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7 February 2020

Mr Peter Debnam
Chair
North Sydney Planning Panel

Dear Peter,

SENIORS LIVING DEVELOPMENT AND DEMOLITION OF EXISTING DWELLINGS AT NOS. 461-473 PACIFIC HIGHWAY, ASQUITH (PANEL REF: PPS-2018SNH033)

This letter has been prepared by Urbis on behalf of Chinese Australian Services Society Limited (CASS) (the applicant) to provide additional information to assist the North Sydney Planning Panel (the panel) in determining PPS-2018SNH033 (the proposal).

We have reviewed Council's assessment report dated 9 January 2020 which recommends that the proposal be refused, primarily in relation to matters listed in the executive summary of the report.

In accordance with their abilities listed in Schedule 1 of the *Sydney and Regional Planning Panels Operational Procedures January 2020*, the applicant requests that the panel defer its determination of the proposal to a subsequent meeting on the following grounds:

- That no consideration of the possible determination by way of approval has been contemplated by the Council, noting that no 'without prejudice' draft conditions have been prepared for contemplation by the Panel who are the determining authority for this application.
- That the requirement for a clause 4.6 variation to the Hornsby LEP Height of Building standard has not been raised previously by Council, including in its pre-lodgement minutes or in its RFI dated June 2018. The matters for consideration under clause 4.6 have been addressed within the planning assessment of height within the Statement of Environmental Effects report and can easily be provided in a 4.6 objection format.
- The matters listed in Council's reasons for refusal in their assessment report dated 9 January 2020 can be addressed through the submission of additional information (refer **Section 1** of this letter).
- Council has not raised these issues with the proponent following the lodgement of Amendment plans in November 2019, and indeed refused to discuss whether there were any issues with the revised design, and as such the proponent has not had the opportunity to provide a response.
- Council has not provided the applicant the opportunity to provide additional information to Transport for NSW (TfNSW) in response to their referral comments, in order to facilitate their concurrence (refer **Section 1** of this letter).

- Council relies on an urban design review prepared by GM Urban Design and Architecture dated 9 July 2018 which assesses the proposal submitted on March 2018 and which has not considered the amended proposal submitted on 4 November 2019 which includes significant design amendments (refer **Section 2** of this letter).
- Council's statutory assessment of the proposal in relation to height and density relies on the *Hornsby Development Control Plan 2013* (the DCP) and the *Hornsby Local Environmental Plan 2013* (the LEP) which is prevailed by *State Environmental Planning Policy Housing for Seniors or People with a Disability* 2004 (Seniors SEPP) and *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* (SEPP 65) in the event of inconsistency (refer **Section 3** of this letter).
- Council has used the worst-case scenario in every instance to demonstrate non-compliances with development standards in their DCP, rather than presenting a balanced assessment noting the built form operational requirements of the proposal (refer **Section 3** of this letter).
- The applicant commits to providing a public bus service between 8 and 12 on Saturday Sundays and Public Holidays to satisfy the requirements of Clause 26 of the Seniors SEPP and invites an appropriate condition of consent to ensure that a suitable access pathway is provided along the southern side Mills Avenue prior to occupation of the proposal (refer **Section 4** of this letter).
- The social and economic benefits of the proposal have not been adequately considered (refer **Section 5** of this letter). Noting the significant social and economic benefits of the proposal, Council should provide the applicant an opportunity to respond to key issues so that an agreeable outcome can be achieved.
- There are discrepancies in the map summarising the location of submissions to the proposal. Council rejected the applicant's request to be provided these submissions in accordance with the *Government Information (Public Access) Act 2009* (refer **Section 6** of this letter). Two of the properties shown as being the origins of the submissions are owned by Council or are railway land. The other 15 submissions are identified as originating from three other properties.

This letter provides further detail and justification in relation to the above grounds that the panel defer its determination of the proposal to a subsequent meeting.

1. **ADDITIONAL INFORMATION CAN BE SUBMITTED**

1.1. **COMMITMENT TO PROVIDING ADDITIONAL INFORMATION**

The applicant acknowledges the length of time taken to respond to Council's Request for Additional Information (RFI) letter dated 14 June 2018 with an amended package being submitted on 4 November 2019. The reasons for this timeframe include:

- The applicant is a not-for-profit organisation meaning that they rely on the operations of their other facilities and functions to fund the additional technical studies required to respond to Council's RFI.
- Noting the specialised aged care service that they provide, the applicant has been in discussions with future residents and staff to ensure that the built form elements of the proposal meets operational requirements.

- The applicant was in discussions with public authorities including the former Roads and Maritime Services NSW (now TfNSW) and Council's traffic and stormwater engineering teams to work through technical matters such as road crossings and overland flow resolution.

The applicant directly responded to matters raised in Council's RFI and independent urban design assessment prepared by GM Urban Design (received by email on 9 July 2018) through an amended package. Since the lodgement of this updated package, Council has provided no formal correspondence to the applicant to raise any additional concerns with the proposal. Indeed, when the proponent asked what if any, issues council's assessment had found, Council refused to enter into a discussion.

It would appear that Council has taken the view that the applicant would not be capable of responding in a timely matter to any further information requests. Notwithstanding, there are a number of amendments that the applicant can make to the proposal which would satisfy Council's concerns in relation to built-form, landscaping, biodiversity, waste management, and tree removal. An example of a minor non-compliance detailed in Council's assessment that could be address through the submission of additional information include:

- Section 2.9.2 (Room Depth): the project architect has confirmed that all dwellings can be configured to achieve compliance.
- Section 2.9.3 (Balcony Size): the balcony for ILU-7 can readily achieve compliance by shifting the current blade wall approximately 600mm further south.

Further examples are provided in this letter.

In addition, Council acknowledge that there are conditions of consent that can satisfy various matters such as earthworks, site remediation, and noise impacts, however, the Council has not contemplated the drafting of any such conditions.

The applicant is committed to working through and satisfying key issues with Council. This includes providing any additional information necessary.

The applicant, therefore, requests that the panel defer determination of the proposal to a subsequent meeting so that these matters can be addressed.

1.2. TRANSPORT FOR NSW CONCURRENCE

In Section 2.6.1.1 of Council's Assessment Report it is noted that TfNSW will not provide concurrence in accordance with the *Roads Act 1993* until amended plans are received and reviewed. Council have not requested this additional information due to their 'concerns with the application'.

The revisions requested by TfNSW are not substantial and can be readily addressed through the submission of revised plans.

2. RELIANCE ON AN INACCURATE URBAN DESIGN ASSESSMENT

On 9 July 2019 the applicant was provided, by email, an independent urban design assessment prepared by GM Urban Design which reviewed the proposal lodged on 14 March 2018. The applicant responded directly to the matters listed in this assessment through significant built form refinements which resulted in the amended scheme lodged to Council on 7 November 2019.

Quotes used throughout Council's assessment report are taken directly from the urban design review prepared by GM Urban Design and Architecture on 14 March 2018 which assesses the proposal submitted on March 2018. Noting that significant design amendments were made, it is submitted that Council cannot rely on urban design advice that has been prepared in response to a prior scheme.

3. INCONSISTENT STATUTORY ASSESSMENT

3.1. PURPOSE AND STATUS OF DEVELOPMENT CONTROL PLANS

Subclause (3) of Clause 5 of the Seniors SEPP states:

If this Policy is inconsistent with any other environmental planning instrument, made before or after this Policy, this Policy prevails to the extent of the inconsistency.

Subclause (1) of Clause 1 of SEPP 65 states:

In the event of an inconsistency between this Policy and another environmental planning instrument, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.

The application has made reasonable attempts to achieve compliance with the DCP, in respect to number of storeys, form of third floor design, landscaped area, building setbacks and the like. It is noted, however, that the operational requirements of seniors housing facilities, especially residential aged care facilities, necessitate a built form that by nature is not 'fine grain'. In particular, the required internal floorplate configuration for the building typology necessitates a long and modular form for operational purposes. The amended proposal, therefore, has responded to design commentary as much as practical within the bounds of its built form operational requirements.

The remainder of this section identifies examples of where the Seniors SEPP and SEPP 65 would prevail in the event of inconsistency with the DCP.

3.2. HEIGHT OF BUILDINGS

Section 2.1.2 of Council's assessment report rightly states that the proposal would be in breach of Council's height of building development standard and a formal Clause 4.6 objection to the development standard has not been submitted. In a Pre-Development Application meeting dated 17 March 2017 Council advised the applicant as follows:

"The proposed non-compliance with the maximum building height of 10.5m would be acceptable on merit in respect to the SEPP Seniors Living provisions ... A Clause 4.6 variation would not be required in this regard"

Development consent for the proposal is sought under the Seniors SEPP. The SEPP prevails to the extent of any inconsistency. The SEPP does not specify any height limit for the development. In the circumstances, it is clear that the SEPP did not intend to impose any maximum height limit and therefore the application of a maximum height limit (merely because one is provided for in the LEP) would be an 'inconsistency'.

Nevertheless, the proposed building height is compatible with the desired future character of the area. In response to comments from GM Urban Design dated 14 March 2018, the applicant amended the design to incorporate a set back and recessive attic-form design for the third storey that is stepped

back from the ground floor and level 1 to ensure consistency with the objectives of the DCP. The applicant has responded to design commentary as much as practical within the bounds of the proposal's built-form operational requirements.

Notwithstanding this, the applicant can readily provide a Clause 4.6 variation to the Height of Buildings development standard to address this technical request.

3.3. BUILDING SETBACKS

Section 2.7.5.1 of Council's assessment report includes an assessment of the proposal against prescriptive setback controls listed in the DCP. The Seniors SEPP does not specify any setback controls for the development. In the circumstances, it is clear that the Seniors SEPP did not intend to impose any setback controls and therefore the application of setback controls (merely because one is provided for in the DCP) would be an 'inconsistency'.

Notwithstanding this, an assessment of the proposal against setback controls listed in the DCP is provided below:

Council Commentary	Applicant Assessment
<u>Eastern, front setback:</u> there are small portions of the building that would not comply with the 9m HDCP front setback control.	<p>The DCP control allows for 1/3 of the building to be setback to a maximum of 6m from front setback. As demonstrated below, less than a third of the building has been setback to a maximum of 6m and therefore compliance with the DCP controls is achieved.</p> <p>6m Front Setback: No encroachment apart from a small portion of the basement.</p> <p>9m Front Setback: Percentage calculation is based on length of building elevation:</p> <p>Level 2 (ground floor): Total non-compliance length is 5.5m (5.6% of total building length)</p> <p>Level 3 (first floor): Total non-compliance length is 27m (27% of total building length)</p> <p>Level 4 (second floor): Total non-compliance length is 18.6m (20.9% of total building length)</p>
<u>Western and Rear Setback:</u> Both the RACF and ILU building fail to comply with the rear building setback control with a minimum of 2.2m to balconies.	Council have used the minimum setback to demonstrate the non-compliance. The

<p>Further, there would be several basement setback non-compliances with a minimum setback of 2.6m.</p> <p>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.</p>	<p>majority of the building would achieve a 6m setback with:</p> <ul style="list-style-type: none"> • Average rear basement setback: 6m • Average rear building setback: 5.7m <p>The height of the ground floor is a result of topography of the site, the requirement for continuously flat internal floors with no steps, and overland flows conditions. Landscaping treatments are proposed to screen the protrusion.</p> <p>Notwithstanding this, consent is sought under the Seniors SEPP which prevails in the event of inconsistency with the LEP.</p>
<p><u>Northern and side setback:</u> Majority of the ILU building would have a northern setback of 3m which does not comply with the HDCP control. The proposed setback does not provide sufficient building separation between the townhouse development to the north and would not maintain reasonable neighbourhood amenity.</p>	<p>As discussed in Section 3.5 of this report, the ADG controls prevail in the event of an inconsistency. In this case the ADG control is 3m to non-habitable rooms for buildings 4 storeys and under, which the proposal complies with as a blank wall is presented to this boundary with windows oriented away from the boundary.</p>

3.4. BUILDING SEPERATION

Section 2.7.5.2 of Council's assessment report states that the proposed building separation of 8.4m between the ILU and RACF building is insufficient. This is an example of the worst-case scenario being used to demonstrate a non-compliance with a building standard. The only portion where this building separation is reduced to 8.4m is along the blank external wall of Bedroom 1 for ILUs 01 and 04 as it steps slightly out for around 3.2m of its length.

The length of this encroachment (roughly 600mm) into the 9m separation zone represents only 11% of the total building length of the ILU development, with no facing habitable windows. The rest of the building separation is fully compliant along the interfacing elevations. The average building separation distance between the ILU and RACF is over 9m.

3.5. VISUAL AND ACOUSTIC PRIVACY

Section 2.7.5.2 of Council's assessment report states that the development would provide a non-compliant 3m northern boundary setback with the DCP control. As stated in Clause 6A of SEPP 65, Development Control Plans cannot be inconsistent with the Apartment Design Guideline (ADG) in relation to visual privacy. In the event of any inconsistency, the DCP controls have no effect.

The proposal complies with the ADG setback control to the northern boundary. The subject site has a single sensitive interface to the north. Whilst the proposal adopts a 3m setback from this boundary (the requirement for non-habitable rooms), privacy screens are proposed for the windows along the northern elevation, or windows are oriented away from the boundary, to restrict potential privacy issues for the development at 457-459 Pacific Highway (under construction).

3.6. WASTE MANAGEMENT

Section 2.7.5.7 of Council's assessment report details minor issues in relation to waste management. These issues are an example of where minor contentions raised by Council could be resolved through the submission of updated technical information. Issues raised by Council's Waste Branch can be satisfied through appropriate conditions of consent for modified plans to be reviewed by Council.

Notwithstanding the above, Council have misrepresented the requirements of Clause 39 of the Seniors SEPP which states:

The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.

The proposal complies with this clause in that the facilities maximise recycling.

3.7. TREE REMOVAL

Section 2.7.5.1 of Council's assessment report states that proposal includes an inconsistency between the Tree Retention and Removal Plan and the Arboricultural Impact Assessment. This inconsistency is acknowledged, and the applicant can readily provide an updated report and plan to reflect the amended design.

The project landscape architect has confirmed that there are design amendments that can be made such as relocation of the bin storage area which can result in possible retention of additional trees to resolve Council's concerns. This can be resolved through the submission of updated landscape plans, and Arboricultural assessment for Council's review.

3.8. LANDSCAPING AND BIODIVERSITY

Section 2.7.5.1 of Council's assessment report states the proposed planting schedule is not consistent with the existing and desired future streetscape character and the existing site conditions. This is an example of where Council's concerns can readily be addressed through the submission of amended landscape plans.

Section 2.12.1 of Council's assessment report states that the proposal does not seem to minimise any impact to the Sydney Turpentine-Ironbark Forest EEC (STIF). Council also ascertain that the proposed 24 new and advanced species plantings to mitigate impacts will be located in inappropriate locations

and comprise of inappropriate species. Council's concerns can readily be addressed through the submission of amended landscape plans.

4. LOCATION AND ACCESS TO FACILITIES

The applicant notes that the bus schedule indicates that the bus stop on the western side of Pacific Highway and Mills Avenue would meet the requirements of Clause 26 of the Seniors SEPP Monday to Friday inclusive. The service, however, would not meet the requirements on Saturday, Sunday and Public Holidays with services arriving at this bus stop at 12:33pm on Saturdays, and 1:12 on Sundays and Public Holidays.

For this reason, the applicant commits to providing a private bus service available to residents of the facility between 8 and 12 on Saturdays, Sundays and Public Holidays to satisfy the requirements of Clause 26 of the Seniors SEPP.

To satisfy the requirements for an appropriate footpath being available to residents at the southern side of Mills Avenue, the applicant invites an appropriate condition of consent to ensure that it is provided prior to occupation of the proposal. It is noted that pre-DA minutes confirmed that Council was satisfied that this application rely on delivery of the bus stop by the condition to DA/723/2016.

5. THE SOCIAL AND ECONOMIC BENEFITS OF THE PROPOSAL HAVE NOT BEEN ADEQUATELY CONSIDERED

Subclause (b) of Section 4.15 of the EP&A Act states that in determining a development application, the following is required to be considered:

....

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

It is submitted that Council has heavily focused its assessment of the proposal on the environmental impacts on both the natural and built environments, with limited consideration of the social and economic impacts in the locality. The assessment report dedicates only two paragraphs to this assessment, stating that social benefits of the proposal are only one of many considerations that must be balanced.

As demonstrated in **Section 3** of this letter, Council has focused on the worst-case-scenario in relation to built-form and density controls failing, to consider the operational requirements of the building typology. This suggests that the social and economic impacts of the proposal have not been appropriately balanced by Council in their assessment report.

There are many and varied social and economic benefits of the proposal including:

- Servicing an identified need for aged care services in the north shore of Sydney for the Culturally and Linguistically Diversity Community (CALD) from Central Asian, South Asian, and East Asian groups.
- Providing a range of bespoke services that specifically cater the CALD community.

- Providing opportunities for people to 'age in place' through transferring from the ILU facility to the RACF building.
- Providing ancillary facilities which will contribute to an enhanced lifestyle for the residents and a better sense of community.
- Creation of useable and attractive spaces generating opportunities for interaction/gathering spaces for the residents.
- Economically, the proposal will provide a range of accommodation options into the residential care housing market in accordance with current demand.
- Generating additional employment opportunities during the construction and operational phases of the proposal.

Noting the significant social and economic benefits of the proposal, Council should provide the applicant an opportunity to respond to key issues so that an agreeable built form outcome can be achieved.

6. THE APPLICANT HAS NOT BEEN PROVIDED AN OPPORTUNITY TO RESPOND TO SUBMISSIONS

The applicant lodged an application in accordance with the *Government Information (Public Access) Act 2009* to be provided the public submissions on 27 November 2019 which was formally rejected on 9 December 2019. For this reason, the applicant has not been provided an opportunity to respond to matters raised in the submissions received during the both exhibition periods of the proposal.

It is also noted that the map provided within Section 5.1 of Council's Assessment report appears to show that two lots owned by Council or public authorities have made a submission to the proposal being:

- Lot 2 in Deposited Plan 618687 (Asquith Oval)
- Lot 6 in Deposited Plan 1159561 (Railway line)

Noting that these lots are owned and managed by Council, it is questioned as to whether the submissions can be categorised as community consultation. Having not been provided these submissions, the applicant is unable to confirm their nature.

7. CONCLUSION

In summary, it is considered that there are sufficient grounds for the panel to exercise its abilities listed in Schedule 1 of the *Sydney and Regional Planning Panels Operational Procedures January 2020* to defer determination of the proposal to a subsequent meeting.

The applicant looks forward to continuing to resolve key issues raised by Council so that an agreeable outcome can be achieved.

Yours sincerely,

A handwritten signature in black ink, appearing to read "JParker", written in a cursive style.

Jacqueline Parker
Director