



Land and Environment Court New South Wales

Medium Neutral Citation:	HB & B Property Pty Ltd v City of Parramatta Council [2021] NSWLEC 1393
Hearing dates:	10-12 May 2021
Date of orders:	8 July 2021
Decision date:	08 July 2021
Jurisdiction:	Class 1
Before:	Walsh C
Decision:	The Court orders that: (1) The appeal is dismissed. (2) Development application No. DA 85/2019 for a seniors housing development at 43-47 Murray Farm Road and 13-19 Watton Road, Carlingford is refused. (3) The exhibits are returned with the exception of Exhibits 1 and A-E.
Catchwords:	DEVELOPMENT APPLICATION – seniors housing – residential care facility – streetscape character compatibility – neighbour impact – solar access for occupants – balancing impact and public benefit
Legislation Cited:	Environmental Planning and Assessment Act 1979, s 8.7 Parramatta (former The Hills) Local Environmental Plan 2012, cl 2.3 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, cll 25-27, 30-40, 46-48
Cases Cited:	GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) 131 LGERA 383; [2003] NSWLEC 268 New Century Developments Pty Limited v Baulkham Hills Shire Council (2003) 127 LGERA 303; [2003] NSWLEC 154 Project Venture Developments v Pittwater Council (2005) 141 LGERA 80; [2005] NSWLEC 191
Texts Cited:	

Seniors Living Policy: Urban Design Guideline for Infill
Development

The Hills Development Control Plan 2012

Category:

Principal judgment

Parties:

HB & B Property Pty Ltd (Applicant)

City of Parramatta Council (Respondent)

Representation:

Counsel:

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Solicitors:

Mills Oakley (Applicant)

City of Parramatta Council (Respondent)

File Number(s):

2020/68689

Publication restriction:

No

JUDGMENT

- 1 This is an appeal under s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of development application No. DA 85/2019 (DA) for a seniors housing development in the form of a residential care facility at 43-47 Murray Farm Road and 13-19 Watton Road, Carlingford (site). While the Respondent in this appeal is City of Parramatta Council (Council), as the capital investment value of the proposal is over \$30 million, the consent authority for the DA was the Sydney Central City Planning Panel, which refused the application on 11 May 2020.

The site and setting

- 2 I rely on Council's Amended Statement of Facts and Contentions (Ex 1) for some of the descriptive particulars in this and the following two sections.
- 3 The site comprises the following three lots: Lot 1 DP 210512, Lot 16 DP 238510 and Lot 6 DP 259726. The site is irregular shaped with a combined site area of 7063.94 m². The southern frontage to Murray Farm Road is 50.289 m and the northern frontage to Watton Road is 46.12 m.
- 4 The site contains several significant trees and mature vegetation as well as disused residential and bus depot structures. A high voltage power corridor runs across the south-east corner of the site. A portion of the site is subject to flooding. The site has a significant cross fall in both north-south and east-west directions.

The wider setting is generally characterised as a low density residential area, albeit noting that there is a medical practice and pathology laboratory directly across Murray Farm Road from the site, and a neighbourhood shopping centre around 200 m to the north of the site's northern boundary.

Statutory setting

- 6 The site and its general environs are located within the R2 Low Density Residential zone under Parramatta (former The Hills) Local Environmental Plan 2012 (PFHLEP). The zone objectives require consideration under cl 2.3 and are as follows:
- To provide for the housing needs of the community within a low density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - To maintain the existing low density residential character of the area.
- 7 The proposed development can be characterised as 'seniors housing' and, at a further level of descriptive detail, a 'residential care facility', under the Dictionary to PFHLEP. While these uses are prohibited under PFHLEP, the proposal relies on, and is permissible under, the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors). Relevant particulars of the SEPP Seniors are introduced later.
- 8 The Hills Development Control Plan 2012 (HDCP) also applies and arose in evidence.

The proposal

- 9 The proposal, as amended, seeks consent for the demolition of existing structures and removal of some 21 trees, then construction of a residential care facility of 118 beds, some particulars of which are outlined below:
- Basement level – comprising basement car parking, loading bay (with service vehicle access by our Watton Road in the north-west of the site), certain service elements and 26 care units along with an internal courtyard.
 - Ground level – comprising entry, a cafe, administration area, various services, outdoor balconies, garden areas and 46 care units.
 - Level 1 – comprising lounge and sitting areas, serveries, back of the house, balconies, and forty-six (46) care units.
 - Civil works including significant cut and fill, retaining walls, and various stormwater management and flood protection works.
 - Substantial soft and hard landscaping.

Issues

- 10 The contentions pressed by the time of the hearing can be categorised into the following three issues, the first two of which are interrelated:
- (1) The proposal's relationship to, and compatibility with, existing low density residential development.
 - (2) The visual presentation of the proposal in the streetscape, again, as to whether it is compatible with the local setting; both in regard to Murray Farm Road and Watton Road.
 - (3) Solar access, with the particular concern the sunlight access available to residents of the facility.
- 11 Contentions were also raised issues in regard to stormwater management and flooding and landscaping. Landscaping comes into attention in regard to topics (1) and (2), above. While expert evidence expressed satisfaction in regard to stormwater management and flooding with various plan amendments, some attention to flooding is given in light of public submissions (see below).
- 12 Experts providing evidence in the proceedings are listed in the table below.

	Expertise	For
B Black	Town planning	Applicant
D Wan	Town planning	Council
J Johannsen	Urban design	Applicant
M Taylor	Landscape architecture	Applicant
R Bollard	Landscape and arboriculture	Council
P Castor	Arboriculture	Applicant
A Francis	Stormwater	Applicant
D Lyons	Flooding	Applicant
P Clark	Stormwater and flooding	Council

- 13 Apart from concerns in regard to stormwater management and flooding which I mention above, and a concern in relation to access to facilities and services which I think was addressed in 'without prejudice' conditions; the public submissions opposing the

proposal, could generally be seen as aligned with the first two topics listed above. I will note that during the site inspection, the opportunity was taken to view from the rear area of 49 Murray Farm Road.

Structure of judgment and summary of findings

- 14 Immediately below, I spend a little time on the detail of the statutory position. Then, the first of the issues nominated above occupies the substantive portion of this judgment. In regard to this issue, first I further particularise the aspects of the development pertinent to the topic. I then consider the evidence. It will be seen that the proposal's adverse impact on 49 Murray Farm Road is most significant to the determination.
- 15 I then briefly examine the other two issues before turning to the central question facing the determination. This is whether the adverse impacts in regard to 49 Murray Farm Road provide sufficient justification for the refusal of the application or whether the positive aspects of the proposal, particularly in regard to the increased supply of residential care accommodation, justify these effects in the circumstances. The finding is that the proposal does not warrant approval in its current form.

Further statutory particulars

- 16 The DA seeks consent under Ch 3 of SEPP Seniors. SEPP Seniors nominates certain pre-requisites before consent to a DA may be issued under Ch 3. These come under the headings:
- Site related requirements (at cll 26-27, and relevantly cl 25(5)(b) of SEPP Seniors)
 - Design requirements (cll 30-39)
 - Development standards to be complied with (cl 40)
- 17 Relevantly, there are also standards that cannot be used to refuse consent for residential care facilities (cll 46-48).

Site-related requirements

- 18 SEPP Seniors (at cl 29) requires a consent authority to "take into consideration" certain issues otherwise associated with site compatibility certificates (referenced at cl 25(5)(b)). The relevant provisions, which draw attention to impact on the existing natural environment and existing land uses, are at subcll 25(5)(b)(i) and (v):

(i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,

...

(v) without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development,

- 19 On the basis of the written evidence provided, I am satisfied in regard to the other site-related requirements (ie in regard to cll 26-29).

Design requirements

- 20 Clause 31 requires me to take into consideration the provisions of the Seniors Living Policy: Urban Design Guideline for Infill Development (Guideline).
- 21 Clause 32 then provides that consent must not be granted unless I am satisfied that “adequate regard has been given to the [design principles set out in cll 33-39 of SEPP Seniors]”. I will reproduce selected design principles which relate to the contentions which are pressed:

33 Neighbourhood amenity and streetscape

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, and

...

(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, and

(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and

(d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and

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

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

...

34 Visual and acoustic privacy

The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by—

(a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and

(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.

Development standards to be complied with

Part 4 of the SEPP Seniors nominates development standards to be complied with. The only point raised by Council was in regard to cl 40(4), concerned with building height in zones where residential flat buildings are not permitted (such as the subject zone). It is reproduced relevantly below:

(1) **General** A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.

...

(4) **Height in zones where residential flat buildings are not permitted** If the development is proposed in a residential zone where residential flat buildings are not permitted—

(a) the height of all buildings in the proposed development must be 8 metres or less, and

...

(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

- 23 The experts agree that the plans show the proposed development does not exceed the 8 m height standard. While it was not pressed in regard to jurisdiction, Council notes the fact that there is proposed a building two storeys in height, near the rear boundary of 49 Murray Farm Road, which it sees as notable in regard to subcl 40(4)(c). The plans show that, for the purposes of subcl (4)(c), the “rear 25% area of the site” is that portion of the site near Watton Road (Ex C, DA4-60), a matter not contested in the hearing as a matter of statutory interpretation.

Standards that cannot be used to refuse development consent

- 24 SEPP Seniors then provides, at cl 48, a series of standards that, if complied with, the relevant grounds cannot be used to refuse development consent. It is agreed that the proposal meets each of the “cannot refuse standards” at cl 48, and as such the DA cannot be refused on the grounds of building height, density and scale, landscaped area or parking for residents and visitors.

Zone objectives under PFHLEP

- 25 I will also reference here the objectives of the R2 zone under PFHLEP (see [6]). Council highlights the third objective, which might be interpreted as supportive of Council’s contentions in regard to low density residential character compatibility. I also note that the second zone objective might be thought of as bringing an openness to uses other than low density residential development.

Compatibility with existing low density residential development

The concerns here are mainly in regard to visual massing, enclosure and visual privacy. The primary point of attention is in regard to impacts experienced at the residential property at 49 Murray Farm Road.

- 27 To clarify, I will say here that I agree with the experts that the proposal's relationship with the residence to the immediate west of the site at Watton Road (ie 11 Watton Road) presents as "subservient", only stepping up to its greater height at a considerable distance from the neighbouring boundary, and with privacy treatment to eastern windows. This relationship is satisfactory. I also note the contentions did not raise concerns in regard to the relationship with the residential development to the east of the site. During the hearing, the Applicant pointed to the considerable presence of vegetation along this common boundary.

Further particulars

- 28 The written and oral objections from owners and residents of 49 Murray Farm Road indicated, and it was apparent from the site view, that there is an enjoyable area of outdoor living in the rear yard and deck to this residence. These spaces enjoy a northern orientation and have a very pleasing outlook to the north and north-east direction with tall trees pleasantly filtering wider views. It was also notable during the site inspection that an existing garage structure at the rear of 13 Watton Road, built close to the shared rear boundary with 49 Murray Farm Road, disrupts the outlook at present.
- 29 The proposal would construct a two-storey (western) wing; offset from but generally along this common boundary (ie the rear boundary of 49 Murray Farm Road). Some particulars of this wing are as follows.
- 30 The construction would involve clearing and removal of the existing garage, and the wing would be in cut and the ground level would sit below the rear yard of 49 Murray Farm Road. To assist in evaluation, the experts agreed that the ridge of the roof of the western wing would be about 1.5m above the ridge of the existing garage at the rear of 13 Watton Road.
- 31 The proposed basement would be offset 3m, with the external wall of the six south-facing rooms on the upper level of this wing offset 4.4m from the boundary. The windows on the upper level would be framed by a privacy screen which juts out a little (Ex C DA9-02). Privacy would be effected by a "glass frit" pattern on each window (Ex C DA9-01).
- 32 Planting is proposed within the site along the common boundary with 49 Murray Farm Road. That is to say, both the southern boundary (ie adjacent to the western wing) and the eastern boundary of 49 Murray Farm Road. The planting regime involves a layered planting approach. Near the southern boundary of 49 Murray Farm Road, there would

be a 3m high screening hedge on the site, at grade, along a 1.8m high boundary fence. Then sitting lower (by some 1.5m) would be taller plantings (blueberry ash (10m mature height) and hibiscus (5m mature height)) (Ex E LA08 and LD05).

- 33 There is a courtyard area proposed adjacent to the eastern boundary of 49 Murray Farm Road, in the area of, and below, the rear yard of that property. Beyond the courtyard, buildings would be setback 12m from the property boundary (Ex C DA 9-22). South of the courtyard, there is a proposed building element, more or less aligning with the existing building occupying 49 Murray Farm Road which is setback 4m from the common boundary. While for the most part further offset, the proposed built form, as perceived along the eastern boundary, would sit at a similar roof ridge height to the western wing (Ex C DA2-04). It is also notable, in regard to the eastern boundary relationship, that a large eucalypt would be retained in this area, along with a smaller tree. Otherwise again, a 3m high-screen hedge would be planted along the 1.8m boundary fence. Advanced plantings, generally in regard to this residential interface, were proposed.

Evidence

- 34 While the particulars of the presentation of the proposal to 49 Murray Farm Road were agreed, the reasonableness of this relationship was not. Mr Wan saw a serious impact as a consequence of the continuous unbroken built form which he believed would be, perceived from the rear of 49 Murray Farm Road, seen to be out of character with the R2 Low Density Residential zone. It was suggested that the proposal embodied a design choice to adopt the 4.4m setback in this area, and that better planning could have mitigated against this.
- 35 The Applicant's experts believed that the proposal was reasonable and respectful in regard to 49 Murray Farm Road. Ultimately, Mr Johannsen indicated that the introduced landscaping would have a "very positive" effect on the outlook from the backyard. He pointed to the proposed 12m building setback from the eastern boundary. While acknowledging the concern that the hedge could bring its own potential visual concerns in terms of visual enclosure, this could be mitigated by conditions relating to its regular pruning.
- 36 Mr Black believed that buildings would need to be taller to bring a sense of enclosure to 49 Murray Farm Road. He also noted that under Council's controls a residence could be setback 6m from the rear boundary now and built to a height of 9m (albeit noting that the 'building height' definition under SEPP Seniors means the distance from ground level to upper level ceiling rather than the highest point of the building which is adopted in PFHLEP).

Mr Wan acknowledged that there was not a great difference in perception between a 4.4m setback and a 6m setback (as would be allowed for a residence under HDCP) but that the concern was in regard to the continuity of the visual presentation of the proposal as now proposed, which would be apparent from the rear of 49 Murray Farm Road.

Consideration

38 There are two problems faced by the Applicant which it seeks to address by way of its purposeful landscape detailing. The first is to help mitigate the visual privacy impacts of the upper level of the west wing. The proposed “glass frit” was not familiar to the experts, but my impression was of an ambition to allow natural light into, and at least, some outlook from the occupied rooms to assist in the amenity that might be enjoyed from within the rooms (window detailing was provided at Ex C DA 9-01 and 9-02). The window sizing was relatively large and it was indicated that these rooms were more than bedrooms and would be occupied for considerable periods by residents (and one might assume quite occasionally by visitors).

39 The second problem is the mitigation of the visual impact of the length of the continuous building which might otherwise be apparent from the rear of 49 Murray Farm Road.

40 I accept that the provisions of cl 40(4)(c) do not apply (that a building located in the rear 25% area of a site must not exceed 1 storey in height), but believe it not unreasonable for Council to suggest the control as worth some note in a merits analysis. However, the concern is not only the height of the building along the western wing at the offset of 4.4m, but the extent of the massing of this height. The massing along the entirety of the boundary to 49 Murray Farm Road is atypical and impactful as a consequence of the western wing alone, but the building returns around the eastern boundary to complete a sense of enclosure, albeit further offset towards the east. The effect is to take away considerably from the current pleasing and more open outlook. The visual privacy and enclosure of the proposed building would be screened out over a few years by landscaping, but then the landscaping would itself effect a sense of quite complete enclosure.

41 Here I acknowledge any outlook across neighbouring property is at risk in a setting such as this. I also acknowledge the disruption of outlook from the existing garage (something I consider to be modest rather than overbearing and occupying a somewhat narrow field of view). But the completeness of the enclosure and loss of outlook cannot be seen as bringing a harmonious outcome mindful of SEPP Seniors’ own standards and the principles indicated in Section 4 of the Guideline. The outcome might be improved by a lower level building along the western wing and responsive landscaping

(some sightlines would seem to be available over a single storey western wing), or some otherwise breaks in visual massing to the north-east as perceived from 49 Murray Farm Road.

The visual presentation of the proposal in the streetscape

42 I agree with the experts that the presentation of the proposal to Watton Road is satisfactory. This is because the proposal only steps up to its greater height at a considerable distance from the neighbouring boundary, and the otherwise prominence of existing vegetation and extensive proposed landscaping and mounding in the large area of communal space (Courtyard 4) proposed in the low-lying land in the Watton Road environs. In turn, the key concern is in regard to the Murray Farm Road streetscape.

43 There was some attention to the Court's planning principle on assessing compatibility of "medium density" seniors housing in low density residential settings arising in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council* (2003) 131 LGERA 383; [2003] NSWLEC 268 (*Wombarra*). Roseth SC cited four principles in *Wombarra*, the last three of which have more relevance here:

"16 The second principle is that where the size of a SEPP 5 development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.

17 The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.

18 The fourth principle is that a SEPP 5 development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced, only that their introduction should be done with care and sensitivity."

44 The key concern is in regard to whether the building would unreasonably dominate the streetscape. While the building height is considered acceptable, the proposed building length is about double that of the residence at 49 Murray Farm Road. Council submits that the "generous breaks" referenced in the second of the *Wombarra* principles are not provided.

45 While the proposal would sit more harmoniously in the streetscape were there less continuity in the massing presented to Murray Farm Road generally, I accept the Applicant's position on this point. Here I note, mindful of *Project Venture Developments v Pittwater Council* (2005) 141 LGERA 80; [2005] NSWLEC 191 (*Project Venture*) at [26], the importance of the relationship created by building height, setbacks and landscaping. There is a 13m front setback (a little greater than 49 Murray Farm Road) which provides considerable opportunity for landscaping. But more important is the existence of the larger eucalypt and small copse of other existing vegetation central to

the front boundary. This existing landscape features and proposed setback landscaping, along with the architectural form (including the modest visual break in the central area of the front façade) and relatively low profile of the building itself, in combination, offsets considerably the lack of a “generous” physical break. The proposal can be seen in the photomontages to respond to the nearby residential development and, while clearly a different form of building than the others, could sit as a reasonably harmonious feature in the street setting, in my opinion.

Solar access for residents

46 Clause 35 of SEPP Seniors provides as follows:

The proposed development should—

(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and

(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.

47 Mr Wan was concerned that in attempting to achieve a development yield while meeting the required building height standard, the extent of excavation subsequently involved, meant a number of the units were “subterranean” and had inadequate solar daylight, sunlight and natural ventilation.

48 Mr Black drew attention to the fact that SEPP Seniors does not contain any minimum requirements for solar access in regard to residential care facilities. He distinguished this from the controls applying to individual living units under SEPP Seniors. He believed that (Ex 3, par 42):

“...The nature of these facilities is such that residents have common areas to congregate (outdoor and indoor) to obtain exposure to weather depending on the time of year. This is different to (self-contained dwellings) for example which are designed as independent dwellings and required to achieve 3 hours solar access to 70% of dwellings during mid-winter. The SEPP was intentionally drafted to not require a minimum quantum of solar access to (residential care facilities).”

49 During the hearing, there was a very close analysis of the proposed solar access features, both within rooms and in shared common areas located indoor and outdoor. While I acknowledge that some of the rooms are clearly less than ideal, mindful of the terms of the provisions of cl 35 and its reference to “daylight”, I accept Mr Black’s comments on the differing needs of residential care residents. My overall impression was that there was reasonable access to sunlight both indoors and outdoors during mid-winter. While acknowledging that many of the rooms would not have such sunlight, there was access to daylight and not so far to go to access the sun.

Lay submission in regard to flooding

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One of the lay submissions raised concern about local flooding, particularly in the environs of the site's Watton Road boundary. Photographs were tendered evidencing street flooding and inundation of private lands in that environs.

- 51 Flooding was raised as a contention by Council, with the site of the located "on the edge of the 1:100 flood zone" (Ex 1 p 21). In their joint report, the flooding experts agreed that the proposal was satisfactory in regard to flooding, and that the contention was resolved (Ex 7 p 6). Mindful of *New Century Developments Pty Limited v Baulkham Hills Shire Council* (2003) 127 LGERA 303; [2003] NSWLEC 154 at [61]-[64] (per Lloyd J), I accept the evidence of the experts.

Conclusion

- 52 SEPP Seniors seems to have two principal concerns of relevance here. First is in regard to increasing the supply of housing for seniors and people with a disability in well located areas, including the frail and those needing special care, a group particularly targeted with this proposal. Second is that of encouraging good design, including that built form responds to its setting. The interrelationship seems to me to be important. That is, that this increase to supply, which includes the overriding of local planning controls (in this instance a prohibition to the use in the R2 Low Density Residential zone), goes hand in hand with a requirement for design responsiveness.
- 53 The proposal proffers a significant level of additional supply of seniors housing and, in particular, that relating to residential care. This is of public interest. An excerpt from the Central City District Plan, prepared by the Greater Sydney Commission, was tendered into evidence as Ex H. Exhibit H indicates significant growth in seniors population, including in the general environs of the site:

"A 183 per cent proportional increase in people aged 85 and over, and a 95 per cent increase in the 65–84 age group, is expected by 2036. This means 16 per cent of the District's population will be aged 65 or over in 2036, up from 11 per cent in 2016.

Parramatta and The Hills local government areas have the largest projected growth in the 65 to 84 age groups."

- 54 Exhibit H also references an expected increased demand for local aged care facilities, including for people with dementia and "the frail aged", groups which might benefit from the services of facilities such as proposed here.
- 55 There is considerable attention to the question of compatibility with neighbouring development in the matters warranting consideration under SEPP Seniors. While points of attentions are cl 33 and 34 (see [18]), and whether "adequate regard" has been given to neighbourhood amenity and streetscape and "visual and acoustic privacy", as itemised; there is also a need, mindful of cl 29 and as detailed at [15] to take into consideration the "impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing (land) uses".

There are many intricacies to the design of the proposal, and some successes in relation to architectural and landscape details when ambitions to supply residential care accommodation are concerned. But as foreshadowed in *Project Venture* (at [25]), the impact of the proposal on the amenity of 49 Murray Farm Road can be relatively objectively assessed. In this instance, it seems to me there would be a severe impact on the amenity enjoyed at 49 Murray Farm Road as a consequence of the more or less complete enclosure of the rear and eastern side of the property by the proposed development. The sense of openness in the rear yard would be almost entirely lost.

57 Of particular importance here, I am not convinced that design changes which give more sympathetic regard to the amenity of 49 Murray Farm Road are not available without unduly prejudicing the supply of residential care accommodation. In turn, it seems to me that adequate regard has not been given to neighbour amenity and the proposal is not consistent with the ambitions of SEPP Seniors in its current form.

58 In closing submissions, the Applicant offered me the opportunity of lowering, or otherwise controlling, the landscape if I was concerned about its density. Unfortunately, it is not as easy as this, as the proposed landscaping is essential as a mitigation treatment for the proposed unbroken building presentation which would otherwise be apparent from the rear of 49 Murray Farm Road.

Orders

59 The Court orders that:

- (1) The appeal is dismissed.
- (2) Development application No. DA 85/2019 for a seniors housing development at 43-47 Murray Farm Road and 13-19 Watton Road, Carlingford is refused.
- (3) The exhibits are returned with the exception of Exhibits 1 and A-E.

P Walsh

Commissioner of the Court

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Decision last updated: 08 July 2021