

## SYDNEY NORTH PLANNING PANEL

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| <b>Panel Reference</b>   | 2018SNH043   |
| <b>DA Number</b>   | DA/668/2018  |
| <b>LGA</b>   | Hornsby Shire Council  |
| <b>Proposed Development</b>  | Seniors living development comprising 146 independent living units and 74 residential aged care beds.  |
| <b>Street Address</b>  | 3 Quarry Road and 4 Vineys Road, Dural   |
| <b>Applicant</b>   | Willowtree Planning  |
| <b>Owner</b>   | Grace Custodian Pty Ltd and H Investments International Pty Ltd  |
| <b>Date of DA Lodgement</b>  | 18 July 2018   |
| <b>Number of Submissions</b>   | 225  |
| <b>Recommendation</b>  | Refusal  |
| <b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>             | Development has a capital investment value of more than \$30 million.  |
| <b>List of All Relevant s4.15(1)(a) Matters</b>                                    | <ul style="list-style-type: none"> <li>• Biodiversity Conservation Act 2016</li> <li>• State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</li> <li>• Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River</li> <li>• Hornsby Local Environment Plan 2013</li> <li>• Hornsby Development Control Plan 2013</li> </ul> |
| <b>List all documents submitted with this report for the panel's consideration</b> | <ul style="list-style-type: none"> <li>• Architectural Plans</li> <li>• Site Compatibility Certificate</li> <li>• Landscape Master Plan</li> <li>• Traffic Impact Assessment</li> <li>• SEPP HSPD Assessment</li> </ul>  |

|                           |  |
|---------------------------|--|
|                           | <ul style="list-style-type: none"> <li>• Ecological Report</li> <li>• Bushfire Threat Assessment</li> <li>• Operational Management Plan</li> <li>• Waste Management Plan</li> <li>• Noise Impact Assessment</li> <li>• BCA Assessment</li> <li>• Access Statement</li> <li>• BASIX Certificate</li> <li>• Stage 1 Environmental Site Assessment</li> <li>• Fire Engineering Statement</li> <li>• HDCP Assessment</li> <li>• SEPP 65 Design Verification Statement</li> <li>• Construction Management Plan</li> <li>• Civil Engineering Stormwater Management Report</li> <li>• Civil Engineering Plans</li> <li>• Character Assessment</li> <li>• CPTED Assessment</li> <li>• Clause 4.6 Variation Request</li> <li>• SEPP HSPD Design Principles Assessment</li> <li>• Geotechnical Report</li> </ul> |
| <b>Report prepared by</b> | Scott Barwick – Consultant Planner   |
| <b>Report date</b>        | 5 December 2018  |

### 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**

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### Legislative clauses requiring consent authority satisfaction

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

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

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### 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**

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### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.22)? **No**

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

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### Conditions

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

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

## **ASSESSMENT REPORT AND RECOMMENDATION**

### **EXECUTIVE SUMMARY**

- The application involves the construction of a seniors living development comprising 146 independent living units and 74 residential aged care beds.
- The proposal does not comply with the maximum height of buildings development standard of 10.5m under Clause 4.4 Height of Buildings under *Hornsby Local Environmental Plan (HLEP)* 2013. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of *HLEP* to vary the height of buildings development standard. The submission is not considered well founded and is not supported.
- 225 submissions have been received in respect of the application.
- It is recommended that the application be refused.
- The Site Compatibility Certificate will expire on 24 May 2019.
- The applicant has lodged an appeal to the Land and Environment Court on the basis of a deemed refusal.

### **RECOMMENDATION: Refusal**

THAT Development Application No. DA/668/2018 for construction of a seniors living development at 3 Quarry Road and 4 Vineys Road Dural, formally described as Lot 2A DP 158064 and Lot 1 DP 230127 respectively, be refused subject to the reasons for refusal detailed in Schedule 1 of this report.

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### **BACKGROUND**

The site was previously used for silviculture and contains a dwelling and outbuildings to the Vineys Road frontage. The plantation has relatively recently been removed, leaving the site substantially cleared.

### **SITE**

The site is known as 3 Quarry Road and 4 Vineys Road, Dural. the land has a legal description of Lot 2A in DP 158064 and Lot 1 DP 230172, and has a total site area of 29,898m<sup>2</sup>.

The site is irregular in shape, with a frontage to Quarry Road of 94m, and an 85m frontage to Vineys Road. A central, irregular area widens the site behind Lot 2 DP 230172 (fronting Vineys Road) and Lot 10 DP 870247 (fronting Quarry Road).

The site slopes down from Quarry Road and Vineys Road into a central, mapped watercourse which flows to Tunks Creek to the east.

The land is part of the Dural non-urban area which contains a mix of intensive agricultural land uses such as wholesale plant nurseries, market garden, and rural residential dwellings. To the east, 260m from the site, is the Pacific Hills Christian School. To the south west is the business zone fronting Old Northern Road.

Vineys Road and Quarry Road are both no through roads. As a consequence, any traffic entering these roads from Old Northern Road must return to the area via Old Northern Road.

The north eastern corner of the site contains remnant vegetation which adjoins greater areas of vegetation through which the watercourse traverses.

The vegetation in the vicinity of the watercourse is mapped as being bushfire hazard.

The site is located south-west of the North Q Business Centre which is zoned B2 Local Centre and comprises service and retail premises. The uses include rural supplies, fast food premises, cafés and retail stores. The land further south of the North Q Business Centre is zoned IN2 Light Industrial and R2 Low Density Residential.

## **PROPOSAL**

Development consent is sought for the demolition of existing structures vegetation removal and excavation work to facilitate the construction of:

- Eight (8), three (3) storey built form, including:
  - Seven (7) Independent Living Units (ILUs) Buildings containing 146 self-care housing units;
- One (1) Residential Aged Care Facility (RACF) with a capacity of 74 beds;
- Central Facilities Building, connecting Building A and Building D; including cinema, restaurant and administration facilities.
- Basement level car parking accommodating approximately 383 car spaces;
- Provision of access to and from the site;
- Ancillary wellness centre;
- Associated landscaping and public domain works; and
- Extension and augmentation of physical infrastructure utilities as required.

Landscaping throughout the site is proposed.

## **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 an employment 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.

Dural is within the Metropolitan Rural Area identified in the Greater Sydney Region Plan (Regional Plan). Objective 29 of the Regional Plan seeks to protect and enhance values in rural areas.

The North District Plan which applies to the land has been developed to assist in the implementation of the Regional Plan. The North District Plan confirms Dural as being within the Metropolitan Rural Area. The North District Plan at Action 70 specifically seeks to limit urban development to the existing urban area, and at Planning Priority N18 (N4) seeks to better manage rural areas to protect biodiversity and enhance the economic contribution potential of the Metropolitan Rural Areas, and specifically identifies that further rural-residential development is not generally supported.

The proposal to develop the land in the manner proposed is inconsistent with the strategic context set by the Regional Plan and the North District Plan as it effectively removes it from the rural area and further expands the urban footprint.

## **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 RU2 Rural Landscape under *HLEP*. The objectives of the zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base;*
- *To maintain the rural landscape character of the land;*
- *To provide for a range of compatible land uses, including extensive agriculture;*
- *To encourage land uses that support primary industry, including low-scale and low-intensity tourist and visitor accommodation and the provision of farm produce direct to the public;*
- *To ensure that development does not unreasonably increase the demand for public infrastructure, services or facilities.*

The proposed development is defined as ‘Senior Housing’ under *HLEP*. Seniors Housing is prohibited in the RU2 Rural Landscape zone. On 24 May 2017, the Department of Planning and Environment issued a Site Compatibility Certificate to permit the Seniors Housing on the site.

#### **2.1.2 Height of Buildings**

Clause 4.3 of *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 10.5m. The proposal does not comply with this provision. As discussed below the non-compliance with the development standard is not supported and would result in a form and scale of buildings that is not suitable for the locality.

The proposal seeks consent for seven (7) buildings of three (3) storeys in height. The site is subject to a height limit of 10.5m.

By the applicant's assessment, the proposed buildings breach the 10.5m height limit by up to 3.46m, which represents a 32.9% variation.

The applicant has prepared a written request to vary the standard.

Clause 4.6(3) requires justification of a contravention of a development standard by demonstrating:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances; and
- That there are sufficient grounds to justify contravening the development standard.

Clause 4.6(4) requires that consent is not to be granted unless:

- The written request has adequately addressed the matters at Clause 4.6 (3); and
- The development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development in the zone applying to the land.

In assessing the applicant's Clause 4.6 written submission, it has not demonstrated or justified why compliance with the height of buildings development standard is unreasonable or unnecessary.

The justification presented is that it provides a more appropriate outcome to support the density proposed under the Site Compatibility Certificate (SCC).

This is not assessed as being a basis of determining that the standard is unnecessary or unreasonable.

The Clause 4.6 request is also considered to fail in an assessment against the zone objectives as required by Clause 4.6(4)(a)(ii). That is, the proposal:

- Does not maintain the rural landscape character of the zone (Objective 1);
- Does not provide for a compatible land use (Objective 2); and
- Does not ensure that development does not unreasonably increase the demand for public infrastructure, services, or facilities (Objective 4).

The applicant's submission to vary the height of buildings development standard is not supported and would result in a development on the land that is out of character with the locality.

### **2.1.3 Exceptions to Development Standards**

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

The proposal exceeds the height of buildings development standard, as indicated by the applicant, by up to 3.46m.

The objective of the height of buildings development standard is *"to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality"*.

The applicant has made a submission in support of a variation to the development standard in accordance with Clause 4.6 of *HLEP*. The development application seeks to vary the development standard by up to 32.9%. It is noted that the survey and architectural information is not sufficient to accurately determine the level of non-compliance.

The applicant states the proposed variation is considered to be consistent with the objectives of the control and is justified as follows:

- The proposed development has been configured with respect to the surrounding land uses.
- The proposed buildings will be setback from the boundaries to minimise the impact on surrounding land uses.
- The proposed building envelopes has been designed to respond to the site's constraints and to deliver the best urban outcome for both future residents of the site and surrounding properties.
- The proposed split into several, single building envelopes, with visible separation, will ensure permeability and sightlines to and from the site, reducing the perceived bulk.
- The façade of the proposed built form has been articulated so as they ensure they retain a human scale and reduce the perceived height and bulk from around the site, as well as adjoining buildings.
- Significant setbacks will allow for extensive landscaping at the interface with the adjoining buildings.
- The overall landscape design has taken into consideration the siting of the proposed built form and the relation with adjoining properties.
- The design strategy has been produced with the intention of not only retaining the ecological value across the site, as well as the existing character being maintained.
- The development does not adversely impact on the surrounding development or the public domain in relation to daylight access.
- Overall, the proposed development presents a development concept of a sympathetic height and scale with increased landscaping and connection to the existing vegetation, which is in keeping with the existing and desired future character of the local area and the proposal's building envelopes are considered appropriate and responsive to the site and its surrounds.

State Government Guidelines on varying development standards recommend considering the provisions of Clause 4.6 of the *HLEP* and the 'five part test' established by the Land and Environment Court as follows:

1. *the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*



4. *the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

The Clause 4.6 Variation Request is not supported in the circumstances as the written objection has not satisfactorily:

- Demonstrated that the 10.5m height of buildings development standard is unreasonable or unnecessary in the circumstances as required by Clause 4.6(3)(a);
- Demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6(3)(b); and
- Demonstrated that the development would be in the public interest as required by Clause 4.6(a)(ii) as the development will be inconsistent with the zone objectives, particularly objectives 1, 2, 3, and 5.

Based on this assessment, it is considered that compliance with the development standard is reasonable in the circumstances. Accordingly, the Clause 4.6 submission is not supported, and is a reason for refusal.

#### **2.1.4 Heritage Conservation**

Clause 5.10 of *HLEP* sets out heritage conservation provisions for Council. The site does not include a heritage item and is not located in a heritage conservation area. Accordingly, no further assessment regarding heritage is necessary.

#### **2.1.5 Earthworks**

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

The assessment of the proposed works and excavation concludes that the proposal is unacceptable in the circumstances as:

- The excavation associated with the development has an unacceptable impact upon the mapped watercourse traversing the site; and
- The quality of the material to be excavated has not been confirmed as being free of contamination as required by *State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)*.

### **2.2 State Environmental Planning Policies**

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

Schedule 7 of *SEPP SRD* identifies that development with a Capital Investment Value (CIV) of \$30 million or more is considered regionally significant development. Regional development is to be determined by the relevant Planning Panel, in this case the Sydney North Planning Panel (SNPP).

The proposal has a cost of works of \$113,160,300, and therefore exceeds the \$30 million threshold.

The application is therefore being reported to the Panel for determination.

#### **2.2.2 State Environmental Planning Policy (Building Sustainability Index – BASIX) (BASIX SEPP) 2004**

The policy provides for the mechanism for the implementation of the BASIX scheme throughout the State to improve water use and energy use efficiency.

The independent living units are supported by a BASIX certificate demonstrating that the requirements of the *BASIX SEPP* can be satisfied.

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

The policy provides for a range of infrastructure protection functions.

Clause 104 requires the application to be referred to the Roads and Maritime Services (RMS) due to the development including 200 or more car parking spaces.

Before granting consent, the consent authority must take into account any submission from the RMS. In responding to the application, RMS has sought additional SIDRA modelling of the intersections with Old Northern Road. Given the range of other issues determining that the proposal to be unacceptable, the additional SIDRA modelling has not been sought in this instance.

#### **2.2.4 State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)**

The provisions of the *SEPP 55* seek to ensure that before development consent is granted the consent authority can be satisfied that the land is, or can be, made suitable for the proposed land use having regard to potential contamination.

The proposal is supported by a Stage 1 Environmental Site Assessment. The Stage 1 Environmental Site Assessment recommends that a Stage 2 Detailed Environmental Site Assessment be undertaken. A Detailed Environmental Site Assessment has not been undertaken by the Applicant.

In the absence of the Stage 2 Detailed Environmental Site Assessment, the consent authority cannot be satisfied that the site is, or can be, made suitable for the proposed seniors housing development.

## 2.2.5 State Environmental Planning Policy (Rural Lands) (Rural Lands SEPP) 2008

The *Rural Lands SEPP* seeks to facilitate orderly and economic development and to identify planning principles for the proper management, development, and protection of rural lands.

Clause 10(2) of the *Rural Lands SEPP* identifies that the matters in Subclause 10(3) are to be taken into account when considering an application for a dwelling. A dwelling is defined as “a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.”

The proposal seeks to include residential development which adjoins intensive agricultural uses and retail plant nursery.

The design and layout of the proposed seniors housing development raises significant concerns over incompatibility of land uses. The design and supporting information do not satisfactorily address or confirm that an appropriate acoustic buffer is provided to the adjoining agricultural land uses.

In its current form, the proposal is considered to be contrary to Clause 10(3) of the *Rural Lands SEPP*.

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

The Policy provides for design principles to improve the design quality of residential flat development and for consistency in planning controls across the State.

The applicant has submitted a “Design Verification Statement” prepared by a qualified Architect stating how the proposed development achieves the design principles of *SEPP* 65. The design principles of *SEPP* 65 and the submitted design verification statement are addressed in the following table.

| Principle   | Compliance |
|---|------------|
| <b>1. Context</b>   | <b>No</b>  |
| <b>Comment:</b> The proposal pursues a three storey urban form in a rural area. The proposal has had no appropriate regard for this context or the existing site features in the development of the design.   |            |
| <b>2. Built Form and Scale</b>  | <b>No</b>  |
| <b>Comment:</b> The proposal exceeds the <i>HLEP</i> Height of Buildings development standard and the applicable DCP control for two storey plus attic buildings. A three storey residential flat building typology has been pursued which is not compatible with the locality. |            |
| <b>3. Density</b>   | <b>No</b>  |
| <b>Comment:</b> The proposed density is uncharacteristic and incompatible with the locality. The  |            |

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| applicant has not demonstrated that support infrastructure and adequate water supply and waste water disposal infrastructure is available to service the development.  |            |
| <b>4. Sustainability</b>   | <b>No</b>  |
| <p><b>Comment:</b> The proposal is supported by a BASIX certificate addressing minimum targets for energy use and water use reductions. The level of site intervention, vegetation removal and need for a managed APZ across the site is however considered to be contrary to the sustainability principles.</p>   |            |
| <b>5. Landscape</b>  | <b>No</b>  |
| <p><b>Comment:</b> The extent of site coverage proposed, and the area of the site covered requires the entire site to be managed as an APZ. This results in a landscape regime more akin to a residential area, rather than a rural landscape zone. The HDCP 2013 provisions anticipate more generous landscape buffers, and the site constraints would support an extension of a riparian corridor through the site.</p> <p>The proposal results in an uncharacteristic landscape treatment of the site which is not supported.</p>   |            |
| <b>6. Amenity</b>  | <b>No</b>  |
| <p><b>Comment:</b> The side boundary setbacks to the adjoining low intensity rural residential dwellings support the need for greater separation, as detailed at Figure 3F.5 of the <i>Apartment Design Guide (ADG)</i>. The amenity impacts to adjoining low density land uses are unacceptable.</p> <p>The orientation of multiple private open space balconies to the western side boundary at less than the recommended setback is unacceptable.</p>   |            |
| <b>7. Safety and Security</b>  | <b>Yes</b> |
| <p><b>Comment:</b> The entry points are generally legible and well defined and are not in conflict with the principle of safety.</p> <p>The proposal includes an assessment of the development against crime prevention controls in the Statement of Environmental Effects (SEE). The SEE has regard to Crime Prevention Through Environmental Design Principles (CPTED) and includes details of surveillance, access control, territorial reinforcement and space management such as artificial lighting in public places; attractive landscaping whilst maintaining clear sight lines; security coded door lock or swipe card entry; physical or symbolic barriers to attract, channel or restrict the movement of people; security controlled access to basement car park; intercom access for pedestrians; and security cameras located at the entrance of the building. Appropriate conditions of consent are recommended to require compliance with the above matters.</p> |            |

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| <b>8. Housing Diversity and Social Interaction</b>   | <b>Yes</b> |
| <p><b>Comment:</b> The proposal is a purpose-built seniors housing development which seeks to provide on-site services and amenities. The inclusions of residential care facility beds provides the opportunity to transition from independent living to higher care living.</p> |            |
| <b>9. Aesthetics</b>   | <b>No</b>  |
| <p><b>Comment:</b> The proposal seeks to impose an urban typology and form in a rural context. The unacceptable height and setting detracts from the existing and desired rural landscaped character of the area.</p>  |            |

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

*SEPP 65* requires consideration of the Apartment Design Guide, NSW Department of Planning and Environment 2015. The Guide 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 Guide:

| <b>Apartment Design Guide</b>                      |   |   |                   |
|--|---|---|-------------------|
| <b>Control</b>                                     | <b>Proposal</b>   | <b>Requirement</b>  | <b>Compliance</b> |
| <b>Deep Soil Zone</b><br><br><b>Proposed:</b>      | <15%  | 15% (8,696.4m <sup>2</sup> )  | Not demonstrated  |
| <b>Communal Open Space (includes rooftop area)</b> | < 30 %  | 25-30%  | Yes               |
| <b>Building Separation</b>                         | 13m (minimum internal separation)<br><br>6m (minimum external separation) | 12m – up to 4 storey<br><br>9m – up to 4 storey   | Yes<br><br>No     |
| <b>Minimum Dwelling Size</b>                       | Greater than 70m <sup>2</sup><br><br>Greater than 90m <sup>2</sup>        | 2 br – 70m <sup>2</sup><br><br>3 br – 90m <sup>2</sup><br>(+5m <sup>2</sup> for extra bathroom) | Yes<br><br>Yes    |

|   |                |  |   |
|---|----------------|--|---|
| <b>Minimum Balcony Depth</b>  | 2.5m (minimum) | 2m   | Yes   |
| <b>Minimum Ceiling Height</b>                                       | 2.7m (minimum) | 2.7m   | Yes   |
| <b>Total Storage Area<br/>Not detailed</b>                          |                | 1 bed - 6m <sup>3</sup> (Min)<br>2 bed - 8m <sup>3</sup> (Min)<br>3 bed - 10m <sup>3</sup> (Min)<br><br>50% accessible from the apartments | Not demonstrated  |
| <b>Solar Access<br/>(living rooms and private open space areas)</b> |                | 2 hours for 70% of units<br>(note SEPP HSPD requires 3 hours)  | Not demonstrated  |
| <b>Dual Aspect and Cross Ventilation</b>                            | 79%            | 60%  | Yes   |
| <b>Adaptable Housing</b>  | 40%            | 10%  | Yes*<br>(*Applicant's Access Report identifies capable of compliance) |

## 2.4 Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (SREP 20)

The site is located within the catchment of the Hawkesbury Nepean River. Part 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.

Submissions have been received identifying that *SREP 20* identifies the area as 'catchment', and as such, would prohibit seniors housing as "water catchment" is environmentally sensitive land for the purposes of *SEPP (HSPD)*. Seniors housing is prohibited on environmentally sensitive land as identified in Schedule 1 of *SEPP (HSPD)*.

*SREP 20* does not map the site and surrounds as 'catchment', rather it describes the localities in the mapping as a catchment in a broader geographical naming context, rather than a specific catchment to be protected. The prohibition concern raised in the objections is noted but is not considered to arise in the circumstance.

In addition, Council has obtained legal advice confirming that the site is not "environmentally sensitive land" listed in Schedule 1 of the *SEPP (HSPD)* and is therefore not prohibited development.

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

The aims of the policy are to encourage the provision of housing for seniors or people with a disability, make efficient use of existing infrastructure, and be of good design.

The *SEPP HSPD* in this instance also provides land use permissibility through the issue of a Site Compatibility Certificate (SCC) pursuant to Clause 25(5)(b) of the *SEPP HSPD*. The SCC was issued on 24 May 2017, and expires 24 May 2019.

The issue of a SCC does not derogate the requirement for an assessment and determination against Section 4.15 of the *EP&A Act 1979*.

The detailed assessment of the application against the provisions of the *SEPP HSPD* has identified a number of areas of non-compliance which support the refusal of the application. These matters are addressed below.

### **2.5.1 Clause 17(1) and 17(2) – Development adjoining land zoned primarily for urban purposes**

Housing on land adjacent to land zoned primarily for urban purposes, which is the circumstance of this application, can only be serviced self-care housing, a residential care facility or a retirement village. The application has not demonstrated that the self-care accommodation is serviced through the provision of meals, cleaning, personal care, or nursing care.

The proposal in its current form is inconsistent with the requirement of Clause 17 and therefore incapable of being approved.

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

The proposal has not adequately demonstrated that the facility will have appropriate access to services and facilities as required by Clauses 17 and 26.

The proposal relies upon works, and the provision of facilities on Quarry Road which have not been detailed in the application, and no application has been made for the installation of pedestrian access facilities. These works at a minimum would be required to provide access to the bus stop on Old Northern Road.

The assessment has also not confirmed that the destination of the public transport being relied upon satisfies the accessibility requirements of Clause 26 of *SEPP HSPD*. As access has not been demonstrated the proposal fails in an assessment against clause 26.

### **2.5.3 Clause 27 – Bushfire prone land**

The land is partly mapped as bushfire prone land and requires the issue of a Section 100B Bushfire Safety Authority under the *Rural Fires Act 1997*.

Further information has been sought by the Rural Fire Service (RFS) on the assessment of radiant heat exposure for the buildings.

The applicant's submission proposes to manage the site as an APZ as the means of satisfying the bushfire planning guidelines. This approach of managing the site to accommodate the scale of development proposed results in an unacceptable level of impact on the vegetation on the site. These adverse impacts will be further discussed at Section 3.1.

#### **2.5.4 Clause 28 Water and sewer**

Clause 28 requires that written evidence be provided that housing will be connected to a reticulated water supply and a system for the removal or disposal of sewage.

Written evidence of the availability of these services has not been provided. Accordingly, consent could not be granted.

#### **2.5.5 Clause 29 – Site compatibility certificate**

The SCC issued for the site included at Schedule 2 identifies four (4) issues that are required to be resolved. These issues are:

- Overland flood management;
- Setbacks, landscaping, and land use conflict;
- Utility servicing to confirm reticulated water and adequate facilities for the removal or disposal of sewage; and
- Traffic and access.

None of these requirements of the SCC have been appropriately satisfied by the applicant.

### **2.6 Environmental Planning and Assessment Act 1979**

#### **2.6.1 Clause 3.42 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.

### **2.7 Hornsby Development Control Plan 2013**

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:



| Hornsby Development Control Plan 2013 |   |   |                                 |
|---------------------------------------|---|---|---------------------------------|
| Provision                             | Control   | Proposed  | Compliance                      |
| <b>2.1.1 Scale Height</b>             | 10.5m<br>(2 storey + attic)   | 13.96m<br>(3 storey)  | No<br>No                        |
| <b>Site coverage</b>                  | For sites of 4,000m <sup>2</sup> +<br>on merit  | Provision of 15% of<br>deep soil consistent<br>with the ADG has not<br>been demonstrated. | No                              |
| <b>2.1.2 Setbacks</b>                 |   |   |                                 |
| <b>Front Boundary</b>                 | 15m (Quarry)  | 15m   | Yes                             |
|                                       | 15m (Vineys)  | 15m   | Yes                             |
| <b>Side Boundary</b>                  | 10m (note greater<br>setbacks required<br>adjacent to potential<br>noise sources<br>(2.1.2(f))) | Minimum 7.83m   | No (see discussion)             |
| <b>2.1.3 Landscaping</b>              | Setbacks should be<br>landscaped  | Basement, surface<br>parking and circulation<br>provided within<br>setbacks.              | No (see discussion)             |
| <b>Parking<br/>(Per SEPP HSPD)</b>    | 147 resident spaces<br>30 visitor spaces<br>7.5 RACF spaces<br>12.5 staff spaces                | 279 resident spaces<br>44 visitor spaces<br>17 RACF spaces<br>29 staff spaces             | Yes<br>Yes<br>Yes<br>Yes<br>Yes |

As detailed in the above table, the proposed development does not comply with a number of prescriptive requirements within the *HDGP*. The matters of non-compliance are detailed below.

### **2.7.1 Desired Future Character**

The land and surrounding area is zoned RU2 Rural Landscape. The area is also identified as being within the Metropolitan Rural Area under the North District Plan. The area, under regional and local strategic planning policies, is intended to remain as rural land. The proposal is contrary to the objectives of the zone and has the potential to impede the operation of existing productive agricultural uses through a lack of appropriate mitigation of noise impacts.

The incompatibility of the use with adjoining uses, the loss of rural land potential, and the uncharacteristic building form are not supported.

### **2.7.2 Height**

The proposal seeks consent for seven (7) buildings of three (3) storeys in height. The site is subject to a height limit of 10.5m within which the *HDGP* seeks to accommodate two storey plus attic building forms. The approach to the site is for the pursuit of a three storey residential flat building form. This is not supported on the inconsistency with the *HLEP* and DCP guidance and on the uncharacteristic building form that would result.

### **2.7.3 Setbacks**

Nominally the front setbacks of 15m are complied with. The consideration of the merit of the setbacks fails in relation to the *HDGP* for rural areas, requiring setbacks to be predominantly landscaped. The setback to Vineys Road is substantially occupied by basement parking and driveways, eliminating the majority of landscape opportunity to this frontage and also leading to the loss of existing street trees in Vineys Road.

The Quarry Road front setback is not impacted by basement parking, but is impacted by a driveway running along the northern boundary, a circular driveway central to the Quarry Road frontage and a basement access driveway along the southern boundary which also leads to at grade visitor parking.

As with the front setback, the western boundary is not substantially landscaped due to the provision of a driveway along this boundary. The eastern boundary accommodates large areas of basement access parking, and visitor parking at-grade. This configuration substantially reduces the landscape potential along this boundary, and the ability to provide the required buffer to the adjoining wholesale plant nursery.

### **2.7.4 Built Form and Separation**

The proposal is consistent with required internal separation of 12m for habitable to habitable spaces.

The more significant concern is the insufficient separation to adjoining low density uses to the west as recommended by Figure 3F.5 of the ADG, and that the proposed site layout provides buildings that are not compatible with the rural landscaped character of the area. The self-care housing and RACF present as a typical urban form in a non-urban area. This arises from the pursuit of a site layout dictated by the ADG rather than a consideration of the rural landscape character and zoning of the land.

While the internal separations satisfy an ADG consideration, they directly contribute to the proposal being of a form that is inconsistent with the character of the locality.

### **2.7.5 Stormwater Management**

Council's *HDCP* at Section 1C.1.2.b requires development to minimise the effects of flooding and to maintain natural environmental flows.

A mapped watercourse traverses the site which is in a disturbed state for the majority of the site.

Council's engineers have identified a number of concerns with the design approach which are inconsistent with Council's policies and desired outcomes.

Council's Civil Works Design and Construction Specification requires piping of minor stormwater event flow up to the 20 year ARI event. Events greater than the up to 100 year ARI event are to be accommodated in an overland flow path. The proposed design is inconsistent with the guideline and does not appropriately accommodate potential 100 year ARI overland flows.

The engineering review has identified that the stormwater management approach does not significantly reduce the risk of property damage due to the potential for stormwater flows to enter into the basement of Building D and that the ground floor levels of the buildings have not accommodated the 100 year ARI stormwater flow levels plus a 500mm freeboard.

### **2.7.6 Vegetation and Ecological Impacts**

The proposal has been assessed as having unacceptable impacts on two (2) ecological communities that occur on-site. The two (2) communities are:

- Sydney Turpentine Ironbark Forest (STIF), which is listed as an endangered ecological community (EEC) under the *NSW Biodiversity Conservation Act 2016*; and
- Blackbutt Gully Forest (BGF) which is listed as a locally significant vegetation community.

The basement construction would result in the removal of the stand of trees in Vineys Road which comprise remnant STIF. The removal of these trees is not supported and would be a detrimental impact on the character of Vineys Road.

The location of facilities to support the use would adversely impact upon the BGF. The adverse impact on this community arises from the removal of trees to accommodate the proposed sediment and detention basin, and works proposed within the watercourse.

Detailed assessment has further identified that remnant trees identified for retention are unlikely to be able to be retained in the vicinity of Building E and associated basement.

The proposal has been assessed as being unable to retain remnant vegetation on-site, resulting in the proposal being inconsistent with the biodiversity provisions of Part 1C.1.1 of the *HDCP*. The inability to practically retain remnant vegetation is exacerbated by the proposed bushfire management of the site as APZ. This approach effectively ensures that the offset replacement planting in accordance with the Green Offsets Code is not, and cannot, be satisfied.

The loss of remnant vegetation and lack of replacement planting opportunities is indicative that the site planning has not accommodated site features and constraints, rather that the site is being substantially modified to accommodate the proposed buildings.

### **2.7.7 Noise Impact Assessment**

Consistent with the RU2 Rural Landscape zone objectives, the *HDCP* seeks to ensure that when a sensitive land use such as seniors housing is proposed, appropriate measures are taken to ensure conflict with adjoining agricultural uses is minimised.

The *HDCP* requires for greater boundary setbacks to minimise potential noise and visual conflicts with uses such as the adjoining wholesale plant nursery. It has already been identified that what buffer for separation and landscaping that has been provided for the eastern boundary is compromised by the inclusion of extensive at-grade parking. Further, the noise impact assessment has not addressed or considered the impact existing noise generating land uses may have on the amenity of future residents.

The failure to address Section 2.2.1 Intensive Plant Agriculture results in it not being possible to ensure that the continued operation of the intensive plant agriculture would not be compromised by the introduction of adjoining residential uses.

### **2.7.8 Waste Management**

The independent living units (ILUs) are required to be capable of being serviced by Council's Standard waste and recycling collection service.

The proposal accommodates a waste storage and bin storage area in the basement below the main administration building fronting Quarry Road.

The proposed basement to the ILUs is incapable of accommodating the required 12.5m long HRV in accordance with AS2890.2. Further, the collection of the bins blocks access to staff parking spaces S01 to S10.

The layout and provision of waste storage and collection areas require excessive management to move bins to collection areas and to provide convenient waste disposal services to residents. Further, five (5) of the waste rooms would not be accessible by persons with a disability due to the aisle width being less than 1.55m wide. In general, the areas allocated to waste and recycling are insufficient in area and poorly allocated to service the development.

The Waste Management Plan for the RACF indicates that a private contractor would be engaged to service this element of the proposal. Waste storage is proposed in a separate basement accessed from the Vineys Road frontage. The waste room would only be capable of being accessed by a SRV, which is inconsistent with the *HDCP* requirements.

### **2.7.9 Traffic**

Vineys Road and Quarry Road are both no through roads. Accordingly, the intersection with Old Northern Road and Quarry Road in particular is constrained.

The Traffic Impact Assessment to demonstrate that an acceptable level of service for the interaction with Old Northern Road is achieved relies upon intersection upgrades which may be carried out in 2028. These upgrades are not committed to and should not be relied upon as a basis for determination of an acceptable traffic impact outcome of this proposal.

The adverse impact upon the performance of the intersection is the critical concern on network performance.

The assessment of traffic issues has identified further deficiencies in:

- The capability of Vineys Road, even if widened, to accommodate HRVs;

- The adequacy of the ambulance bay design and access to the RCF;
- Assessment of the traffic impacts to Quarry Road on Saturdays; and
- An identification that traffic generation rates should be based on a current survey of a similar facility.

## **2.8 Section 7.11 Contributions Plans**

Hornsby Shire Council Section 94 Contributions Plan 2014–2024 applies to the development as it would result in an additional 145 residential dwellings in lieu of the one (1) existing residence. Accordingly, the requirement for a monetary Section 94 contribution would be required as a condition of consent should the application be approved.

Hornsby Shire Council Section 94A Contributions Plan 2014 – 2024 applies to the RACF portion of this development as the estimated costs of works is greater than \$100,000. Were the application to be approved, an appropriate condition of consent would be imposed requiring the payment of a contribution in accordance with the Plan.

## **3. ENVIRONMENTAL IMPACTS**

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

### **3.1 Natural Environment**

#### **3.1.1 Tree and Vegetation Preservation**

The proposal would result in substantial removal of remnant vegetation from the site and adjoining road reserves. The proposal is unable to accommodate appropriate replacement vegetation in accordance with Council’s policy and would require on-going management of any vegetation on the site as an APZ

It is considered that the removal of the trees is unacceptable in the circumstances of the case given the impact upon significant vegetation communities on and adjacent to the site and the related adverse impact to the rural landscape character of the locality.

#### **3.1.2 Stormwater Management**

The proposal has not appropriately demonstrated that the management of stormwater can be accommodated to Council’s requirements, particularly in relation to overland flow paths and provision of floor levels above the 100 year ARI level.

The site is traversed by a water course and the opportunities should be pursued for the incorporation of a more natural water management regime that could also accommodate and enhance remnant vegetation on the site.

### **3.2 Built Environment**

#### **3.2.1 Built Form**

The buildings proposed are of a three storey residential flat building typology which exceed the Height of Buildings development standard. The non-compliant height in conjunction with insufficient setbacks

and landscape opportunities result in a built form that would be unacceptable for the locality and be inconsistent with the strategic planning vision for the locality and the objectives of the existing land use zoning.

The impact of the development would be to physically and visually expand the urban area and undermine the rural character of the locality. The proposed building height, regime of setbacks and landscape treatment are unacceptable.

### **3.2.2 Traffic**

A traffic and parking assessment has been submitted with the proposal which identifies that the local intersections with Old Northern Road would be at an unacceptable level of service. The proposition to justify the development is for planned upgrades to the intersections in 2028. As identified by Council's traffic engineer, these upgrades are not committed to in relation to funding and should not be relied upon as a basis for demonstrating an acceptable level of traffic service.

In the circumstances the proposal is not supported on these grounds as well as the inability for the current design to appropriately accommodate emergency and waste collection vehicles.

### **3.3 Social Impacts**

It is acknowledged that the development has the potential to provide housing for seniors in self-care housing and in the later stages in a residential aged care facility. The provision of further housing opportunities is only one of a number of interests and considerations that must be balanced. In the circumstance the potential provision of additional housing does not justify the inconsistencies with the strategic planning for the protection of the metropolitan rural areas, adverse impacts upon remnant vegetation or the unacceptable traffic impacts of the proposal.

### **3.4 Economic Impacts**

The proposal seeks to accommodate residential accommodation adjacent to active economic land uses such as the adjacent wholesale plant nursery. The proposal has not appropriately demonstrated that mitigation against the acoustic and visual impacts has been accommodated within the subject site. Accordingly, the approval of the development in the manner proposed raises concerns that there could be consequential adverse impacts upon these economic land uses within the metropolitan rural area.

## **4. SITE SUITABILITY**

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

The development is partly mapped as bushfire prone land. In response to the bushfire hazard the site is proposed to be managed as an APZ which as a consequence limits the range of landscape that can be established due to the potential conflict with a sensitive seniors housing use on bushfire prone land.

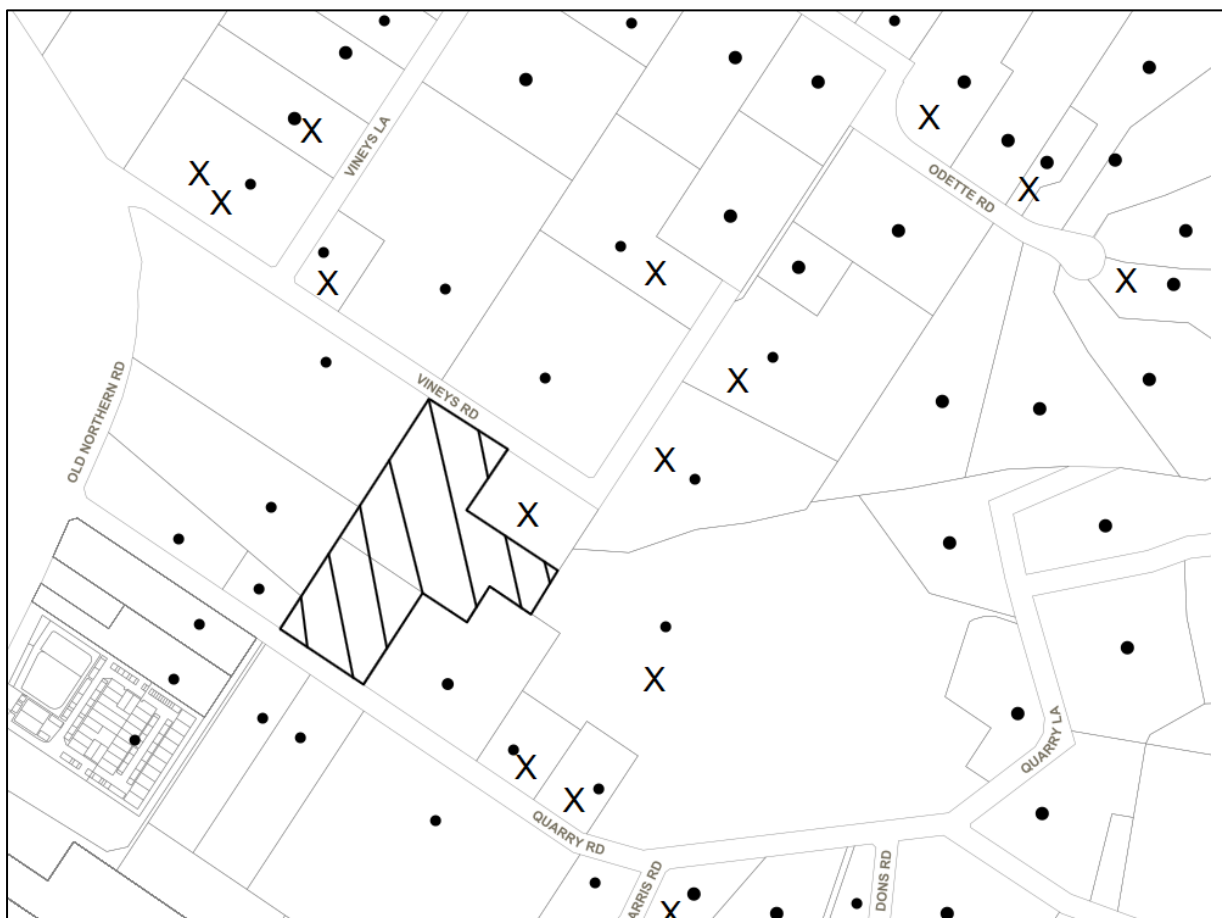
In addition to the potential bushfire hazard, the site is traversed by a water course which should be rehabilitated as a riparian corridor. The current approach of imposing an urban typology on to the site has not appropriately balanced the consideration of the bushfire hazard, riparian corridor and rural landscaped character considerations. The proposed development is not suitable for the site.

## 5. PUBLIC PARTICIPATION



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

### 5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 18 July 2018 and 31 August 2018, in accordance with the Notification and Exhibition requirements of the HDCP, and a further period from 20 August 2018 to 24 September 2018. During the notification periods, Council received 225 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 |  |
| <b>209</b> SUBMISSIONS RECEIVED OUT OF MAP RANGE |                        |   |   |



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

#### **5.1.1 Impacts**

The assessment has supported the concerns raised in relation to traffic impacts, particularly in relation to current levels of performance and the unique road network including no through roads.

The adverse impact upon traffic has been included as a reason for refusal in the recommendation.

#### **5.1.2 Incompatible with Existing Rural Character**

Significant concerns have been raised over the inconsistency of the proposal with the character of the development with the rural character of the area. The planning framework seeks to retain the area as rural land.

The proposed form and layout seeks to impose typical urban form into a non-urban area, having little or no regard for site characteristics.

The concerns raised in the submission are concurred with.

#### **5.1.3 Oversupply of Existing Seniors Facilities in the Area**

Policy and demographics indicate that demand exists, and is likely to increase, for seniors housing.

The consideration of oversupply or not is not a key issue to consider. The assessment has determined that the proposal is unacceptable for matters relating to character, site impacts, and servicing.

#### **5.1.4 Scale of Buildings Not Suitable for the Locality**

The concerns over the suitability of the scale of development are agreed. The provision of multiple three (3) storey buildings in an urban layout is contrary to the character of the rural area, and the desired future character for the area.

#### **5.1.5 Lack of Infrastructure**

The applicant has not provided written evidence confirming the availability of reticulated water supply or the means of sewage disposal. The concerns raised are agreed.

#### **5.1.6 Lack of Nearby Services**

The proponent has sought to rely on access to services via public transport options available on Old Northern Road.

The access to facilities and services has been found to be deficient in determining appropriate access to the bus stop and accessibility at the destination.

#### **5.1.7 Lack of Public Transport Options**

Subject to an accessible path of travel, the public transport options would satisfy the minimum requirements for the SEPP. The concerns however are reflective of the current high dependence upon private motor vehicle use which would be exacerbated by the proposal.



### **5.1.8 Inconsistency with the Greater Sydney Commission Objective to Protect Rural Lands**

The area is identified in the North District Plan and Council's strategic document as Metropolitan Rural Area. These areas are identified for retention in conjunction with a policy position to limit urban development to the urban area.

The concerns of the submissions are supported and the loss of rural land and the inconsistent character of the proposal with the locality.

### **5.1.9 Development Prohibited under Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 – 1997)**

Several submissions received identified that the land is environmentally sensitive land, and therefore the development is prohibited as seniors housing is not permitted on such land. The submission identifies that the operation SREP 20 (No 2 – 1997) designates that land as "Water Catchment".

As discussed in the assessment the position is not agreed. the mapping for SREP 20 uses the term "Cowan Creek Catchment Area" as a geographical designation, rather than mapping areas specifically as "Water Catchment".

## **5.2 Public Agencies**

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

### **5.2.1 Roads and Maritime Services (RMS)**

The proposal was referred to the RMS as traffic generating development under the provisions of ISEPP 2007. RMS have requested SIDRA Modelling be undertaken on the performance of the surrounding intersections.

### **5.2.2 Rural Fire Service (RFS)**

The RFS have not issued General Terms of approval as an Integrated Development referral. Additional information is required to assess radiant heat loads in a bushfire.

### **5.2.3 Office of Water**

The proposal has been referred to the Office of Water as an Integrated Development referral for works within 40m of a watercourse. General Terms of approval have not been provided.

## **6. THE PUBLIC INTEREST**

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

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

The proposal would result in a departure from the height of buildings development standard and a development that is contrary to the existing and future rural character and use of land in the locality.

The proposal does not represent an overarching public benefit that would justify the departure from the development standard or to allow the rural land to be developed in the manner proposed.

In the circumstance, the public interest is best served by seeking to ensure that the strategic protection of the rural lands be retained and the height of buildings development standard is not varied.

## **CONCLUSION**

The application seeks consent for the demolition and clearing of the site to facilitate the redevelopment of the site for ILUs and a RACF above basement parking.

To accommodate the development and to address the bushfire planning constraints requires substantial clearing and modification of the site. the site would require ongoing management as an Asset Protection Zone, ensuring that a landscape treatment uncharacteristic of the locality would not be implemented.

The assessment concludes that the proposal has not had appropriate consideration for the rural character of the area and has instead sought to manipulate the site to accommodate an urban built form and site plan in a rural area.

The resulting non-compliance with the height of buildings development standard is unacceptable in the context, which is exacerbated by insufficient retention of existing vegetation and opportunities to provide replacement planting.

The proposal is not only visually out of character and incompatible with the locality, but it is also contrary to the strategic planning approach of the North District Plan and Council's strategic planning to preserve metropolitan rural lands.

The intensity of development would adversely impact upon the performance levels of surrounding intersections to an unacceptable level of service and the design fails to adequately cater for necessary service vehicles such as ambulances and waste collection vehicles and has not satisfactorily provided management of stormwater flows for the development.

The development is Integrated Development and has not received GTAs from the RFS of the Office of Water. In the absence of GTAs from the Integrated Development Referral Bodies the Panel cannot determine the application other than for refusal.

Accordingly, the proposal is recommended for refusal.

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

**Attachments:**

1. Locality Plan
2. Architectural Plans
3. Site Compatibility Certificate
4. Landscape Master Plan
5. Traffic Impact Assessment
6. SEPP HSPD Assessment
7. Ecological Report
8. Bushfire Threat Assessment
9. Operational Management Plan
10. Waste Management Plan
11. Noise Impact Assessment
12. BCA Assessment
13. Access Statement
14. BASIX Certificate
15. Stage 1 Environmental Site Assessment
16. Fire Engineering Statement
17. Hornsby Development Control Plan 2013 Assessment
18. SEPP 65 Design Verification Statement
19. Construction Management Plan
20. Civil Engineering Stormwater Management Report
21. Civil Engineering Plans
22. Character Assessment
23. CPTED Assessment
24. Clause 4.6 Variation Request
25. SEPP HSPD Design Principles Assessment
26. Geotechnical Report

## SCHEDULE 1

1. The proposal has not satisfied the requirements of the Site Compatibility Certificate issued for the site to satisfactorily resolve overland flood management, setbacks, landscaping, land use conflict, provision of utility services and traffic impacts and access.
2. The proposal has not satisfactorily demonstrated that the development would comprise “serviced self-care” housing as required by Clause 17(1) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD)*.
3. The proposal has not adequately demonstrated that appropriate access is provided to facilities and services as required by Clauses 17 and 26 of *SEPP HSPD*.
4. The proposal has not satisfied Clause 27 of *SEPP HSPD* relating to bushfire prone land and has not been issued a Bushfire Authority or General Terms of Approval as Integrated Development.
5. The proposal has not demonstrated that the site has access to and can be serviced by a reticulated water supply and waste water disposal as required by Clause 28 of *SEPP HSPD*.
6. The proposal fails an assessment of neighbourhood amenity against Clause 33 of *SEPP HSPD* resulting in a development that is out of character with the locality providing an excessive building height and lack of landscaped setbacks and contrary to the protection of metropolitan rural land and the North District plan, and fails to protect and enhance existing vegetation in the locality.
7. The proposal has failed to satisfactorily consider the acoustic and visual privacy of future residents and adjoining properties as required by Clause 34 of *SEPP HSPD* through:
  - a) Failing to provide appropriate assessment and mitigation to adjoining noise sources from rural land uses;
  - b) Providing insufficient setbacks and visual screening to adjoining low intensity land uses; and
  - c) Providing insufficient setbacks as recommended by Figure 3F.5 of the Apartment Design Guide.
8. The proposal results in an unacceptable density of 0.83:1 comprising 0.13:1 for the Residential Aged Care Facility and 0.70:1 for the self-care housing, and fails to demonstrate that 4,484.7m<sup>2</sup> (15% of the site area) is appropriately provided as deep soil landscaped area.
9. The proposal has not satisfactorily demonstrated that 70% of the self-care dwellings receive three (3) hours of solar access to the living room and private open space areas as required by Clause 50(e) of *SEPP HSPD*.
10. The proposal fails in an assessment against the design quality principles of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)* and the *Apartment Design Guide (ADG)*, in particular:
  - a) The proposal fails to satisfy Principle 1 Context and Neighbourhood Character, Principle 2 Built Form and Scale, Principle 3 Density, Principle 5 Landscape and

Principle 9 Aesthetics. The proposal would result in a development that is uncharacteristic and incompatible with the local context and rural character and of a height and density that is not compatible with the density of adjoining properties;

- b) The proposal fails to provide increased side boundary separation to the adjoining low density residential development consistent with figure 3F.5 of the *ADG* to manage and minimise potential adverse amenity impacts upon adjoining low density development; and
  - c) The proposal fails to provide appropriate centrally located communal open space to serve the self-care dwellings consistent with Objective 3D-1 and 3D-2 of the *ADG* resulting in a poor amenity outcome for future residents.
11. The proposal has not provided a Detailed Environmental Site Assessment to determine that the land is suitable for the proposed use as required by Clause 7 of *State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)*.
  12. The proposal does not comply with the maximum height of buildings development standard of 10.5m applying to the land under Clause 4.4 of *Hornsby Local Environmental Plan 2013*. The applicant's written request under Clause 4.6 to contravene the standard has not satisfactorily justified the contravention to the development standard.
  13. The proposal fails in an assessment against the provisions of the *Hornsby Development Control Plan 2013 (HDCP)* relating to:
    - a) Insufficient buffers the threatened species are provided as required by Section 1C.1.1(e) of the *HDCP*;
    - b) Street trees in Vineys Road would require removal, contrary to Section 1C.1.1(i) of the *HDCP*, with these trees being remnant Sydney Turpentine Ironbark Forest;
    - c) Section 1C.1.1 (o) requires the development to be designed and located to maintain an effective watercourse riparian zone comprising native vegetation. The proposal has not achieved this relative to the watercourse that traverses the site.
    - d) The existing watercourse traversing the site has not been maintained and designed in accordance with Section 1 C.1.3 of the *HDCP*.
    - e) Proposed building heights do not comply with the maximum 10.5m and 2 storey (plus attic) height controls of Section 2.1.1 of the *HDCP*.
    - f) The proposed development proposes a site coverage which is uncharacteristic of the rural locality contrary to Section 2.1.1 (h) of the *HDCP*.
    - g) Significant structures and paved areas and basement car parking areas encroach into the setbacks required to Quarry and Vineys Roads contrary to Section 2.1.2 (g) of the *HDCP*.
    - h) Minimum 10m side setbacks have not been provided as required by Section 2.1.2 (a) of the *HDCP* to the north-west and north-east boundaries. The majority of the side boundary setbacks are encroached with vehicle circulation paths and car parking spaces.

- i) The proposed landscape treatment fails to maintain existing vegetation and natural features and provide a landscape treatment consistent with the rural landscaped area as required by Section 2.1.3 of the *HDCP*.
  - j) Driveways have not been setback a minimum 2m from side boundaries and landscaped as per Section 2.1.5(c) of the *HDCP*. Both driveways and at-grade car parking encroach into the setback areas.
  - k) The proposed driveway design, associated with the porte-cocheres, dominate the streetscape contrary to rural character of the area contrary to Section 2.1.6(g) of the *HDCP*.
  - l) Insufficient separation has been provided to the existing intensive plant agriculture uses on adjoining sites as required by Section 2.2.1 of the *HDCP*.
14. Due to the extent of clearing proposed, the proposal results in an unacceptable impact upon the ecological communities of Sydney Turpentine Ironbark Forest and Blackbutt Gully Forest, and fails to provide appropriate offset measures in accordance with Council's Green Offsets Code.
  15. The proposal fails to provide stormwater management and overland flow paths as required by Section 1C.1.2 of the *HDCP* and Council's *Civil Works Design and Construction Specification*.
  16. The Noise Impact Assessment has not addressed appropriately the potential impacts of existing noise generating intensive agricultural land uses on adjoining properties as required by Sections 2.1.2 and 2.2.1 of the *HDCP*.
  17. Appropriate means for waste and recycling storage have not been provided in accordance with Section 1C.2.3 of the *HDCP* and the collection areas are unable to be serviced by Council's 12.5m long heavy rigid vehicles.
  18. The development proposal has failed to demonstrated compliance with the requirements of *Planning for Bush Fire Protection* and has not received General Terms of Approval from the NSW Rural Fire Service.
  19. The development proposal fails to demonstrate compliance with the requirements of Section 1C.1.3 Watercourses of the *HDCP* and has not received General Terms of Approval from the NSW Department of Primary Industry.
  20. The development proposal has failed to demonstrate compliance with the requirements of the NSW Roads and Maritime Service (RMS) and the RMS has not issued concurrence for the proposed development.
  21. The proposal would not be in the public interest, being contrary to the protection of the metropolitan rural area under the North District Plan, Hornsby Shire Rural Resource Lands Study 2006, the Hornsby Shire Rural Lands Planning Provisions Review 2009, and the RU2 Rural Landscape zone provisions under *HLEP*.

**- END OF REASONS FOR REFUSAL -**