located in Asquith Park via a proposed easement. Stormwater would be treated to remove suspended solids and nutrients.

##### Assessment

Council's engineering assessment raise no objections to the proposal in regard to stormwater dispersal subject to the nature strip and footpath levels at the property boundary being re-graded toward Mills Avenue at a constant grade to avoid any sag points.

Notwithstanding, an in-principle agreement would be required from Council's Land and Property Services Branch for the relocation of existing stormwater pipe and creation of a Drainage Easement within Asquith Park prior to consent being granted. Following an in principle agreement, a full assessment of the relocated public drainage system would then be required to be undertaken.

#### **2.7.5.5 Clause 37 – Crime Prevention**

The proposal includes an assessment of the development against crime prevention controls in the submitted SEE. The access way design, pedestrian linkages and orientation of dwellings ensures casual surveillance of the development and separation of public and private areas. The application is assessed as generally satisfactory in this regard.

#### **2.7.5.6 Clause 38 – Accessibility**

The accessibility report submitted with the proposal indicates that the development is capable of compliance with internal and outdoor accessibility provisions within relevant *Australian Standards*, the *Building Code of Australia*, and the *Disability Discrimination Act 1992*.

As discussed in Section 2.7.3 of this report, the site does not currently have a suitable access pathway to a bus stop within 400m that provides a regular service to and from the site to essential services. The application is unsatisfactory in this regard.

#### **2.7.5.7 Clause 39 – Waste Management**

The application proposes a garbage room within the basement for the RACF, a waste holding room and bulky waste storage room for the ILU, and an on-grade bin storage bay directly adjacent to the front boundary of the site.

The application includes an operational waste management plan (WMP), prepared by The Mack Group for the RACF. The report notes that bins would be transferred from the garbage room to the shared waste storage area adjoining Pacific Highway for collection from a private contractor. The waste truck would enter the site from Pacific Highway and park within the internal access road near the waste enclosure while the waste is loaded.

Residents living within the ILU building would be required to take their waste directly to the waste storage room with the basement. Council vehicles would collect waste generated by the ILU development on-grade.

Council's Waste Branch has identified the following issues with the proposal regarding waste management:

- The ground level bin holding area adjoining Pacific Highway is considered undersized for the size of the development and not in a suitable location from a visual and amenity aspect;
- There is conflicting information between the WMP and the submitted architectural plans. The WMP references a chute system for the ILU that does not exist on the architectural plans; and
- It is proposed that 660L bins be used for the ILU. 660L bins are designed to be used with chutes and their lids would likely be too heavy for some residents to lift.

Having regard to the above, the proposal is assessed as non-satisfactory against the requirements of Clause 39.



2(4)	<b>Letterboxes</b>	Yes	To be provided at the entry point.
2(5)	<p><b>Private Car Accommodation</b></p> <p>If car parking (not being car parking for employees) is provided:</p> <p>car spaces must comply with AS2890, and</p> <p>5% of total number must be designed to enable width to be increased to 3.8 metres.</p> <p>Garage with power operated doors</p>	<p>Capable</p> <p>Capable</p> <p>Capable</p>	<p>All parking spaces can comply with AS2890.6 and AS 2890.1.</p> <p>Compliance could be enforced via conditions of consent.</p>
2(6)	<p><b>Accessible Entry</b></p> <p>Every entry must comply with AS4299.</p>	Capable	The Access Report advises that the units can comply. Compliance could be enforced via conditions of consent.
2(7)	<p><b>Interior: General</b></p> <p>Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.</p>	Capable	The Access Report advises that the units can comply with AS1428.1. Compliance could be enforced via conditions of consent.
2(8)	<p><b>Bedroom</b></p> <p>One bedroom to accommodate a wardrobe and queen-size bed and a clear area of at least 1200mm at the foot of the bed and 1000mm wide beside the bed and the wall.</p>	Capable	The Access Report advises that the units can comply. Compliance could be enforced via a condition of consent.
2(9)	<p><b>Bathroom</b></p> <p>At least 1 bathroom to comply with AS1428.1</p>	Capable	The Access Report advises that the units can comply with AS1428.1. Compliance could be enforced via a condition of consent.
2(10)	<p><b>Toilet</b></p> <p>Provide a visitable toilet per AS4299.</p>	Capable	The Access Report advises that the units can comply with this provision. Compliance could be enforced via a condition of consent.
2(11, 12 and 13)	<b>Surface Finishes, Door Hardware, Ancillary Items</b>	Capable	The Access Report advises that the units can comply with this provision. Compliance could be



	Slip resistance surfaces.		enforced via a condition of consent.
2(15)	<b>Living Room and Dining Room</b> Circulation space per AS4299.	Capable	The Access Report advises that the units can comply with this provision. Compliance could be enforced via a condition of consent.
2(16 and 17)	<b>Kitchen and Access</b> Circulation space per Cl.4.5.2 of AS4299. Width of door approaches of 1200mm.	Capable	The Access Report advises that the units can comply with this provision. Compliance could be enforced via a condition of consent.
2(18)	<b>Lifts</b> Lifts in multi-storey buildings	Yes	Lifts are proposed for both buildings.
2(19)	<b>Laundry</b> Width of door approach to be 1200mm Clear space in front of appliances of 1300mm.	Capable	The Access Report advises that the units can comply with this provision. Compliance could be enforced via a condition of consent.
2(20)	<b>Storage for Linen</b> Linen cupboard per AS4299.	Capable	The Access Report advises that the units can comply with this provision. Compliance could be enforced via a condition of consent.
2(21)	<b>Garbage</b> A garbage storage area must be provided in an accessible location.	Capable	The Access Report advises that the units can comply with this provision. Compliance could be enforced via a condition of consent.

In accordance with the above table, if approval were recommended conditions of consent would be required in order to enforce compliance with the requirements of Clause 41.

## **2.7.8 Clause 48 – Standards That Cannot be Used to Refuse Development Consent for Residential Care Facilities**

Clause 48 of *SEPP HSPD* includes non-discretionary development standards and states “a consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds”. A discussion is provided below in this regard.

- (a) **building height:** if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys)



Comment: The proposal would exceed 8m in height and accordingly, can be used by the consent authority for grounds of refusal. A discussion regarding height is provided within Section 2.1.2 of this report.

- (b) **density and scale:** *if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less*

Comment: The submitted Site Areas Plan indicates that the RACF building would have a FSR of 1.17:1. Council contends that the calculations included in the plan are incorrect as the measurements are taken from the internal face of the outer walls and excludes the areas for internal stairwells and lift shafts. The definition of “gross floor area” contained within Clause 3 of *SEPP HSPD* states that floor area is to be taken from the outer face of the external wall and it does not state that voids, stairwells or lift shafts are excluded. Accordingly, Council calculates that the FSR is approximately 1.31:1, substantially exceeding the non-discretionary standard of 1:1.

The proposed FSR, combined with non-compliant height and building setbacks would result in an overdevelopment of the site.

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

Comment: The submitted Site Areas Plan indicates a total of 1,215m<sup>2</sup> landscaped area in hatched green equating to 12.15m<sup>2</sup> per residential care bed. This calculation is generally consistent with the measurements contained within the Landscape Plans prepared by Taylor Brammer. Council however notes that this figure includes unusable areas such as drains, the electricity substation, water hydrant and bin enclosure.

The application maintains that 25m<sup>2</sup> of landscaped area per residential care bed is not required given the site adjoins a public park, RACF residents “are generally not very mobile” and “views out from RACF room windows onto landscaped areas provides a more practical amenity for residents”, and there is an over provision of landscaped area for the ILU component.

Council does not support the statement that views to landscaped areas are more practical than providing actual landscaped areas. Additionally, the fact that the site adjoins a sporting park is not considered appropriate justification as to why landscaped areas are not provided on the subject site. Asquith Park is predominantly a sporting oval and serves a different purpose to a private landscaped area. Finally, even with the entirety of the ILU landscaping component the included, the landscaped area not would meet the 25m<sup>2</sup> standard.

In summary, Council considers the proposed landscaping insufficient for the size of the development.

- (d) **parking for residents and visitors:** *if at least the following is provided—*
- i. *1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and*
  - ii. *1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and*
  - iii. *1 parking space suitable for an ambulance”.*

Comment: The proposed number of car parking spaces is compliant with the standard.

## 2.7.9 Clause 50 – Standards That Cannot be Used to Refuse Development Consent for Self-Contained Dwellings

Clause 50 of *SEPP HSPD* includes non-discretionary development standards and states “a consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds”. A discussion is provided below in this regard.

- (a) **building height:** *if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys).*

Comment: The proposal would exceed 8m in height and accordingly, can be used by the consent authority for grounds of refusal. A discussion regarding height is provided within Section 2.1.2 of this report.

- (b) **density and scale:** *if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less.*

Comment: The submitted Site Areas Plan indicates that the ILU building would have an FSR of 1.26:1. Council contends that the calculations included in the plan are incorrect as the measurements are taken from the internal face of the outer walls and excludes the areas for internal stairwells and lift shafts. The definition of “gross floor area” contained within Clause 3 of *SEPP HSPD* states that floor area is to be taken from the outer face of the external wall and it does not state that voids, stairwells or lift shafts are excluded. Accordingly, Council calculates that the FSR is approximately 1.51:1, substantially exceeding the non-discretionary standard of 0.5:1.

The proposed FSR, combined with non-compliant height and building setbacks render the ICU along with the RACF an overdevelopment of the site.

- (c) **landscaped area:** *if -*
- i. *in the case of a development application made by a social housing provider - a minimum 35 square metres of landscaped area per dwelling is provided, or*
  - ii. *in any other case - a minimum of 30% of the area of the site is to be landscaped.*

Comment: The submitted Site Areas Plan indicates that the proposal would comply with the 30% landscaping requirement as a total of 434m<sup>2</sup> or 36.5% total site would be landscaped.

- (d) **Deep soil zones:** *if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the deep soil zone). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres.*

Comment: The submitted Site Areas Plan and Landscape Plan indicate that the whole site would have a total deep soil area of 1,033m<sup>2</sup> or 20.5%. Notwithstanding, the definition of deep soil zones contained within *SEPP HSPD* specifically excludes areas that are paved. Paved areas and stormwater drainage pits are included in the calculations within the submitted plans. Once accounted for, the remaining deep soil area is approximately 815m<sup>2</sup> or 16%. The proposal complies with this requirement. Notwithstanding,

as discussed in Section 2.7.5.1 of this report, the size and shape of the deep soil zones, along with the proposed services and structures limit meaningful vegetation planting.

- (e) **Solar access:** *if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.*

Comment: The application indicates that 10 out of 13 dwellings (77%) would receive adequate sunlight between 9am and 3pm during Winter Solstice.

- (f) **Private open space** *for in-fill self-care housing: if - in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area.*

Comment: The balcony for ILU No. 7 would be 8.6m<sup>2</sup> and does not comply with Clause 50(f) requirement as it contains two bedrooms. All other units comply with this measure.

- (g) *(Repealed)*

- (h) **Parking:** *if at least the following is provided -*

- i. *0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider, or*
- ii. *1 car space for each 5 dwellings where the development application is made by, or is made by a person jointly with, a social housing provider”.*

Comment: The proposed number of car parking spaces is compliant with the standard.

## 2.8 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

*State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65)* applies to the ILU portion of the development as it is 3 storeys in height and contains more than 3 dwellings. The Policy provides for design principles to improve the design quality of residential apartment development and for consistency in planning controls across the State.

*SEPP 65* adopts the Apartment Design Guide which prevails in the event of any inconsistency with a Development Control Plan.

### Design Quality Principles

The applicant has submitted a “Design Verification Statement” prepared by a qualified Architect stating how the proposal achieves the design principles of *SEPP 65*. Council also engaged GM Urban Design & Architecture to undertake an urban design review of the proposed development. Council’s view of the proposal in respect to the design quality principles is addressed in the following table.

Principle	Compliance
1. <b>Context and Neighbourhood Character</b>	<b>No</b>
<b>Comment:</b> The site is located within the Pacific Highway Asquith precinct planned for medium density residential housing.	

The desired future character of the area, as outlined in the *HDCP*, is envisioned as medium density housing comprising 2 storey buildings in a landscaped setting where additional floor space is contained wholly within a roofscape.

The proposal does not reflect the desired urban form outlined in the *HDCP*. The proposed driveway, hydrant boosters, electrical substation and bin storage within in the front setback would result in minimal landscaping opportunities and as a result, the development would not appropriately address the Pacific Highway frontage. The 3 storey built form with non-compliant side and rear boundary setbacks would not contribute positively to the identity and future character of the precinct.

**2. Built Form and Scale**

**No**

**Comment:** The proposed building does not achieve an appropriate built form for the site.

The ILU building presents as 3 storeys in height and the scale of the building is exaggerated on the western elevation as the finished floor level of the ground floor is sited above existing ground level.

The built form is considered inappropriate for the site and inconsistent with the desired future character of the precinct. Sufficient deep soil landscaping could not be achieved throughout the site that could break up the building mass which limits the ability to integrate the buildings with landscaping and tree canopy.

The design is considered a poor response to the public domain and would not contribute to the desired future streetscape character.

**3. Density**

**No**

**Comment:** The *HLEP* does not incorporate any floor space ratio or site coverage development standards for the precinct. The bulk, scale and density of residential development is regularised by the 'setbacks' and 'height' related planning controls in the *HDCP*. It is essential that the proposed development complies with the above development controls to achieve an appropriate development outcome on the site and avoid over development.

The proposal does not satisfy the requirements for setbacks, and height. Deep soil areas required under the *SEPP HSPD* and the *HDCP* are compromised by building encroachments. Given that the proposal does not comply with the setback requirements and includes insufficient landscaped areas, the proposed density would not be appropriate for the site or the precinct and is unacceptable.

**4. Sustainability**

**Yes**

**Comment:** The proposal complies with solar access requirements and includes a BASIX report. The proposal is considered acceptable in regard to resource, energy and water efficiency principles.

**5. Landscape**

**No**

**Comment:** Council's Landscape Architect assessment does not support the application as the driveway and potential future services within the Pacific Highway Street frontage would significantly compromise the areas available for landscaping. The proposal does not provide for an adequate deep soil verge along the southern, western or northern frontages.

Accordingly, the application does not demonstrate that the future development would be sited within an integrated landscaped setting.

Given the above, the proposal would not satisfy the intent of the 'Landscape' principle of *SEPP 65*.

<b>6. Amenity</b>	<b>No</b>
<b>Comment:</b> The units are designed with appropriate room dimensions and layout to maximise amenity for future residents. Notwithstanding, compromised building setbacks, building separation and insufficient landscaping would not achieve a development outcome with reasonable amenity for future occupants.	
<b>7. Safety</b>	<b>Yes</b>
<b>Comment:</b> The proposal includes an assessment of the development against crime prevention controls in SEE. The design orientates the balconies and windows of individual apartments towards the street and rear boundary, providing passive surveillance of the public domain and communal open space areas. Both the pedestrian and vehicular entry points would be generally secured and visibly prominent from Pacific Highway.	
<b>8. Housing diversity and social interaction</b>	<b>Yes</b>
<b>Comment:</b> The proposal incorporates a range of unit sizes to cater for different budgets and housing needs. The development complies with the housing choice requirements of the <i>HDGP</i> by providing a component of adaptable housing and a mix of 1 and 2 bedroom dwellings.	
<b>9. Aesthetics</b>	<b>No</b>
<b>Comment:</b> The architectural treatment of the building is not consistent with the design principles contained within the ADG and <i>HDGP</i> .  As described in the independent urban design assessment by GM Urban Design & Architecture, the architectural treatment would result in lack of articulation in the built form. As a result, the building would detract from the desired future character of the area. The proposal is not supported with regard to the principle “ <i>Aesthetics</i> ”.	

## 2.9 State Environmental Planning Policy No. 65 – Apartment Design Guide

*State Environmental Planning Policy No. 65 – Apartment Design Guide (SEPP 65)* also requires consideration of the Apartment Design Guide (ADG). The ADG includes development controls and best practice benchmarks for achieving the design principles of *SEPP 65*. The following table sets out the proposal's compliance with the ADG:

Apartment Design Guide			
Control	Proposal	Requirement	Compliance
<b>Deep Soil Zone</b>	29%	7% of site area	Yes
	Min Dimension 3m	Min Dimension 6m	No
<b>Communal Open Space</b>	>25%	25%	Yes
	Capable of complying with 50% sunlight	50% direct sunlight to principal area	Yes

<b>Ground Level Private Open Space</b>	>15m <sup>2</sup> Min Depth of 3m	15m <sup>2</sup> Min Depth of 3m	Yes Yes
<b>Solar Access (Living rooms and private open space areas)</b>	77%	2 hours for 70% of units	Yes
<b>No Solar Access allowable for units</b>	15%	15% of units (max)	Yes
<b>Natural Cross Ventilation</b>	77% (10/13)	Min. 60%	Yes
<b>Minimum Dwelling Size</b>	1 br – 55.5m <sup>2</sup> 2 br – 79.5m <sup>2</sup>	1 br – 50m <sup>2</sup> 2 br – 70m <sup>2</sup> + 5m <sup>2</sup> for additional bathrooms	Yes Yes Yes
<b>Habitable room depth from a window for open plan layout</b>	8.2m (ILU-01) 8.2m (ILU-04) 8.2m (ILU-08) 9.2m (ILU-09)	8m from a window (max)	No
<b>Bedroom Size</b> <b>Master bedroom</b> <b>Bedroom</b> <b>Minimum depth</b>	>10m <sup>2</sup> >9m <sup>2</sup> >3m	10m <sup>2</sup> 9m <sup>2</sup> 3m	Yes Yes Yes
<b>Minimum Ceiling Height</b>	2.7m	2.7m (habitable rooms) 2.4m (non-habitable rooms)	Yes
<b>Minimum Balcony Size</b>	1 bedroom >8m <sup>2</sup> 2 bedroom 8.6m <sup>2</sup> (ILU-7)	1 bedroom 8m <sup>2</sup> 2 bedroom 10m <sup>2</sup>	Yes No
<b>Maximum Number of Units on a Single Level</b>	6 units	8 units off a circulation core	Yes

<b>Total Storage Area</b>	1 bed - 6m <sup>3</sup> (Min)	1 bed - 6m <sup>3</sup> (Min)	Yes
	2 bed - 8m <sup>3</sup> (Min)	2 bed - 8m <sup>3</sup> (Min)	Yes
	3 bed - 10m <sup>3</sup> (Min)	3 bed - 10m <sup>3</sup> (Min)	Yes
	50% accessible from the apartments	50% accessible from the apartments	Yes

As detailed in the above table, the proposed development does not satisfy some of the prescriptive measures within the ADG. Below is a brief discussion regarding the relevant development controls and best practice guidelines.

### 2.9.1 Deep Soil Zones

As discussed in Section 2.7.5.1 of this report, non-compliant building and basement setbacks result in deep soil areas of limited width. The proposal does not comply with the ADG in this regard.

### 2.9.2 Room Depth

As detailed in the above table, there are several dwellings that do not comply with the maximum habitable room depth. Whilst the non-compliances are minimal they contribute to an overall non-compliant development.

### 2.9.3 Balcony Size

The balcony for ILU-7 would not meet the minimum 10m<sup>2</sup> size as prescribed in the ADG. Providing a compliant balcony size would encroach further into the non-compliant front setback. The proposal is not considered satisfactory in this regard.

### 2.9.4 Building Separation

The ADG states the minimum separation distances for buildings are:

- 12m between habitable rooms/balconies
- 9m between habitable and non-habitable rooms
- 6m between non-habitable rooms.

Habitable rooms of the ILU would be separated from the RACF building by a minimum of 8.4m. Further, ground floor balconies and first floor habitable rooms would be separated from the townhouse development to the north by 6m. The proposal fails to provide sufficient building separation which would likely result in unacceptable visual and acoustic amenity.

## 2.10 Sydney Regional Environmental Plan No. 20 – Hawkesbury – Nepean River

The site is located within the catchment of the Hawkesbury Nepean River. Section 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, recreation and tourism.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would comply with the requirements of the Policy.



## **2.11 Clause 3.42 Environmental Planning and Assessment Act, 1979 - Purpose and Status of Development Control Plans**

Clause 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

## **2.12 Hornsby Development Control Plan 2013**

The Hornsby Development Control Plan 2013 (*HDCP*) applies to all land within Hornsby Shire and came into effect on 11 October 2013. A discussed regarding relevant sections of the *HDCP* are provided below. Council notes that the proposal has been assessed predominantly against the requirements of *SEPP HSPD* which prevails over inconsistencies with the *HDCP*.

### **2.12.1 Biodiversity**

The flora and fauna report notes that STIF vegetation on the site is solely represented by canopy trees comprising 18 individual trees of 4 different species. The flora and fauna report concludes that the development will not have a significant impact on matters protected under the *Biodiversity Conservation Act 2016* and should proceed subject to mitigation measures being implemented. The report proposes several measures to mitigate impacts including tree protection measures, weed management and implementation of a vegetation management plan. Table 8 lists the trees to be retained, and as with the arborist report, the significant majority of these trees are not located on the development site which are to be retained regardless of the proposal. Table 8 also includes a list of STIF trees to be removed and proposes offset planting at a ratio of 3:1. The revegetation works include a minimum of 24 new advanced trees “*within the subject site in an area where no vegetation clearing or construction is proposed*”. Table 9 states that the pre-development area of STIF on the site covers 480.3m<sup>2</sup> and post-development extent of 1101.5m<sup>2</sup>. There is a disparity in the proposed landscaping and offsetting requirements with the landscape plan proposing the planting of 17 *Corymbia gummifera* (Red Bloodwood) while the flora and fauna report recommends a minimum of 24 STIF species. The location and viability of the planting is questionable with the deep soil locations affected by services and pathways. The building setbacks in the deep soil areas are minimal and don't provide suitable space that would enable trees to grow. The estimated increase in extent of STIF across the site is considered inaccurate due to the insufficient space on the site to support additional planting as proposed. The services and pathways will also affect trees to be retained with additional encroachment within the TPZ's potentially reducing their long-term viability.

The amended SEE submitted to Council in November 2019 lists the additional information requests from Council and indicates how the amended proposal complies with these requests. The list acknowledges the request for the application to address matters in the Biodiversity element of the *HDCP* including the 'avoid, minimise and mitigate' provisions. The responses to these requests are

drawn from the various reports submitted with the application including the arborist report and flora and fauna report. The SEE does not demonstrate how the application addresses matters in the Biodiversity element of the *HDCP* including the 'avoid, minimise and mitigate' provisions.

The proposal does not seem to avoid or minimise any impact to the STIF community and the proposed mitigation measures are not considered achievable. The proposal does not comply with the biodiversity provisions of the *HDCP* and cannot be supported.

#### **2.12.2 Desired Future Character**

A discussion regarding the desired future character is provided in Section 2.7.5.1 of this report.

#### **2.12.3 Scale**

A discussion regarding the scale of the proposal is provided in Sections 2.1.2 and 2.7.5.1 of this report.

#### **2.12.4 Setbacks**

A discussion regarding the setbacks the proposal is provided in Section 2.7.5.1 of this report.

#### **2.12.5 Vehicle Access and Parking**

A discussion regarding vehicle access is provided under in Section 2.6 of this report and a discussion regarding parking is provided in Sections 2.7.8 and 2.7.9.

### **2.13 Section 7.11 Contributions Plans**

Hornsby Shire Council Section 94 Contributions Plan 2014 - 2024 applies to the development. Accordingly, if approval were recommended by the panel a condition would be imposed for a monetary Section 7.11 contribution.

## **3. ENVIRONMENTAL IMPACTS**

Section 4.15(1)(b) of the Act requires Council to consider *"the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality"*.

### **3.1 Natural Environment**

A discussion regarding tree preservation, landscaping and biodiversity has been provided in Sections 2.7.5.1 and 2.12.1 of this report. A discussion regarding stormwater flow is provided in Section 2.7.5.4 of this report.

### **3.2 Built Environment**

Discussions regarding the impact of the proposal on the built environment is provided in Section 2.7.5.1 of this report.

### **3.3 Social Impacts**

It is acknowledged that the development has the potential to provide housing for seniors in both high-care and self-care housing. The provision of further housing opportunities is only one of a number of interests and considerations that must be balanced. In the circumstance of this application however, the potential provision of additional housing does not justify the inconsistencies with State Planning Policies, local controls and the adverse impact on remnant vegetation.

### 3.4 Economic Impacts

The proposal seeks to accommodate residential accommodation within an area primarily zoned for residential accommodation. The proposal is considered to have a neutral long term economic impact.

## 4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider *“the suitability of the site for the development”*.

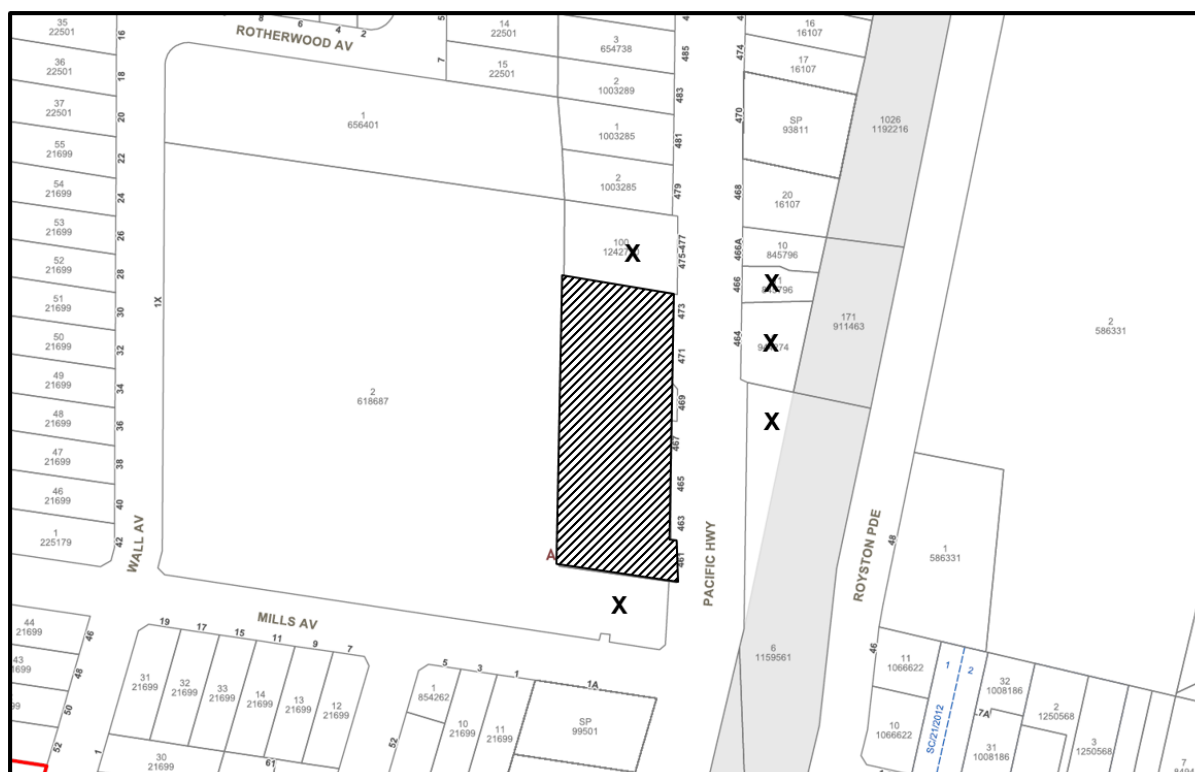
Whilst the development site contains a stormwater easement and is mapped to contain endangered STIF vegetation, Council considers that the site is capable of supporting medium density residential housing. Notwithstanding, as discussed in this report, the proposed scale of the development is considered to exceed the site capabilities.

## 5. PUBLIC PARTICIPATION


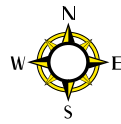
Section 4.15(1)(d) of the Act requires Council to consider *“any submissions made in accordance with this Act”*.

### 5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 29 March 2018 and 31 May 2018, in accordance with the Notification and Exhibition requirements of the *HDCP*, and a further period from 6 November 2019 to 22 November 2019. During the notification periods, Council received a total of 15 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



## NOTIFICATION PLAN

<ul style="list-style-type: none"> <li>• PROPERTIES NOTIFIED</li> </ul>	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
15 submissions received out of map range			

15 submissions objected to the development, generally on the grounds that:

### 5.1.1 Insufficient building and basement setbacks

Comment: As discussed in Section 2.7.5.1 of this report, Council considers the proposed building and basement setbacks insufficient.

### 5.1.2 Insufficient building height and scale

Comment: As discussed in Sections 2.1.2 and 2.7.5.1 of this report, Council considers the proposed building height and scale excessive.

### 5.1.3 The development would result in lack of privacy for Asquith Park users

Comment: This matter is discussed in Section 2.7.5.2 of this report.

### 5.1.4 Schedule of finishes is not within the character of the Hornsby Shire

Comment: An amended schedule of finishes was submitted to Council in November 2019 in response to concerns raised by Council. The amended schedule of finishes has replaced the brightly painted facades and brickwork with additional earthy colour tones. The amended schedule of finishes includes a range of finishes such as face brick, rendered brick, and metal and cement cladding.

### 5.1.5 Lack of on and off-street car parking spaces

Comment: As identified in Sections 2.7.8 and 2.7.9 of this report, the consent authority must not refuse consent on car parking grounds if compliance with the parking requirements of *SEPP HSPD* are achieved. Council therefore cannot raise objections to the proposal on lack of car parking.

### 5.1.6 Site is not suitable for seniors living

Comment: As identified in Section 4 of this report, the site has been strategically identified as being capable of supporting medium density housing. Notwithstanding, as discussed in Section 2.7.3 of this report, the site does not currently have a suitable access pathway to a bus top within 400m that provides a regular service to and from the site to essential services.

Further, the site attributes, including the size and dimensions, are not suitable for the scale of the development proposed.

### 5.1.7 The arborist report is not accurate or insufficient

Comment: An amended arborist report was submitted to Council in November 2019 in response to initial concerns raised by Council. As discussed in Section 2.7.5.1 of this report, Council have identified inconsistencies between the number of trees impacted by the proposal as identified in the arborist report and the tree retention and removal plan and continue to raise concerns with the information submitted.

#### **5.1.8 The flora and fauna report and vegetation management plan is not accurate or insufficient**

Comment: An amended flora and fauna report was submitted to Council in November 2019 in response to initial concerns raised by Council. As discussed in Section 2.12.1 of this report, Council have identified inconsistencies between the recommendations of the flora and fauna report and the proposed tree planting contained within the landscape plan.

#### **5.1.9 The development would require the removal of a large number of significant trees**

Comment: This matter is discussed in Section 2.7.5.1 of this report.

#### **5.1.10 The development would have an adverse impact on retained significant trees**

Comment: This matter is discussed in Section 2.7.5.1 of this report.

#### **5.1.11 The offset planting proposed is not sufficient and is not consistent with the Hornsby Shire Council Green Offsets Code**

Comment: As discussed in Section 2.12.1 of this report, Council considers that the proposed landscaping is not consistent with the *Seniors SEPP* or Council's Green Offsets Code. Notwithstanding it is noted that the provisions of the *Seniors SEPP* relating to landscaping prevail where inconsistencies may exist.

### **5.2 Public Agencies**

The development application was referred to the following Agencies for comment:

#### **5.2.1 Transport for NSW**

The original proposal was referred to the RMS, (now Transport for NSW (TfNSW)) under the provisions of Section 138 of the *Roads Act 1993* on 20 April 2018. A formal response from TfNSW was provided to Council dated 27 June 2018. The response raised objections to the proposal in its original form and requested a reduction in vehicle access points and swept paths showing how vehicles could enter and exit in a forward direction.

In response to these objections, amended plans were provided to Council in November 2019 that reduced the number of vehicle crossings to one in the form of a 6m-9m dual crossover. An amended traffic and parking report was also provided. An amended response from TfNSW was provided to Council dated 13 December 2019. The response states the following:

*TfNSW has reviewed the submitted application and notes the amendments for the provision of single driveway access to the proposed development. However, the swept path plans need to be amended to include line marking for the Pacific Highway to show the largest vehicle can manoeuvre in and out of the site without encroaching on the opposite lane.*

*TfNSW has also previously requested that access is restricted to left-in/left-out access arrangement. Concept civil design plans are to be submitted that physically restrict right turn movements into the site.*

*TfNSW will not provide concurrence in accordance with the Roads Act 1993 until amended plans that reflect the comments above are received. Once received, a further review will be undertaken and responded to accordingly.*

Council has not requested additional information from the applicant to address concerns raised by TfNSW due to the other substantive issues of concern raised in the assessment of the application.

In summary, concurrence has not been received from TfNSW.

### **5.2.2 Sydney Trains**

The application was referred to Sydney Trains pursuant to Clause 85 of *SEPP Infrastructure*. Sydney Trains wrote to Council on 10 May 2018 stating no objections to the proposal on noise and vibration grounds. Sydney trains recommended conditions of concurrence be imposed including the submission of an acoustic assessment, electrolysis risk assessment, and a geotechnical report prior to the issuance of a Construction Certificate. These conditions would be included as Conditions of Concurrence if approval were recommended.

## **6. THE PUBLIC INTEREST**

Section 4.15(1)(e) of the Act requires Council to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The proposal would result in a departure from the height of buildings development standard and a development that is contrary to the desired character of the locality. The proposal does not represent an overarching public benefit that would justify the departure from the state policies or local controls in order to allow the land to be developed in the manner proposed.

## **CONCLUSION**

The application seeks consent for the demolition and clearing of the site to facilitate the construction of a 3 storey residential aged care facility comprising 100 beds and 3 storey residential building containing 13 independent living units with basement car parking.

Council's assessment concludes that the proposal does not have appropriate consideration for the desired future character of the area and instead seeks to provide buildings that exceed the site capabilities.

The resulting non-compliances with height, setbacks, floor space ratio, and building separation controls are unacceptable in the context, which is exacerbated by insufficient retention of existing significant vegetation and opportunities to provide suitable replacement planting.

Council received 15 submissions during the public notification periods. The matters raised have been addressed in the body of the report.

The development does not meet the desired outcomes of Council's planning controls and is unsatisfactory having regard to the matters for consideration under Section 4.15C of the *Environmental Planning and Assessment Act 1979*.

Accordingly, the proposal is recommended for refusal. The reasons for this decision are:

- The proposed development does not comply with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.

*Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.*

**Attachments:**

1. Locality Plan
2. Architectural Plans
3. Landscape Plans
4. Flora and Fauna Report
5. Water Sensitive Urban Design Strategy Report
6. Survey Plans
7. Arboricultural Impact Assessment



## SCHEDULE 1

1. The proposal is unsatisfactory in respect to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development does not comply with the maximum height of buildings development standard of 10.5m applying to the land under Clause 4.3 of *Hornsby Local Environmental Plan 2013*. The applicant has not submitted a written request under Clause 4.6 to support why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
  
2. The proposal is unsatisfactory in respect to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development does not satisfy the following requirements of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*:
  - a. The proposal does not meet the aims of the policy as prescribed in Clause 2(2)(b) as the development does not achieve a built form that responds to the characteristics of the site and form of the land.
  - b. The proposal has not adequately demonstrated that appropriate access is provided to facilities and services as required by Clause 26.
  - c. The proposal does not satisfy Clause 32 as it has not been demonstrated that adequate regard has been given to the design principles set out in Division 2 of the SEPP.
  - d. The proposal fails an assessment of neighborhood and streetscape amenity against Clause 33 for the following reasons:
    - i. The development is out of character with the locality providing excessive building height and lack of landscaped setbacks that is contrary to the desired future character of the area.
    - ii. The development does not provide sufficient boundary setbacks in order to promote sufficient landscaping and private open space.
    - iii. The proposed landscaping planting is not compatible with the existing streetscape.
    - iv. The development does not seek to retain, wherever reasonable, major existing trees.
  - e. The proposal has failed to satisfactorily consider the acoustic and visual privacy of future residents and adjoining properties as required by Clause 34 as the development provides insufficient building setbacks and building separation.
  - f. The proposal has failed to satisfactorily consider appropriate waste facilities as required in Clause 39.
  - g. The proposed Residential Aged Care Facility would result in unacceptable height, density and lack of landscaped area and does not comply with the following non-discretionary development standards contained within Clause 48:
    - i. Building Height.
    - ii. Density and Scale.

- iii. Landscape Area.
- h. The proposed independent living unit building would result in unacceptable height, density, and private open space and does not comply with the following non-discretionary development standards contained within Clause 50:
  - i. Building Height.
  - ii. Density and Scale.
  - iii. Private open space.
- 3. The proposal is unsatisfactory in respect to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development does not satisfy the following requirements of *Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development* and the Apartment Design Guide, in particular:
  - a. The proposal fails to satisfy the Schedule 1 design quality principles including: Principle 1 Context and Neighborhood Character, Principle 2 Built Form and Scale, Principle 3 Density, Principle 5 Landscape, Principle 6 Amenity, and Principle 9 Aesthetics.
  - b. The proposal fails to satisfy the following sections of the Apartment Design Guide:
    - i. The deep soil zones fail to meet the required minimum dimension of 6m.
    - ii. Independent Living Units 1, 4, 8, and 9 fail to meet the maximum habitable room depth from a window of 8m.
    - iii. The balcony for Independent Living Unit 7 does not meet the required size of 10m<sup>2</sup>.
    - iv. Inadequate building separation is provided between the proposed independent Living Unit Building and the Residential Aged Care Facility, and the townhouse development to the north.
- 4. The proposal is unsatisfactory in respect to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal does not demonstrate compliance with Clause 101 (Development with frontage to classified road) of *State Environmental Planning Policy (Infrastructure) 2007* as concurrence has not been received from Transport for NSW pursuant to Section 138 of the *Roads Act 1993*.
- 5. The proposal is unsatisfactory in respect to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979* as the development is not consistent with the aims of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* as the development does not seek to protect the biodiversity and amenity values of trees in a non-rural area.
- 6. The proposed development is unsatisfactory in respect to Section 4.15(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal does not meet the following requirements of the Hornsby Development Control Plan 2013:
  - a. The proposal is contrary to Part 3.2.1 Desired Future Character as the proposal would result in buildings with inadequate height, setbacks from adjoining properties, a compromised landscape setting and an inappropriate built form.
  - b. The proposal is contrary to Part 3.2.3 Height as both buildings would not comply with the 10.5m height limit and the maximum number of storeys.

- c. The proposal is contrary to Part 3.2.4 Setbacks as the building does not satisfy the requirements for front, side and rear building setbacks.
  - d. The proposal is contrary to Section 3.2.6 Landscaping as the proposed landscaping along the frontage to Pacific Highway is compromised by the location and size of the driveway, substation, bin storage area and hydrant booster.
  - e. The proposal is contrary to Part 1C.1.1 Biodiversity as the development does not seek to avoid, minimise or mitigate adverse impacts on biodiversity values.
- 7. Pursuant to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the likely impacts of the development would be unsuitable with respect to the built environment as the proposal would not achieve a built form consistent with the desired future character of Pacific Highway, Asquith.
  - 8. Pursuant to the to the provisions of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposal would not have a positive social impact due to the extent of non-compliances with *SEPP HSPD* and the *HDCP*.
  - 9. Pursuant to the provisions of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the site attributes, including the size and dimensions, are not suitable for the scale of the development proposed.
  - 10. Pursuant to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of an application with insufficient setbacks, insufficient landscaping and inappropriate built form would not be in the public interest.

**- END OF REASONS FOR REFUSAL -**