

SYDNEY NORTH PLANNING PANEL FURTHER ASSESSMENT REPORT

Panel Reference	PPS-2018SNH033
DA Number	DA/235/2018
LGA	Hornsby Shire Council
Proposed Development	Demolition of existing dwellings and structures, construction of a 3 storey residential aged care facility comprising 97 beds and 3 storey residential building containing 11 independent living units with basement car parking.
Street Address	Nos. 461-473 Pacific Highway Asquith
Applicant/Owner	Chinese Australian Services Society Ltd c/o Urbis Pty Ltd
Date of DA lodgement	14 March 2018
Number of Submissions	17
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	General development over \$30 million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 • State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development • State Environmental Planning Policy No. 55 Remediation of Land • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Infrastructure) 2007 • Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River • Biodiversity Conservation Act 2016 • Hornsby Local Environment Plan 2013 • Hornsby Development Control Plan 2013
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Locality Plan • Architectural Plans • Landscape Plans • Flora and Fauna Report • Waste Management Plan

	<ul style="list-style-type: none"> • Water Sensitive Urban Design Strategy Report • Arboricultural Impact Assessment • Urbis Justification Letter • Urbis Clause 4.6 (height) • Urbis Clause 4.6 (location to service) • SEPP Schedule 3 Assessment
Report prepared by	Stephen Dobbs
Report date	2 December 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?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **Yes**

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (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? **Yes**
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 17 beds and a 3 storey residential building containing 11 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 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(2)(b) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. The application has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the *HLEP* to vary Clause 26(2)(b) Location and Access to Facilities.
- The proposal demonstrates adequate regard has been given to the design principles set out in Division 2 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* with the exception of waste management (Clause 39).
- Concurrence has not been issued from Transport for NSW pursuant to Section 138 of the *Roads Act 1993*
- The proposal is inconsistent with waste controls within the Hornsby Development Control Plan 2013.
- 17 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 97 beds and a 3 storey residential building containing 11 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.

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.

On 11 February 2020, Council recommended that the application be refused at the Sydney North Planning Panel public meeting. The North Sydney Planning Panel resolved to defer the application for the following reasons:

The Panel considers that the application before it is an overdevelopment of the site by virtue of excessive Gross Floor Area (GFA), building footprint, loss of significant trees, poor and unresolved access and parking, a lack of transition from the higher density zone to the south and the 'townhouse' zone to the north.

Further, the Panel is not in a position to approve the application in the absence of cl4.6 variation requests in respect of height, cl 26 (accessibility) and the development standards contained in Schedule 3.

The Panel read submissions received and also heard from a community representative who raised similar issues identified by the council and the Panel.

Having discussed the matter with Council staff and the applicant, the Panel agreed to defer the determination of the matter to resolve the number of unacceptable planning and design issues, including:

- *Compliance with or provision of written request to vary, all relevant development standards in both the Seniors State Environmental Planning Policy and Hornsby Local Planning Plan;*
- *Site landscaping including the retention of as many indigenous trees as possible, including avoiding encroachment into the TPZs for the trees to be retained, on both the site and those on adjoining council land;*
- *Basement design, size and parking configuration and parking numbers;*
- *Staff numbers (full time equivalent) and carparking need / demand;*
- *Vehicular access and Roads and Maritime concurrence;*

- *Accessibility both within the site and external to services and facilities;*
- *Assessment of site hydraulics and stormwater drainage and required easements alongside their impact on trees both on site and on council land*
- *Assessment of the hydrology of the site and its effect on adjoining public land;*
- *Setbacks to be increased (particularly front set back)*
- *Scale of development should transition in context with adjoining development to the north and to the south*
- *Confirmation and evidence of Social Housing Provider status.*

The applicant should endeavour to provide amended plans and further documentation to council addressing the above issues within 2 months of the date of this decision. When this information has been received, and council has assessed the information, the Panel will hold another public determination meeting.

On 2 March 2020, draft plans were submitted for Council to review in response to the above-mentioned reasons for deferral.

On 3 March 2020, Council and Council's independent urban design consultant (GMU) met with the applicant regarding the draft plans submitted. Between 9 April and 11 May 2020, 2 further draft designs were submitted to Council and reviewed by GMU.

On 11 August 2020, revised architectural plans were formally submitted to Council along with associated reports and documents. The revised application was re-notified in accordance with the Hornsby Community Participation Plan and a further 2 submissions were received. The revised plans include the following amendments:

- Re-location of the residential aged care facility (RACF) building to the northern portion of the site and the independent living unit (ILU) building to the southern portion. The buildings are now separated by a hardstand driveway area and landscaping with a minimum habitable room distance of 10.4m.
- The RACF building has been redesigned from a long single form into two distinct built form elements, separated by a lightweight glass entry structure. The southern portion of the RACF has been stepped back from the Pacific Highway while the northern portion has been stepped forward. Additionally, each form incorporates unique material palettes and roof forms.
- The top floor of the RACF and ILU buildings has been stepped back further from the ground and first floor to reduce visual bulk. The top floor setback has been increased on the northern side of the RACF building to provide a more sympathetic transition to the adjacent townhouse building.
- The basement driveway has been provided between the RACF and IUL buildings. This results in additional landscaping within the front setback to Pacific Highway. The proposed hardstand area between the RAC and ILU building would provide access to the basement with landscaping on each side. The building separation would provide a view corridor through the site into the large mature trees located within Asquith Park.
- A reduction in the extent of the basement and car parking provision resulting in increased deep soil zones and further tree retention.

- All buildings provide greater boundary setbacks (including the zone identified for road acquisition fronting the Pacific Highway) resulting in an overall increase in general landscaping of 1,081m² and deep soil landscaping of 933m².
- An overall reduction in gross floor area of 756m² and the deletion of 8 car parking spaces.
- 5 RACF beds and 2 independent living units have been deleted.
- An additional 4 trees representative of the Sydney Turpentine Ironbark Forest would be retained within the front setback to Pacific Highway.
- Amended stormwater and on-site waste management to reflect the amended design.

On 19 August 2020, Council requested a floor plan of the amended basement kitchen. On 16 October 2020, the requested information was submitted.

On 31 August 2020, Council requested the basement ramp and entry be amended to comply with *Australian Standard 2890.2* for a small rigid vehicle (SRV). On 4 November 2020, Council received amended plans with a compliant driveway grade. On 10 November 2020, Council further requested the basement comply with *Australian Standard 2890.2* for a (SRV) for head height clearance. On 12 November 2020, Council received a letter from the applicant noting that the proposal would not be amended to comply with a compliant SRV head height clearance and that no changes would be made to the proposed 2.4m height.

On 1 September 2020, Transport for NSW (TfNSW) requested amendments to the driveway design and vehicle swept paths. On 16 October 2020, amended plans were submitted to Council and forwarded to TfNSW. As of the date of this report, concurrence has not been provided from TfNSW.

On 10 September 2020, Council requested a preliminary construction management plan (CMP). On 4 November 2020, the requested information was submitted.

On 11 September 2020, Council requested amendments be made to the landscape plan as Sydney Turpentine Ironbark Forest (STIF) planting was proposed within a stormwater easement. On 4 November 2020, amended plans were submitted reducing the number of replacement STIF trees from 13 to 8.

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 5,034.5m², 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 a townhouse development comprising 9 dwellings approved under 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 amended proposal involves demolition of the existing dwelling houses and associated structures and construction of the following:

- A three storey RACF comprising 97 beds. The RACF would have a gross floor area of 4,480m² (as calculated by Council) and would utilise a range of finishes including face brick, timber and metal cladding and glass.
 - The ground floor would comprise 32 bedrooms, several common lounge and dining rooms, service rooms, hairdresser, doctors' room, nurse room, three rear (western) facing balconies and two front (eastern) facing courtyards. Several bedrooms would have private front or rear facing courtyards.
 - The first floor would comprise 36 bedrooms, several common lounge and dining rooms, service rooms, nurse room, two rear (western) facing balconies and several private front facing balconies.
 - The second floor would comprise 29 bedrooms, several lounge and dining rooms, service rooms, nurse room, two rear (western) facing balconies and several private front and rear facing balconies.
- A three storey ILU residential flat building comprising 11 units. The ILU would have a total gross floor area of 1,175m² (as calculated by Council) and would utilise a range of finishes including face brick, rendered brick and metal and cement cladding.
 - The ground floor would comprise 3 units (1x bedroom and 2 x 2 bedroom) as well as a communal area with a foyer, activity lounge, communal garden, and community facilities.
 - First floor would comprise 5 units (2 x 1 bedroom and 3 x 2 bedroom).
 - The second floor would comprise 3 units (1 x 1 bedroom and 2 x 2 bedroom).
- A basement carpark comprising 36 spaces with 30 dedicated to the RACF and 6 to the ILU. The basement would include a loading area, service rooms, staff amenities, waste rooms, several store rooms, and a kitchen to service the RACF.

- The existing Council stormwater drainage line and easement would be re-located to parallel with the northern boundary of the site and stormwater would be drained into an existing stormwater easement located within Asquith Park to the rear.

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 development would necessitate the removal of 46 trees. The amended landscape plan proposes the planting of 82 trees along with shrubs and groundcovers.

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 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.

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 R3 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 meets the objectives of the zone as it would provide a variety of housing types 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 proposed development at its highest point exceeds the maximum building height development standard prescribed under Clause 4.3 of the *HLEP* by 1.31m, or 12.4%. The table below identifies each separate building height encroachment:

Building Element	Maximum Height	Departure from Standard
ILU Building - Top Lift Overrun	11.52m	10.2m (9%)
RACF South Building - Top Ridgeline	11.4m	0.9m (8%)
RACF North Building - Top Lift Overrun	11.81m	1.31m (12.4%)
RACF North Building - Main Entry Component	11.52m	1.02m (9%)
RACF Roof Plant	11.24m	0.74m (7%)

The applicant has 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 the proposed variation is considered to be consistent with the objectives of the control and is justified.

A summary of the objection submitted with the application is as follows:

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Historically, the most common way to establish whether a development standard was unreasonable or unnecessary was by satisfying the first method set out in Wehbe v Pittwater Council [2007] NSWLEC

827. This method requires the objectives of the standard be achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

The objectives of the standard are achieved notwithstanding non-compliance with the standard (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the building height standard as specified in clause 4.3 of HLEP 2013 are detailed in Table 4 below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Objectives	Assessment
To permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.	<p>The site is located at the transition between the higher density 5-6 storey residential buildings to the south of Mills[sic] Avenue (zoned R4) and the medium density residential environment to the north (zoned R3). The desired future character of the site as described in the Hornsby Development Control Plan (HDCP) is “medium density housing development comprising two storey buildings in a landscaped setting where additional floor space is contained wholly within the roofscape.”</p> <p>It is noted that the operational requirements of seniors living facilities, which are a listed permissible use within the R3 zone under HLEP 2013, 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. Notwithstanding this, the amended proposal has been designed to comprise three distinct building forms with a recessive upper level that incorporates increased setbacks and light-weight building materials. Whilst not an attic arrangement as envisaged by the DCP, the proposed building forms will sit comfortably within the medium density context and will deliver a successful transition between the higher built form at the south to the lower built forms to the north of the site.</p>

	<p><i>The proposal also responds appropriately to the sloping character of the site, which has a fall of approximately 2.5m from the eastern boundary to western boundary. The minor height non-compliance accounts for this site constraint and allows the development to achieve the level internal floor requirement for a RACF proposal. The main area of non-compliance relates to the roof form of the northern RACF building and responds to the recommendation from GMU for “the part of the building that links to the glass connector be reconsidered as a taller form to further emphasise the subservient nature of the glass connector. This will also have the added benefit of integrating the lift core into the overall façade as part of the roof feature.” This deliberate height increase will create a more pronounced roof feature that accentuates the entry to the building and provides a varied skyline along the Pacific Highway.</i></p> <p><i>The non-compliant rooftop plant on the RACF is sited behind the main parapet and is not readily visible from the public domain and as such will not detract from the overall design of the development. It will not contribute to perceivable building bulk and these elements that breach the height standard do not erode the ability to achieve high-quality built form on the site.</i></p> <p><i>The amended development has been pulled in from the property boundaries to ensure the proposal complies with the setback requirements of the HDCP. This ensures that a large portion of the mature vegetation within the site can be retained and will allow the proposed built forms to sit comfortably within its established and proposed landscaped setting. The site benefits from having only one sensitive interface to the north and therefore overshadowing, visual, acoustic and privacy issues have been appropriately managed through the design response.</i></p> <p><i>The proposal will deliver a development in a location that has existing access to trunk infrastructure and essential services. In addition, the stormwater drainage easement has been adjusted to align parallel to the northern and western boundaries of the site as requested by Council. As outlined in the amended Traffic Impact Assessment, the proposed development will not have an unreasonable impact on the surrounding road network.</i></p>
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In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

Not relied upon.

The burden placed on the community (by requiring strict compliance with the standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable

to the proposed non-compliant development (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

Strict compliance with the building height development standard could defeat or thwart the achievement of underlying objectives of the control, consequentially creating an adversely disproportionate impact to the community.

If the proposed building height was to be reduced unnecessarily, this would reduce the number of beds able to be provided within the site for seniors housing. This, in turn, will reduce the capacity for the development to support the well-being of the community by providing for the housing needs of its seniors.

The proposed variation will enable the development to:

- *Accommodate a range of seniors housing within the site by providing beds within a RACF to cater for seniors who are in need of a high level of care and ILUs catering to seniors living independently.*
- *Provide various built forms that will sit comfortably within a medium density context and provide a successful transition between the higher and lower built forms to the south and north of the site respectively.*
- *Accommodate a RACF building in an appropriate and accessible location that will not adversely impact on the scale and character of the low density residential areas in the LGA.*
- *Minimise impacts on the amenity of the adjoining residential property to the north.*

Overall, it is considered that strict compliance with the development standard is unreasonable as an alternate scheme which complied with the height standards would result in an inferior outcome for the site and result in the significant loss of accommodation for seniors within the locality.

Are there sufficient environmental planning grounds to justify contravening the development standard

The Land & Environment Court judgment in Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, assists in considering whether there are sufficient environmental planning grounds to justify a variation from the development standard. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- *The proposal satisfies the general objectives in section 1.3 of the Environmental Planning and Assessment Act 1979 in that it promotes the orderly and economic use and development of land and promotes good design and amenity of the built environment.*
- *The proposal is consistent with the relevant objectives of the R3 Medium Density Residential Zone;*

- The desired future character of the locality is still achieved as the proposed built forms adopt recessive upper levels and have been pulled in from the property boundaries to retain mature vegetation and the established landscaped setting.
- The proposal is consistent with aims and provisions of the State Environment Planning Policy (Housing for Seniors or People with a Disability) 2004, in accordance with which the DA has been submitted.
- The proposed variation results in more and diverse residential accommodation for seniors in need of a high level of care or those residents who prefer to live independently but with support available.
- The elements of the buildings which exceed the height standard are generally limited to minor rooftop elements which do not increase the floorspace and will not result in an increased scale of development that might otherwise result in adverse outcomes for the capacity of infrastructure and services.
- The main non-compliance of the roof form will provide visual interest and a varied building façade and scale to the main entry to the RACF, helping to differentiate the built elements and respond to the DCP requirement for well-articulated building forms.
- The proposed variation will not result in any unacceptable environmental impacts on the site, the adjoining public open spaces or the adjoining residential property.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed clause 4.3 building height non-compliance in this instance.

Is the proposed development in the public interest?

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

Consistency of the development with the objectives of the development standard is demonstrated in Table 4 above. The proposal is also consistent with the land use objectives that apply to the site under HLEP 2013.

The site is located within the R3 Medium Density Residential Zone. The proposed development is consistent with the relevant land use zone objectives as outlined in Table 5 below.

Objective	Assessment
To provide for the housing needs of the community within a medium density residential environment.	The RACF and ILUs will increase the supply of seniors housing within the locality, which is a housing type with a demonstrated need within the Hornsby LGA. The proposal will provide high-quality seniors housing within an attractive landscaped setting and proximate to public transport and services.
To provide a variety of housing types within a medium density residential environment.	The site is at the transition between the high-density residential buildings to the south and medium density residential properties to the north comprising townhouses and detached dwellings. The proposal will further increase the provision and diversity of housing within the area through the combination of a RACF and ILUs, allowing senior members of the Asquith community to

	<p><i>'age in place'. The various building forms proposed within the site will sit comfortably within the medium density context and provide a transition in building heights along the Pacific Highway from the higher density zone to the south.</i></p> <p><i>The RACF building does not reflect a typical RACF layout, with its scale and form designed to complement the character of the medium density zone. This is achieved through separation of the RACF building into two distinct forms, with a lightweight glazed link between, to enhance its appearance as two separate buildings rather than a single building. Indeed, the increased building height above the entrance to the RACF emphasises a change in building scale and massing to contribute to the building's appearance as differentiated building elements.</i></p>
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	<i>Not applicable, although the ancillary services (doctor and hairdresser) proposed within the site will meet the needs of future ILU and RACF residents.</i>

Conclusion

For the reasons set out in this written request, strict compliance with the maximum height of building contained within clause 4.3 of HLEP 2013 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the building height standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposal achieves the objectives of the development standard as provided in clause 4.3 of HLEP 2013 and is consistent with the objectives for development within the R3 Medium Density Residential Zone.*
- The proposal is compatible with the existing site context and is consistent with the desired future character of the site and locality.*
- The proposal provides an appropriate transition in building scale between the five storey residential buildings to the south of Mills [sic] Avenue and the three storey townhouses to the immediate north.*
- The increased building height at the entrance to the RACF building provides variation in the building form, helping to break the massing of the RACF building in two, so that it reads as distinct building elements rather than the traditional design of a RACF building which is long and regular. This design element directly responds to the recommendation from GMU to the character of the R3 Medium Density Zone and.*
- The main area of non-compliance relates to the roof form of the northern RACF building and responds to the recommendation from GMU for "the part of the building that links to the glass connector be reconsidered as a taller form to further emphasise the subservient nature of the glass connector. This will also have the added benefit of integrating the lift core into the overall*

façade as part of the roof feature.” This deliberate height increase will create a more pronounced roof feature that accentuates the entry to the building and provides a varied skyline along the Pacific Highway.

- *The additional height does not result in the loss of amenity to neighbouring properties by way of visual impact, overshadowing or loss of privacy.*
- *The proposal will deliver significant public benefits, including increased provision of seniors housing, allowing seniors members of the Asquith community to ‘age in place’.*

To avoid any breach of the height control would cause a loss of one building level and/or unworkable floor plates, the consequences which would be a reduction in the number of seniors living beds. Importantly, such adverse outcomes from strict compliance with the height standard would not be counterbalanced by achieving any improved environmental outcomes, as the part of the buildings which exceed the height standard have been shown to have no increase in negative impacts on amenity to adjacent sites.

For the reasons outlined above, the Request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds to warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the building height standard should be applied.

Council Assessment

The applicant's submission to vary the maximum building height development standard is generally considered well founded.

The underlying objective of the height of buildings development standard is still considered relevant to the proposal. However, 100% compliance in this circumstance is considered both unreasonable and unnecessary because:

- The desired future character of the subject R3 zone is for 2 storey + attic buildings within a landscaped setting. The servicing requirements of a RACF building preclude recessive attic levels. Providing a third level as opposed to an attic is beneficial to the amenity of its future users. Providing compliant 2 storey buildings with smaller boundary setbacks to compensate for the loss in floor area would reduce green space and would not result in a landscape setting.
- Due to the operational requirements of a RACF building, the floor level cannot be stepped down toward the rear western boundary.
- Whilst small select portions of the development exceed the maximum 10.5m height control, a large portion of the buildings are under the height limit. Further, the proposal is compliant with other local scale controls including building setbacks. Accordingly, the overall bulk and scale of the development is considered appropriate for the site.
- The height non-compliances would be limited to small portions of the roof forms and lift overrun and it is anticipated that it would not be highly perceivable when viewed from the Pacific Highway.
- The height non-compliance would not cause any adverse impacts to surrounding properties in terms of overshadowing, visual impacts or view loss.

The proposal demonstrates sufficient environmental planning grounds to justify contravening the height of buildings development standard for the following reasons:

- The site is located within a transitional zone with 5 storey buildings to the south and 2 storey + attic level buildings to the north.
- The development has predominantly been designed to conform to existing site conditions with reduced top floor setbacks to the townhouse buildings to the north.
- Providing a compliant 2 storey building with a larger building envelope would result in additional tree loss and loss of landscaping.
- The roof form of the RACF building has been designed in response to feedback from Council's independent urban design consultant (GMU). The pitched roof form of the southern part of the RACF has been purposely made higher than the other portions of the RACF building to provide a separate building identity.
- Support of the variation is unlikely to create an undesirable precedent considering adjacent land has been recently developed for residential accommodation.

The development is considered to meet the objectives of the maximum height of buildings development standard and the R3 medium density zone for the following reasons:

- The development as a whole generally conforms to the existing site constraints by retaining a significant number of trees at the front and rear of the site.
- The development would provide for the housing needs of an ageing population.
- The development provides for the orderly and economic use of the land whilst providing a variety of housing types within a transitional residential area.

Clause 4.6(4) of the *HLEP* states that development consent must not be granted for development that contravenes a development standard unless:

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Secretary has been obtained.*

With regard to Clause 4.6(4)(a), Council is satisfied that the applicants written request has addressed the matters raised in subclause (3) and that the development would be in the public interest if approval were recommended.

With regard to Clause 4.6(4)(b), the contravention of the development standard does not raise any matter of significance for State and regional environmental planning, and there is no public benefit in strictly maintaining the development standard in this case.

2.1.2.1 Clause 4.6 - Location and Access to Facilities

The proposal does not comply with access requirements prescribed within Clause 26(2)(b) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. The applicant

has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the *HLEP* to vary this standard. A discussion in this regard has been provided in Part 2.3.3 of this report.

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 up to 3.5m. 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 2,500m².

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 amended application includes a flora and fauna assessment (F&F) report prepared by Narla Environmental, dated July 2020 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 2.11.1 of this report.

2.3 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:

2.3.1 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 97 bedrooms.

2.3.2 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.

The Statement of Environmental Effects (SEE) notes that the proposal is for “infill self-care housing”.

“In-fill self-care housing is seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care”.

For the purposes of assessment against *SEPP HSPD*, the proposed ILU development is defined as “*in-fill self-care housing*” comprising 11 “self-contained dwellings”.

2.3.3 Clause 26 - Location and Access to Facilities

The *SEPP HSPD* includes mandatory standards for accessibility and useability 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 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 original application relied on the completion of this footpath under Condition No. 19 of DA/723/2016 which has not been constructed at the time of this report. In this regard, the applicant has submitted a request to vary Clause 26(2)(b) of *SEPP HSPH* under a Clause 4.6 variation.

The written request is summarised as follows:

Clause 26 of the Seniors SEPP stipulates a development standard that must be satisfied prior to a consent authority granting development consent. This Request specifically seeks a variation to clause 26(2)(b), which stipulates the following:

“(2)(b) in the case of a proposed development on land in a local government area within the Greater Sydney (Greater Capital City Statistical Area) there is a public transport service available to the residents who will occupy the proposed development:

- (i) that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and*
- (ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and*

- (iii) *that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive), and the gradient along the pathway from the site to the public transport services (and from the public transport services to the facilities and services referred to in subclause (1)) complies with subclause (3)...*

Extent of Contravention

Having regard to the provisions of clause 26 outlined in Section 4.1 above, the proposal is compliant with the following requirements:

1. *There are bus stops within 400m of the site, which are serviced by bus route 598 and provide transport to/from the site and Hornsby Town Centre. The closest stops providing access to/from Hornsby Town Centre are located on the southern side of Mills Avenue, approximately 180m from the site (refer Figure 4) and in line with the subject site's southern boundary on Pacific Highway.*
2. *Hornsby Town Centre includes supermarkets, speciality retail, banks, post office, library, medical centres and recreation facilities, which are all located within 400m of the bus stop for route 598.*
3. *Calder Flower Architects have confirmed that the existing sealed footpath along the Pacific Highway will meet the Seniors SEPP clause 26(3) requirement and have a gradient of no more than 1:14. A Longitudinal Section Plan is provided at Appendix B.*
4. *Based on the Public Domain Works Plans available for D723/2016 (Ref: ACE161351 dated 8 March 2019), the proposed design of the footpath to the bus stop on the southern side of Mills Avenue will satisfy the gradient requirements at clause 26(3) of the Seniors SEPP (refer Appendix A).*
5. *Bus route 598 between the site and Hornsby Town Centre satisfies the frequency requirements of clause 26(2) as the following minimum services are available:*
 - *One daily service between 8am and 12pm Monday to Sunday in each direction.*
 - *One daily service between 12pm and 6pm Monday to Friday in each direction.*

Whilst the printed timetable (effective 6 July 2020) available on the TfNSW website (refer Figure 5) makes it look like there are no morning services available to 'Asquith Park, Mills Avenue', the service operates in two directions depending on the time of day and does not list all stops. During the morning period for each day of the week, the timetable indicates that services stop at 'Pacific Highway opp. Mills Avenue'. This is further clarified by the use of the NSW Government's Trip Planner which shows all individual stops and confirms that the required services are available (refer Appendix C for example Sunday services) This stop is one immediately before the Mills Avenue stop proposed to be used by the development.

Having regard to the above, the site meets the location and access requirements of clause 26 with the exception of the suitable access pathway to the bus stop along the southern side of Mills Avenue. As highlighted in Section 2.3, the sealed footpath is to be reconstructed in association with the development at 457-459 Pacific Highway. If the footpath has not been delivered by the adjacent development prior to OC for the seniors living development at the subject site, the Applicant intends to provide a private bus service for residents to access the local facilities and services at Hornsby Town Centre until such time as the footpath is completed. The private bus service will include (at a minimum):

- *One daily service between 8am and 12pm Monday to Sunday in each direction.*

- One daily service between 12pm and 6pm Monday to Friday in each direction.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case

The Seniors SEPP does not include specific objectives at clause 26 for the location and access to facilities requirements. Notwithstanding this, the objective is presumably to ensure that residents of seniors housing accommodation have adequate and independent access to local services and facilities, recognising that these residents may no longer drive or have access to a car.

The site is located more than 400m to the local services and facilities and without the sealed footpath on the southern side of Mills Avenue, a suitable access pathway to public transport is not available. Until such time as the footpath is completed, the Applicant intends to supply a private bus service that will transport residents between the site and Hornsby Town Centre. The private bus service will be available at the minimum frequency required by clause 26(2)(b) including:

- One daily service between 8am and 12pm Monday to Sunday in each direction.
- One daily service between 12pm and 6pm Monday to Friday in each direction.

The public transport service will therefore be replaced with a private bus service, ensuring residents have the same level of access to facilities and services as intended by clause 26.

Strict compliance with the development standard could defeat or thwart the achievement of underlying objectives of the control, consequentially creating an adversely disproportionate impact to the community.

Without a variation to the access requirements, the site would not be able to accommodate seniors housing as, for a temporary period, public transport may not be available by a suitable access pathway and the site is located more than 400m from the required facilities and services. This, in turn, will reduce the capacity for the site to support the well-being of the community by providing for the housing needs of its seniors. The proposed variation to clause 26 will enable the development to:

- Accommodate a range of seniors housing within the site by providing beds within a RACF to cater for seniors who are in need of a high level of care and ILUs catering to seniors living independently.
- Accommodate seniors housing in an appropriate location that will not adversely impact on the scale and character of the low density residential areas in the LGA.
- Provide a feasible and appropriate alternative means of transport until such time that the sealed footpath along the southern side of Mills Avenue has been constructed.
- Provide future residents of the seniors housing accommodation with adequate and independent access to local facilities and services.

Overall, it is considered that strict compliance with the development standard is unreasonable and will result in the significant loss of accommodation for seniors within the locality.

Are there sufficient environmental planning grounds to justify contravening the development standard

There are sufficient environmental planning grounds to justify the proposed variation to the development standard, including the following:

- The proposal satisfies the general objectives in section 1.3 of the Environmental Planning and Assessment Act 1979 in that it promotes the orderly and economic use and development of land and promotes good design and amenity of the built environment.

- *The development achieves the underlying objective and intent of the development standard as a bus service to Hornsby Town Centre will still be fulfilled. As such, strict compliance with the development stand is not considered necessary.*
- *As soon as the footpath has been delivered, as required by an adjacent development, the access requirements of clause 26 will be satisfied and the private bus service will no longer be required. In this regard, if the footpath was already present (as indeed it should be as its provision is a pre-CC requirement for (DA/723/2016), this Request would not be required.*
- *The proposal is consistent with aims and provisions of the Seniors SEPP, in accordance with which the DA has been submitted.*
- *The development is consistent with the objectives of the R3 Zone.*
- *The proposed variation will not result in any unacceptable environmental impacts on the site, the adjoining public open spaces or the adjoining residential property.*

In summary, there are sufficient environmental planning grounds to justify convening the development.

Council's Assessment

The applicant's submission to vary Clause 26(2)(b) is generally considered well founded.

The requirement to provide a suitable access pathway is still considered relevant to the proposal. However, 100% compliance in this circumstance is considered both unreasonable and unnecessary because:

- The application relies upon completion of a footpath imposed as a condition of DA/723/2016 which has not been constructed at the time of this report, however is envisioned to be completed in the future as it is a requirement of a separate development consent.
- Without a variation to the standard, the site would not be able to provide seniors living until such time as the footpath works were completed as required.

The proposal demonstrates sufficient environmental planning grounds to justify contravening the height of buildings development standard for the following reasons:

- The development would achieve the intent of the development standard as a private bus service would provide access to Hornsby Town Centre.
- When the footpath is constructed the requirements of Clause 26(2) would be satisfied and the private bus service would no longer be required.

The development is considered to meet the objectives of Clause 26 and the R3 medium density zone for the following reasons:

- Whilst no specific objectives are contained within Clause 26, the private bus service would provide access to services until such times as a suitable access pathway is completed.
- The development would provide for the housing needs of an ageing population.
- The development provides for the orderly and economic use of the land whilst providing a variety of housing types within a transitional residential area.

Clause 4.6(4) of the *HLEP* states that development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Secretary has been obtained.*

With regard to Clause 4.6(4)(a), Council is satisfied that the applicants written request has addressed the matters raised in subclause (3) and that the development would be in the public interest if approval were recommended.

With regard to Clause 4.6(4)(b), the contravention of the development standard does not raise any matter of significance for State and regional environmental planning, and there is no public benefit in strictly maintaining the development standard in this case.

If approval were to be obtained, conditions of consent would be required that a private bus service be available until such times as the footpath is completed on the southern side of Mills Avenue.

2.3.4 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.

2.3.5 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 generally satisfied that the proposal demonstrates sufficient regard for the design principles.

2.3.5.1 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 *HDGP* is medium density housing development comprising 2 storey + attic 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 amended proposal has demonstrated that the height of the development is appropriate for the site context as providing an attic is unreasonable for a RACF building.

The amended development would provide greater boundary setbacks, additional landscaped area, additional building separation and additional tree retention. Specifically, amendments made to the front setback and a reduction of driveway area have resulted in significant changes to the presentation of the development to the streetscape. Council is satisfied that the amended development considers the requirements of Clause 33(a) and generally meets the desired future character of the locality.

- (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 have provided compliance with the front 9m building setback *HD*CP control.

Regarding the building form, the *HD*CP recommends “articulated buildings that are limited in width and depth and separated by gardens”. The amended RACF building has been separated into two distinct elements with the southern portion given a generous front boundary setback. Distinct roof forms have been provided to the individual building elements which would be interconnected by a glass façade.

Removal of much of the driveway within the front building setback has enabled further tree retention and deep soil planting.

Western, rear setback: The *HD*CP encourages 6m rear setbacks for buildings and 4m setbacks for basements for the subject site.

The amended development provides compliant rear boundary setbacks with the exception of two small staircases. The increased rear setbacks enable additional tree retention and enhanced private open space. The additional and compliant rear setback also reduces the visual and amenity impact of the large building on the users of Asquith Park.

Northern, side setback: The *HD*CP encourages 6m side setbacks which can be reduced to 3m for a maximum of 1/3 the building length and 3m basement setbacks.

The amended proposal would be compliant with these controls and no objections are raised in this regard.

Further, the top storey of the RACF building has an increased setback to the northern boundary in order to provide a transitional section to the adjacent townhouse development.

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

Southern, side setback: The *HD*CP 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 amended proposal has demonstrated that adequate regard has been given to Clause 33(c) of *SEPP HSPD*.

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

Comment: The amended building and basement setbacks allow for a significant increase in vegetation planting deep soil planning areas. Although some landscaped areas are limited in what species can be planted (due to stormwater services), the overall deep soil areas as indicated within the Deep Soil and Landscape Area Plan by Calderflower has increased from 1,033m² to 1,986m² (92% increase) from the original proposal.

Along with shrubs, the amended Planting Plan by Taylor Brammer indicates the planting of the following trees (common name) in several landscaped areas: Japanese Maple x1, Some Bush x3, Turpentine Tree x8, Quandong x4, Blueberry Ash x7, Fried Egg Tree x11, Magnolia x3, Ornamental Plum x2, Sweet Pittosporum x6, Cherry Ballar x3 and Ornamental Plum x5.

Council originally raised concerns as to whether all trees could be planted and grow effectively. The increased boundary setbacks would provide additional area and therefore more chance for the proposed trees to establish.

If approval is obtained, conditions are recommended that the approved landscape plans be amended to include a pergola for vertical plant growing over the basement carpark entry, additional planting within the southern side setback and the deletion of a ground level car space to include a larger pedestrian entrance.

Overall, the development is considered satisfactory with regard to the desirable landscape elements of the locality.

(f) retain, wherever reasonable, major existing trees

Comment: The amended Arboricultural Impact Assessment Report (AIA) prepared by Urban Arbor, dated 29 July 2020 has undertaken an assessment of 72 trees (including trees in Asquith Park) and describes the potential impacts on those trees as a result of the proposed development. The AIA lists 46 trees to be removed (9 less than the original proposal). Moreover, the AIA notes that 9 trees to be retained will have encroachments in their respective tree protection zones and will require tree sensitive construction. The amended Tree Retention and Removal Plan prepared by Taylor Brammer also lists 46 trees to be removed. Council notes that a large number of these trees (29 of 46) are z category trees, consisting of mostly palms and other exotic species.

Trees such as 44 and 46 (*Eucalyptus paniculate* and *Angophora costata*) located within the front setback which were to be removed for the waste storage area in the original proposal are now proposed to be retained.

Council is satisfied that the amended proposal reasonably maintains major existing trees.

If approval were granted, conditions of consent would be recommended that a project arborist be appointed to the project to provide monitoring and assistance throughout construction. Further, conditions would be recommended that tree sensitive construction be undertaken in accordance with the recommendations of the AIA.

2.3.5.2 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 has been re-located to the southern portion of the site and provided with greater separation from the RACF building.

The RACF building that adjoins to the northern adjacent townhouse complex would have compliant setbacks and is considered acceptable with regard to separation. Visual and acoustic privacy is not considered to be an issue as no balconies are proposed directly adjoining the northern boundary and the top floor would not include northern facing bedroom windows.

2.3.5.3 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 a residential development to the north.

The submitted shadow diagrams indicate that 81% of the proposed dwellings within the ILU would receive solar access for 3 hours between 9am and 3pm during winter solstice. Moreover, the landscape plan submitted indicates that communal private open space areas would receive sufficient sunlight access during mid-winter.

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

2.3.5.4 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 amended 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 77m³ 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 and if approval were obtained conditions of consent would be required in regard to stormwater treatment, creation of easements and the re-location of the existing stormwater pipe.

2.3.5.5 Clause 37 - Crime Prevention

The proposal includes an assessment of the development against crime prevention controls in the amended 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.

2.3.5.6 Clause 38 - Accessibility

The amended accessibility report submitted with the proposal indicates that the development can comply with the internal and outdoor accessibility provisions within relevant *Australian Standards*, the *Building Code of Australia*, and the *Disability Discrimination Act 1992*. No objections are raised in this regard.

2.3.5.7 Clause 39 - Waste Management

RACF

The amended waste management plan uses 115L/bed/week for garbage for the RACF which is now acceptable, as it includes the further waste generation from the dining, lounge, kitchen and back of house. The recycling generation rate is now acceptable at 40L/bed/week at a ratio of about 3:1 paper and cardboard: mixed recycling (plastic and glass containers, steel and aluminium cans etc).

The suggested number of bins outlined in the amended waste management plan will be sufficient if the private waste service provider will collect 3 times per week. If 3 times per week cannot be achieved additional room will need to be available to house either 15 of the 660L garbage bins serviced weekly or 8 of the 660L bins serviced twice weekly.

Storing liquid waste (waste oil) with solid waste is not acceptable. Liquid waste must be stored in a bund and any spills must not enter the sewer or stormwater. A separate caged area is required within the bin room for the banded oil storage. Similarly, the clinical/medical/sharps waste bin must also be stored within a separate caged area. These amendments would be conditioned if approval were obtained.

It is proposed that the RACF building be serviced by a small rigid waste collection vehicle (SRV) from the basement. As the RACF is considered a commercial facility, Council would not be required to collect waste from this building. Notwithstanding, the *HDCEP* recommends the facility be serviced by a heavy rigid vehicle with a vertical clearance of 4.5m

The amended architectural plans indicate that the driveway gradient would comply with *Australian Standard AS2890.2* for a SRV, however the vertical clearance to enter the basement level housing

waste facilities and loading areas for commercial operations would be 2.4m (according to the applicants letter) which does not comply with the minimum 3.5m vertical clearance requirement of *Australian Standard AS2890.2* for a commercial vehicle. It is unlikely that the driveway ramp gradient to the basement entrance could be lowered further due to the need for the ramp gradient to comply with *AS2890.2*; and raising the ground floor level would be problematic due to the building height already exceeding the height limit and the need for accessible paths of travel into the building.

Council discussed with the applicant two solutions to achieve a compromise with the vertical clearance aspect. The first would be to hold a ground floor waste collection room in place of a bedroom (e.g. ACR-005), however this notion was not acceptable to the applicant. The second would involve reconfiguring the ground floor plan of units ACR-008 and ACR-009 located above the basement entrance with the possible deletion of one bedroom, however this aspect was also rejected by the applicant on feasibility grounds with the applicant stating in its letter dated 12 November 2020 that they would use a private contractor for waste collection with a maximum height of 2.08m and the maximum delivery truck would be 2.3m high. Taking the applicants letter into consideration, that the maximum delivery truck would be 2.3m high, a clearance of 2.4m would not be sufficient as ceiling mounted objects (pipes, cable trays, light fittings, ventilation shafts etc) or floor mounted objects (speed humps etc) within the vehicle travel path further reduce the vertical clearance

Council stresses the importance of complying with *AS2890.2* to accommodate commercial vehicles, not just for waste collection, but for all commercial operations for the lifespan of the building, taking into consideration that the proposal is a 24/7 commercial operation and would involve numerous deliveries to and from the basement.

Subject to the amended plans reconfiguring the ground floor plan of units ACR-008 and ACR-009 located above the basement entrance with the possible deletion of one unit to achieve additional vertical clearance, Council would raise no objections to the proposal on waste management grounds or commercial operations.

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

ILU

The amended proposal no longer includes a garage chute as per the updated waste management plan. Residents of the 11 units would be required to dispose of their garbage in the Level 1 main waste store. The floor plans however show a garbage chute system which would need to be deleted from the plans if approved.

The amended waste management plan states that a 'bin mover' will be available for staff to help safely cart the bins to the ground level bin holding area. The ILU bin holding area screened within the front setback is acceptable.

The ILU are to be serviced by the heavy rigid rear loader. Turning paths show that the truck will be able to enter in a forward direction onto the site, reverse into the loading bay, and exit in a forward direction out of the site. The HRV truck requires a minimum loading bay of 12.5m length and 3.5m width as per *AS2890.2*. The amended architectural plans show a loading bay of approximately 12.5m which will allow for 2m at the rear of the truck for the bin lift arc.

The amended landscape plan notes that the loading bay surface is to be hydropaver to enable water to reach retained tree roots. The pavement must be suitable for heavy rigid vehicles and therefore if

approval is obtained a condition would be recommended that the paver be suitable for a heavy rigid vehicle.

2.3.6 Clause 40 - Development Standards

The site has an area of 5,034.5m² and complies with the standard in respect to the site area being greater than the minimum 1,000m². The site frontage is approximately 115m to Pacific Highway which complies with the minimum frontage of 20m at the building line.

2.3.7 Clause 41 - Standards Regarding Accessibility and Useability

This clause requires development to comply with development standards contained within Schedule 3 of *SEPP HSPD* to ensure an adequate level of access for people with disabilities for self-contained dwellings. The application includes a Disability Access Assessment report and a Schedule 3 design assessment that addresses the controls. Compliance with the controls is discussed below.

Clause	Provision	Compliance	Comments
2(1), (2) and (3)	Wheelchair Access 100% of the units must have wheelchair access by a continuous path of travel to an adjoining public road and to common areas. Site gradient should be less than 1:10 or If the whole of the site does not have a gradient of less than 1:10: (a) the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and (b) the wheelchair access provided must be by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or an internal road or a driveway that is accessible to all residents.	Complies	The access report certifies that gradients for all parts of the development are suitable for wheelchair access and the Schedule 3 design assessment states the proposal complies with <i>AS1428.1</i>
		Complies	A direct and compliant access path to the Pacific Highway and common areas has been provided.
2(3)	Security Pathway lighting.	Complies. However specific	The report states that the development is capable of

		detailed plans at CC stage.	complying with details to be verified at the CC stage.
2(4)	Letterboxes	Complies	Letter boxes provided at the entry point and are lockable.
2(5)	Private Car Accommodation If car parking (not being car parking for employees) is provided: car spaces must comply with AS2890, and 5% of total number must be designed to enable width to be increased to 3.8 metres. Garage with power operated doors	Complies	All parking spaces have been designed to comply with AS2890.
2(6)	Accessible Entry Every entry must comply with AS4299.	Complies	Entry to the units is from a common lobby compliant to AS4299 Adaptable Housing.
2(7)	Interior: General Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	Complies	Interior doorways and circulation spaces are compliant to AS1428.1.
2(8)	Bedroom 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.	Complies	Main bedrooms are designed for a queen size bed with required clear areas. Power and telephone outlets will be compliant, and the wiring will allow illumination level of at least 300 lux.
2(9)	Bathroom At least 1 bathroom to comply with AS1428.1	Complies	Bathroom has been designed to comply with AS1428.1.
2(10)	Toilet Provide a visitable toilet per AS4299.	Complies	Toilets has been designed to comply with AS4299.

2(11, 12 and 13)	Surface Finishes, Door Hardware, Ancillary Items Slip resistance surfaces.	Complies	Balconies and external paved areas will have slip resistance rating compliant to AS1428.1.
2(15)	Living Room and Dining Room Circulation space per AS 4299.	Complies	Complies with AS4299.
2(16 and 17)	Kitchen and Access Circulation space per Cl.4.5.2 of AS4299. Width of door approaches of 1200mm.	Complies	Kitchens comply with AS4299.
2(18)	Lifts Lifts in multi-storey buildings	Complies	Lifts are proposed for both buildings.
2(19)	Laundry Width of door approach to be 1200mm Clear space in front of appliances of 1300mm.	Complies	A laundry has been provided in each ILU in the form of a closet.
2(20)	Storage for Linen Linen cupboard per AS4299.	Complies	All units have linen storage.
2(21)	Garbage A garbage storage area must be provided in an accessible location.	Complies	A garbage area has been provided on level 1 as per the submitted waste management plan.

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.

2.3.8 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 in which Council raise no objections to the proposed height.

- (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 amended Site Areas Plan indicates that the RACF portion of the site would have an FSR of 1.19:1. 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 1.27:1, exceeding the non-discretionary standard of 1:1.

Notwithstanding this exceedance, the overall site FSR is calculated at 1.12:1 whilst utilising the *SEPP HSPD* definition of floor area. This number represents a reasonable reduction from the original development evident in the increased deep soil areas and increased boundary setbacks. Further, the overall FSR of 1.12:1 is not considered excessive in a medium density zone.

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

Comment: The amended Site Areas Plan indicates a total of 1,552m² of landscaped area hatched in green, equating to 16m² per residential bed. This represents an increase of 337m² over the original proposal.

The application maintains that 25m² of landscaped area per residential care bed is not required given the site adjoins a public park, there is an over provision of landscaping for the ILU building, and RACF residents “are generally not very mobile” and “views out from RACF room windows onto landscaped areas provides a more practical amenity for residents”.

Whilst Council still does not support the statement that views to landscaped areas are more practical than providing actual landscaped areas, the increased boundary setbacks with the amended proposal offer more usable landscaped areas. Council therefore raises no concerns to the provision of 16m² of landscaped area per residential bed.

- (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 with 10 spaces for the 97 beds, 20 spaces for the 40 employees and 1 ambulance parking space.

2.3.9 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 in which Council raise no objections to the proposed height.

- (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 0.68:1. 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 0.77:1 which is higher than the non-discretionary standard of 0.5:1.

Notwithstanding the exceedance, the FSR of 0.77:1 is substantially lower than the original proposal's 1.51:1. Council raises no objections to the FSR of 0.77:1 as it is not considered substantial within an R3 medium density zone.

- (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 amended Site Areas Plan indicates that the proposal would comply with the 30% landscaping requirement as a total of 757m² or 49% of the total ILU 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 amended Site Areas Plan and Landscape Plan indicate that the ILU portion of the site would have a deep soil area of 702m² or 46%. Council notes that, 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. Notwithstanding, once accounted for, the remaining deep soil area still substantially exceeds the 15% as required. No objections are raised in this regard.

- (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 9 out of 11 dwellings (81%) 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 amended proposal is compliant in this regard.

- (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: 6 spaces have been provided for the 11 units. The proposed number of car parking spaces is compliant with the standard. Further, the amended application notes that CASS is an approved social housing provider.

2.4 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. Context and Neighbourhood Character	Yes
<p>Comment: The site is located within the Pacific Highway Asquith precinct planned for medium density residential housing. Notwithstanding, the surrounding area is typified by a variety of housing topologies and a public park.</p> <p>The desired future character of the area, as outlined in the <i>HDGP</i>, is envisioned as medium density housing comprising 2 storey buildings in a landscaped setting where additional floor space is contained wholly within a roofscape.</p> <p>As discussed in Part 2.1.2 of this report, greater amenity for its users would result in a third floor for the seniors living development and the proposed height is considered acceptable with regard to the site and application specific circumstances.</p>	

The amended proposal has provided additional building separation, additional landscaping, increased tree retention and increased building setbacks. The proposal as amended is considered to reflect the context of the site by providing a landscaped setting.

Parking has been predominantly provided within the basement in accordance with Council's desired future character.

2. Built Form and Scale

Yes

Comment: The proposed building as amended achieves an appropriate built form and height for the site as discussed in Part 2.1.2 of this report. The proposal is generally compliant with the 10.5m height limit with the exception of the lift overrun which is supportable in this instance.

The design of the building provides a transitional scale from the R4 zoning to the south to the subject R3 zoning.

Appropriate building separation is provided with no adverse privacy or amenity issues anticipated for adjoining sites.

3. Density

Yes

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 *HDGP*.

As discussed within Council's original report, it is essential that the proposal complies with setback standards to avoid overdevelopment. The proposed development as amended complies with building setback controls and includes generous landscaped areas. The proposed density would be appropriate for the site and the surrounding locality.

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

Yes

Comment: As discussed in Part 2.7.5.1 of this report, additional deep soil areas have been provided in the amended proposal to enable both tree retention and the ability for new trees to establish. Communal areas have been provided surrounding the ILU building with graded access pathways to allow for usability and pedestrian circulation.

6. Amenity

Yes

Comment: The units are designed with appropriate room dimensions and layout to maximise amenity for future residents.

The units have been designed to comply with all internal accessibility requirements and include sufficient solar access and access to private outdoor space.

7. Safety

Yes

Comment: 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.

8. Housing diversity and social interaction **Yes**

Comment: 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 *HDGP* by providing a component of adaptable housing and a mix of 1 and 2 bedroom dwellings.

9. Aesthetics **Yes**

Comment: The development has been amended to reflect the urban design comments by GMU. In particular, the proposal now incorporates three distinct building forms to reflect the built form character in the area and provide a transition between the higher and the lower building surrounding the site

The development incorporates a range of building materials, colours and textures to add articulation and contrast to the building facades.

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
Deep Soil Zone	46% (as per <i>ADG</i>)	7% of site area	Yes
	Min Dimension >6m	Min Dimension 6m	Yes
Communal Open Space	>25%	25%	Yes
	Capable of complying with 50% sunlight	50% direct sunlight to principal area	Yes
Solar Access (Living rooms and private open space areas)	81%	2 hours for 70% of units	Yes
No Solar Access allowable for units	18%	15% of units (max)	No
Natural Cross Ventilation	91% (10/11)	Min. 60%	Yes
Minimum Dwelling Size	1 br - >50m ²	1 br - 50m ²	Yes
	2 br - >70m ²	2 br - 70m ²	Yes

		+ 5m ² for additional bathrooms	Yes
Habitable room depth from a window for open plan layout	All <8m from a window	8m from a window (max)	Yes
Bedroom Size			
Master bedroom	>10m ²	10m ²	Yes
Bedroom	>9m ²	9m ²	Yes
Minimum depth	>3m	3m	Yes
Minimum Ceiling Height	2.7m	2.7m (habitable rooms) 2.4m (non-habitable rooms)	Yes
Minimum Balcony Size	1 bedroom >8m ² 2 bedroom 10m ²	1 bedroom 8m ² 2 bedroom 10m ²	Yes Yes
Maximum Number of Units on a Single Level	4 units	8 units off a circulation core	Yes
Total Storage Area	All units compliant with the exception of ILU-11	1 bed - 6m ³ (Min) 2 bed - 8m ³ (Min) 3 bed - 10m ³ (Min) 50% accessible from the apartments	No

As detailed in the above table, the proposed development is generally compliant with the provisions of the ADG with the exception of solar access and storage. Below is a brief discussion regarding the relevant development controls and best practice guidelines.

2.4.1 Solar Access

A total of 2 units (ILU-02 and ILU-05) would not receive the required ADG solar access which equates to 18% of total units. This is considered a minor non-compliance given the ADG requires no less than 15%.

Both ILU-2 and ILU-5 are located on the south-western side of the building and despite not achieving direct solar access in mid-winter, they would achieve sufficient cross ventilation. Further, both units would have access to the communal "south courtyard" which would have direct morning sunlight.

2.4.2 Storage

The application notes that ILU-11 would not meet the requirement for internal storage area. Notwithstanding, the SEE notes that it would receive a storage cage within the basement which has been nominated on the amended plans. Council raises no objections to this minor non-compliance as sufficient storage overall is accounted for including the basement area.

2.4.3 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.

The amended proposal has increased the minimum distance between habitable rooms of the ILU and the RACF building from 8.4m to 10.4m. Council raises no direct objection to the 10.4m building separation noting that a large portion of the building is compliant. Further, the non-compliant units would receive sufficient sunlight access.

Additionally, Council notes that that building separation issues between the ILU building and the townhouse building to the north has been resolved through the amended proposal.

2.5 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.

2.6 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

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.

2.7 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.

2.7.1 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.

2.7.1.1 Frontage to Classified Road

Regarding traffic generation, the amended traffic and parking report submitted with the application, prepared by Traffix (July 2020) predicts that the proposal would result in 23 vehicle trips per hour, an increase in 16 trips over the existing traffic generation. The net traffic generation is estimated to be one additional trip per 3.75 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 amended proposal was re-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 16 October 2020. As of the date of this report no concurrence has been received.

2.7.1.2 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 16 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.

2.7.2 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*".

2.7.3 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.

2.7.4 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 should approval were recommended.

2.8 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.

2.9 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.

2.10 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.

2.11 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 discussion 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*.

2.11.1 Biodiversity

The development site is located adjacent to Asquith Park with a playing field and playground adjacent to the western boundary and remnant vegetation to the south. Remnant and planted trees are also located within the surrounds of the playing fields, road reserve and surrounding residences. Vegetation in the park and on site is characteristic of Sydney Turpentine Ironbark Forest (STIF).

The amended flora and fauna report (31/07/2020) 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 12 provides a summary of trees to be removed. The report states that the removal of these trees are not likely to impact the biodiversity of the subject site as the proposed landscape plan involves the planting of STIF canopy trees. A total of 4 trees characteristic of STIF vegetation would be removed as part of the amended development and a total of 8 replacement STIF trees would be planted along with other tree species. This represents an additional 4 STIF trees that would be retained from the original proposal. Tree 1 (*Eucalyptus resinifera*), Tree 11 (*Angophora costata*), 44 (*Eucalyptus paniculate*), Tree 46 (*Angophora costata*) would be retained that are located within the front setback to Pacific Highway.

Subject to appropriate tree protection during construction and replacement planting and offset strategies as contained within the flora and fauna report, the application is considered satisfactory in regard to the Biodiversity principles of the *HDCP*.

2.11.2 Desired Future Character

A discussion regarding the desired future character is provided in Section 2.3.5.1 of this report.

2.11.3 Scale

A discussion regarding the scale of the proposal is provided in Sections 2.1.2 and 2.3.5.1 of this report.

2.11.4 Setbacks

A discussion regarding the setbacks the proposal is provided in Section 2.3.5.1 of this report.

2.11.5 Vehicle Access and Parking

A discussion regarding vehicle access is provided under in Section 2.7 of this report and a discussion regarding parking is provided in Sections 2.3.8 and 2.3.9.

2.12 Section 7.11 Contributions Plans

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 applies to the development. Notwithstanding, the applicant maintains that they are a “Social Housing Provider” as described under *SEPP HSPD*. Accordingly, if approval were recommended by the Panel no monetary Section 7.11 contribution would be required.

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 Construction Management

The submitted preliminary construction management plan, prepared by Traffix, dated 10/2020 has been assessed as unsatisfactory as it does not include sufficient details in order for Council to be satisfied that the construction of the development would not result in unacceptable impacts on the surrounding road network, pedestrian travel and unacceptable neighbourhood amenity.

Accordingly, if approval is obtained, a deferred commencement condition has been recommended that the construction management plan be amended and updated to Council requirements.

3.2 Natural Environment

A discussion regarding tree preservation, landscaping and biodiversity has been provided in Sections 2.3.5.1 and 2.11.1 of this report. A discussion regarding stormwater flow is provided in Section 2.3.5.4 of this report.

3.3 Built Environment

Discussions regarding the impact of the proposal on the built environment is provided in Section 2.3.5.1 of this report.

3.4 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 waste collection and TfNSW concurrence.

3.5 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 the proposed development if the development were to resolve waste collection and TfNSW concurrence issues.

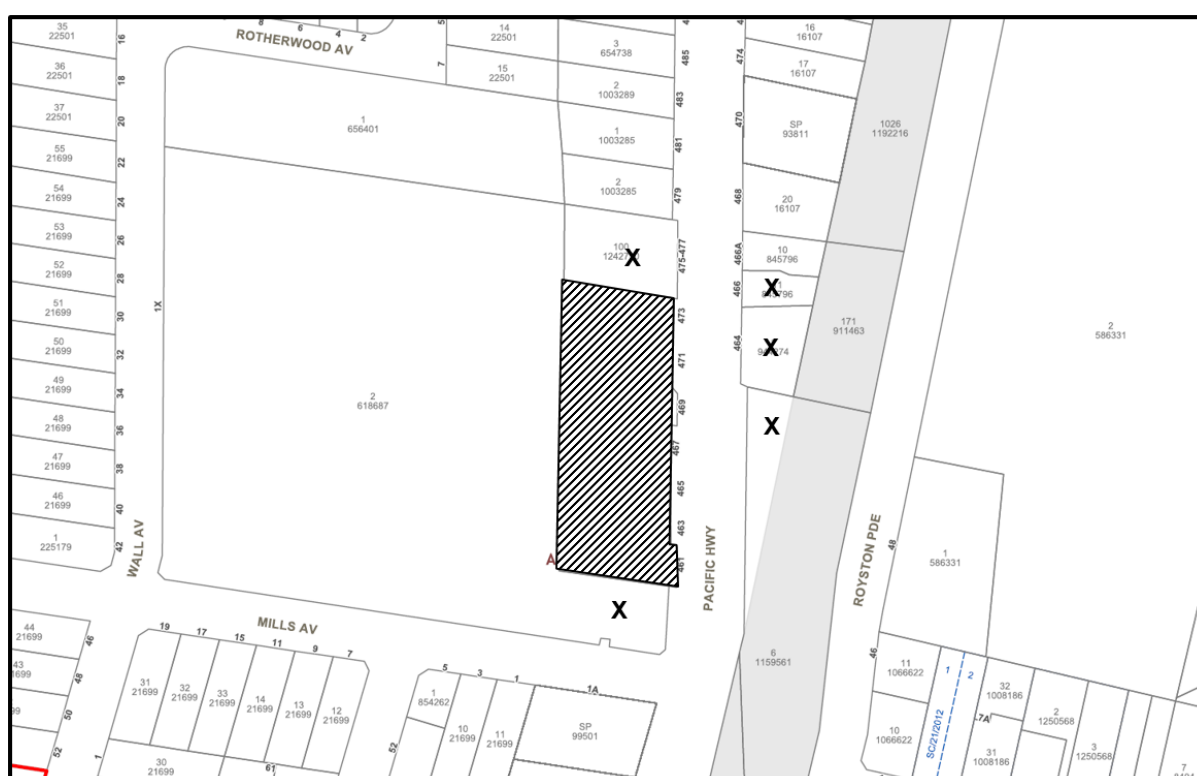
5. PUBLIC PARTICIPATION

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 in accordance with the Hornsby Community Participation Plan and was notified to adjoining and nearby landowners on three occasions; between 29 March 2018 and 31 May 2018, 6 November 2019 to 22 November 2019, and from 11 August 2020 to 2 September 2020.

During the notification periods, Council received a total of 17 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

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
17 submissions received out of map range			

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

5.1.1 Insufficient building and basement setbacks

Comment: The proposal as amended proposes compliant building setbacks. No objections are raised from Council in this regard.

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 acceptable in the site and application specific circumstances.

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

Comment: Council considers that additional tree retention and additional building setbacks proposed within the amended development negate potential privacy issues for Asquith Park users.

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 August 2020 in response to concerns raised by Council and GMU. The amended schedule of finishes includes a variety of face brick, timber and metal cladding. Council raises no objections in this regard.

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.

5.1.7 The arborist report is not accurate or insufficient

Comment: An amended arborist report was submitted to Council in August 2020 in response to initial concerns raised by Council. The amended report has been considered by Council's Tree Management Group and has deemed it satisfactory in order to make an informed planning decision.

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 August 2020 in response to initial concerns raised by Council. The amended report has been considered by Council and has been deemed satisfactory in order to make an informed planning decision.

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

Comment: The amended development would result in an additional 9 trees to be retained, 4 of which are characteristic of the STIF community. Council considers that the proposed tree loss is acceptable subject to the replacement planting proposed. Council further notes that the site have been zoned for R3 medium density residential and that some tree loss would be expected and is inevitable with re-development. 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: Council's Tree Management Group has considered that significant trees can be retained subject to conditions. 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 2.11.1 of this report, 4 additional STIF trees would be retained resulting in less offsetting. Council considers that the proposed planting schedule sufficiently offsets the trees proposed for removal.

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.

Amended plans were submitted to Council and TfNSW to review on 11 August 2020 and again on 16 September 2020 in response to minor concerns with the treatment of the driveway. As of the date of this report, 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 should the application be recommended for approval.

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.

As discussed in this report, the proposed development is considered generally compliant with local controls. Notwithstanding, Council have identified issues with waste collection and vehicle basement vertical clearance. As a consequence, the application cannot be supported in its current form.

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 97 beds and a 3 storey residential building containing 11 independent living units with basement car parking.

Council's assessment concludes that the amended proposal has provided greater consideration for the desired future character of the area. Notwithstanding, significant issues are raised with waste management, serviceability and concurrence and the application cannot be supported.

Council received 17 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.
- Concurrence has not been received from Transport for NSW pursuant to Section 138 of the Roads Act 1993

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.

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 satisfy the following requirements of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*:
 - 2.1 The proposal has failed to satisfactorily consider appropriate waste facilities as required in Clause 39.
2. 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*.
3. 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:
 - 3.1 The proposal is contrary to Part 1C.2.3 Waste Management as the development does not provide acceptable vehicle head height clearance for the basement ramp.
4. Pursuant to the provisions of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of an application with insufficient waste management facilities would not be in the public interest.

- END OF REASONS FOR REFUSAL -