

**SYDNEY NORTH PLANNING PANEL
COUNCIL ASSESSMENT REPORT**

Panel Reference	2019SNH002
DA Number	DA2018/1752
LGA	Northern Beaches Council
Proposed Development	Demolition works and Construction of a Seniors Housing Development, comprising a Residential Care Facility and Independent Living Units, community and strata title subdivision
Street Address	Lot 368, DP 752017, No. 58 Laitoki Road, Terrey Hills
Applicant	Tolucy Pty Ltd
Owner	Barbara Enid Harris Anthony Brian Harris
Date of DA lodgement	26 October 2018
Number of Submissions	A total of 175 submissions received, which includes: <ul style="list-style-type: none"> • 174 individual submissions objecting to the proposal • 1 individual letter in support of the proposal
Recommendation	REFUSAL
Regional Development Criteria (Schedule 7 of the SEPP) State and Regional Development) 2011	Development with a Capital Investment Value (CIV) of more than \$30 million (\$69.6 million)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979; • Environmental Planning and Assessment Regulations 2000; • State Environmental Planning Policy (State and Regional Development) 2011; • State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development; • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004; • State Environmental Planning Policy No. 55 – Remediation of Land; • State Environmental Planning Policy (Infrastructure) 2007; • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; • State Environmental Planning Policy No 44 – Koala Habitat; and • Warringah Local Environmental Plan 2011.
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Architectural Plans • Attachment 2- Site Compatibility Certificate • Attachment 3 - Applicant's Legal advice on the applicability of Clause 26 • Attachment 4 – Applicant's Clause 4.6 on Clause 40(4) (b) of SEPP (HSPD) 2004
Report by	Louise Kerr – Director Planning and Place
Responsible Officer	Lashta Haidari - Principal Planner
Report date	1 May 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 summarised, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
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Clause 4.6 Exceptions to development standards

If a written request for a contravention of 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 (S94EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Not Applicable
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Conditions

Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefers 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</i>	Yes
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Executive Summary

Northern Beaches Council is in receipt of a Development Application (DA2018/1752) from Tolucy Pty Ltd for redevelopment of the site known as 58 Laitoki Road, Terrey Hills for the purposes of a large scale seniors housing development.

The subject site is bound by Laitoki Road and Cooyong Road and is currently zoned RU4 Primary Production Small Lots under Warringah Local Environmental Plan 2011 (WLEP 2011). Development for the purposes of seniors housing is permitted with consent under the *State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004* (SEPP HSPD), provided a Site Compatibility Certificate (SCC) is issued by the NSW Department of Planning and Environment (DPE) under Clause 25(4) (a) of SEPP (HSPD).

On 14 July 2017, an SCC was issued by the Deputy Secretary of the DPE for the proposed development. In issuing the SCC, the DPE imposed a number of requirements on the determination as part of Schedule 2 of the SCC. Of particular importance are the conditions attached to the SCC requiring the Applicant to resolve issues relating access to services and facilities via appropriate pedestrian and public transport facilities and the issue of building bulk and scale.

The assessment of this DA has found that the issues identified in Schedule 2 of the SCC relating to access requirements and bulk and scale have not been satisfactorily resolved in this application. Firstly, from the documentation submitted with the application, it appears that the proposed development has a limited range of on-site services and facilities and as such the residents will depend on off-site facilities and services and/or public transport to take them to those facilities and services. The services and facilities required by older people or people with a disability are not located within walking distance of the site and as such the residents will be dependent upon private transport to access the available services which are a significant distance from the site and with a steep grade.

The applicant has indicated that a private mini-bus service will be provided by the operators, however, it is considered that this will only provide a partial solution to the critical issue of adequate transportation for future occupants. The site is remote from the services and

facilities nominated within clause 26 of SEPP (HSPD) 2004 and so the application for this reason is recommended for refusal.

Secondly, under Clause 33 of the SEPP, there is a requirement for new development to recognise and implement the desirable elements of the location's current character and contribute to the quality and identity of the area, although the SEPP does not provide specific controls for assessing whether a proposal is compatible with an existing area. Therefore, this assessment has taken into consideration the permissible forms of development within the RU4 zone and the principles contained in the Planning Principle of the Land and Environment Court (LEC) to determine the compatibility of the development. The character assessment revealed that the development, as proposed, is at odds with the desire future character of the locality, with a predominance of adjacent properties sited within large rural blocks.

In this regard, the proposal is found to be inconsistent with the core principles as contained in SEPP 65 and the design and character requirements under SEPP (HSPD), WLEP 2011 and *Warringah Development Control Plan* (WDCP). The assessment of the application has revealed that application was not supported by adequate information to fully determine the likely impacts of the proposed development and inadequate information to address certain clauses of SEPP (HSPD).

The proposed development has a capital investment value of \$69.6 million, which is in excess of \$30 million threshold. Therefore, the Sydney North Planning Panel (SNPP) has the function of determining the application in accordance with Section 2.12 and 2.15 (previously Section 23G) of the *Environmental Planning and Assessment Act 1979* (EPA Act).

An assessment of the proposed development under Section 2.12 and 2.15 (previously 23G), and Section 4.15 (previously 79C) of the EPA Act, 1979 has been undertaken and it is considered that the proposal does not satisfy the applicable controls. All relevant processes and assessments have been satisfactorily addressed.

Accordingly, it is recommended that the SNPP, as the determining authority, refuse the application for the reasons detailed within the "Recommendation" section of this report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the EPA Act (as amended) and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the EPA Act, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

STATUTORY CONTROLS

- a) *Environmental Planning and Assessment Act 1979;*
- b) *Environmental Planning and Assessment Regulations 2000;*
- c) *State Environmental Planning Policy (State and Regional Development) 2011;*
- d) *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development;*
- e) *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;*
- f) *State Environmental Planning Policy No. 55 – Remediation of Land;*
- g) *State Environmental Planning Policy (Infrastructure) 2007;*
- h) *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;*
- i) *State Environmental Planning Policy No 44 – Koala Habitat; and*
- j) *Warringah Local Environmental Plan 2011.*

NON-STATUTORY CONTROLS

- a) *Warringah Development Control Plan 2011*

SITE DESCRIPTION

The subject site, known as No 58 Laitoki Road, is located in Terrey Hills and is bound by Laitoki Road to the east and Cooyong Road to the south. The site consists of land with a legal identification of Lot 368 in DP 752017.



Figure 1 - Site Plan (note: site boundaries shown in blue)

The site is generally rectangular in shape, with a slight splay at the south western corner of the site. It has a street frontage to Laitoki Road of 76.43m and a street frontage to Cooyong

Road of 237.64m. The rear (western) boundary is 83.14m and the northern boundary is 266.83m. The site has an area of 19,545m².

The site slopes from the north-east to south-west with a fall of approximately 20 metres over 240 metres having a gradient of 8.3%. The site is generally open grassed area and contains a scattering of native canopy trees and some exotic trees. The perimeter of the site is more densely vegetated with native trees and understorey vegetation.

The site is currently occupied by a timber dwelling with a deck surrounding the perimeter of the dwelling and a swimming pool located at the rear of the dwelling with a detached garage located to the north of the dwelling accessed via a driveway off Cooyong Road. A large horse arena is located in the western portion of the site with two (2) metal sheds, utilised as stables are located in the north western portion of the site.

Laitoki Road and Cooyong Road are setback beyond densely landscaped street verges, with the dwellings located within large cleared paddocks.

To the north of the site is No. 60 Laitoki Road, a rural residential site of similar size to the subject site. The site contains a dwelling as well as a number of sheds and stored machinery. The eastern and southern boundary of No. 60 Laitoki Road contain dense vegetation.

To the east of the site, on the opposite side of Laitoki Road is land zoned R2 Low Density and characterised by single and 2 storey dwellings fronting Laitoki Road.

To the south of the site, on the opposite side of Cooyong Road are a number of rural residential lots containing large dwellings, swimming pools and tennis courts. The dwellings are generally setback between 15 metres and 30 metres from Cooyong Road.

To the west is No. 56 Cooyong Road, a relatively small rural residential lot containing a dwelling and shed accessed off Cooyong Road.

RELEVANT HISTORY/ BACKGROUND

Pre-Lodgement Meeting (PLM)

A PLM was not held in relation to this proposal, despite the significant constraints on the site and the importance of resolving issues concerning access, character and built form prior to lodgement of a DA.

Site Compatibility Certificate (SCC)

On 3 February 2017, a Site Compatibility Certificate (SCC) application was lodged with the Department of Planning and Environment (DPE). Council provided a detailed response (dated 20 April 2017) to the DPE, raising concerns with regard to the suitability of the site in terms of its distance from public transport and services, environmental features of the site, hazard affectations, access, character, and compatibility.

On 14 July 2017, DPE issued the SCC. In issuing the SCC, the DPE imposed a number of requirements on the determination (refer to Schedule 2 of the SCC). The requirements imposed relate to the resolution of issues relating to access to services and facilities, building bulk and scale, flora and fauna issues, landslip issues, flooding, traffic, and potential contamination.

DEVELOPMENT APPLICATION HISTORY

On 26 October 2018, the DA was lodged with Council.

On 28 December 2018, the Applicant filed a Class 1 application with the Land and Environment Court against the deemed refusal of the DA.

The hearing dates are set down to commence on 20 May 2019.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks development consent for demolition works and construction of a seniors housing development comprising of a 94 bed Residential Aged Care Facility and 60 Independent Living Units (Serviced Self Care) spread across three separate buildings and associated landscaping works. Vehicular access is to be provided from two (2) separate driveways off Cooyong Road. The proposal also includes a Community title subdivision of the resultant development.

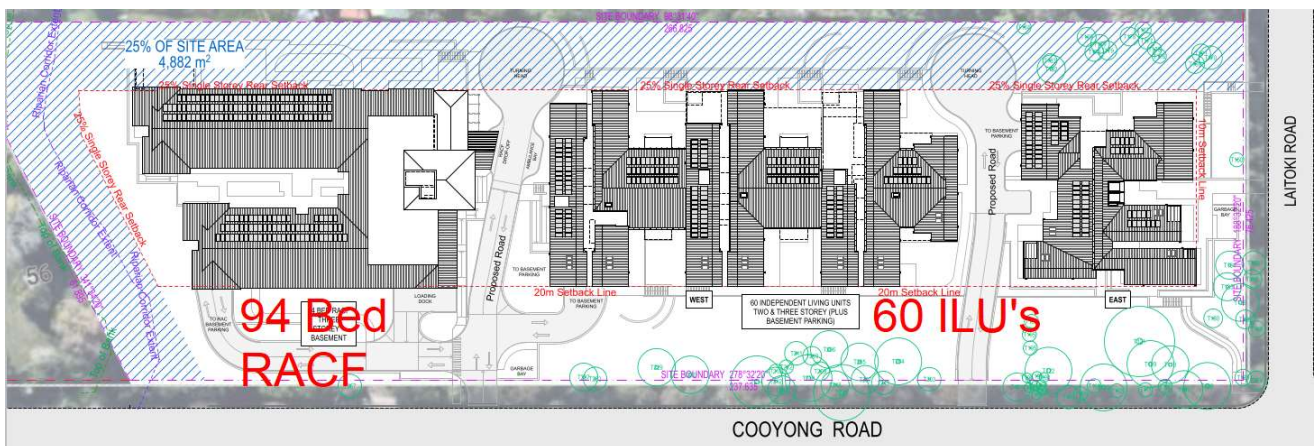


Figure 2 - Proposed Building Arrangement

(Source: Adapted by the author from Plan No. DA-A003, prepared by Calder Flower Architects)

Further detail of the proposal is provided as follows:

Residential Aged Care Facility

The 94 bed Residential Aged Care Facility (RACF) is located on the western portion of the site (described below), and includes the following:

- Level 1 (Basement Level) - provides parking for 31 cars including 1 disabled space and 1 space for a 12-seater mini-bus. The basement also provides for a bulk store, service lobby and two lifts and an internal stair case.
- Level 2 - provides for 47 single occupancy rooms (including 2 single disabled occupancy units) each with its own ensuite. This level also provides for a kitchen, laundry, 3 dining/lounge areas, garbage room as well as staff facilities, plant and storage rooms.
- Level 3 - provides for 47 single occupancy rooms (including 3 single disabled occupancy units) each with its own ensuite. This level also provides for the main

lobby/entrance, administration, function room/café, offices and consulting rooms, 3 dining/lounge areas as well as staff facilities, plant and storage rooms.

- Level 4 - provides for a staff room, amenities, lobby and mechanical plant.

The main front entrance to the RACF building is to be located on the building's eastern elevation and is provided with a covered porte-cochere. The proposed western driveway services this front entrance as a drop off/pick up area and area for ambulance parking.

Self- Contained Units (Serviced Self-Care)

The 60 self-contained units are located within the centre and eastern portion of the site. These units are divided into two separate buildings and separated by a new cul-de-sac driveway.

Each of the units comprise two bedrooms, two bathrooms, kitchen, laundry and balcony with 15 units also comprising a study. The proposal incorporates 61 parking spaces across 4 basement areas.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See the discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None Applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	<i>Warringah DCP</i> is applicable to this application.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None Applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p>The <i>EPA Regulations 2000</i> requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be addressed via a condition of consent should this application be approved.</p> <p>Clause 92 of the <i>EPA Regulations 2000</i> requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter can be addressed via a condition of consent should this application be approved.</p> <p>Clause 50(1A) of the <i>EPA Regulations 2000</i> requires the submission of a Design Verification Statement from the designer at lodgement of the development application.</p> <p>A Design Verification Statement was submitted with the Development Application and has been signed by the project architect.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>i. The environmental impacts of the proposed development on the natural and built environment are addressed under the <i>Warringah DCP</i> section of this report. A number of inconsistencies with the relevant controls have been identified which indicate the</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>impact of the development on the built environment is not acceptable.</p> <p>ii. The development will provide seniors housing in the locality, therefore the development ensures that the housing stock caters for a broad cross section of the community. In terms of the provision of housing, the proposed development will not have a detrimental social impact on the locality.</p> <p>iii. The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed land uses.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is not considered to be suitable for the development given its location within an area which renders the development to be inconsistent with the applicable planning controls for the site.</p> <p>In this regard, the site is not suitable for the proposed development given the excessive distance and grades of the pedestrian access to the closest public transport services</p> <p>Given the site's isolated location, the density of the proposed development, and planning intent for the site reflected by its RU4 zoning in WLEP 2011, any future redevelopment of the site should be more sympathetic with contemporary planning objectives and design standards.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the <i>EPA Act</i> or <i>EPA Regs</i></p>	<p>The 175 public submissions received in response to the proposed development are addressed under 'Notification & Submissions Received' within this report. Several issues were raised which warrant the refusal of the application.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>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.</p> <p>The provision of seniors housing in the locality is generally, in the broader public interest.</p> <p>However, the various controls contained within <i>Warringah LEP 2011</i> and <i>WDCP</i> provide the community with a level of certainty as to the scale and intensity of future development and the form and character of development that is in keeping with the desired future character envisaged for the locality.</p> <p>This assessment has found the development to be inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and within the</p>

Section 4.15 'Matters for Consideration'	Comments
	locality and is therefore not considered, in its current form, to be in the localised public interest.

EXISTING USE RIGHTS

Existing Use Rights do not apply to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The application was publically exhibited in accordance with the EP&A Act, *Environmental Planning and Assessment Regulation 2000* and WDCP 2011. The application was notified from 31 October 2018 to 3 December 2018. Additionally, the application was advertised in the Manly Daily on 3 November 2018 and a notice was placed on the site.

As a result of the public exhibition of the DA, 174 submissions received, which includes:

- 174 objecting to the proposal; and
- One (1) letter in support of the proposal.

Assessment of Residents Issues

The relevant matters raised within the submissions have been considered and are addressed as follows:

1. Site Compatibility Certificate

A significant number of concerns have been raised in relation to the process of the SCC that has been issued for the site. The submissions note that the SCC should be considered invalid due to improper consideration and assessment.

Comment

The assessment and the issuing of the SCC is not matter for Council to consider as part of the assessment of this application. However, it is noted that the proposed development does not address the requirements of Schedule 2 of the SCC.

2. Inconsistent with the objectives of the RU4 zone

Concerns have been raised that the proposed development is incompatible with the objectives and future form of development envisaged for the zone.

Comment

The proposal's consistency with the objectives of the RU4 zone is considered under the WLEP 2011 section of this report. In summary, the proposed development has been found to be inconsistent with the objectives of the zone and this issue has been included as a reason for refusal.

3. Traffic congestion

A number of submissions received raised concern that the traffic produced by the development will exacerbate the already congested local road network. Concerns have

been raised that development would result in a significant increase in traffic and a decline in safety for pedestrians and horse riders, which will cause significant safety and congestion problems.

Comment

This issue is addressed under the referral section of this report (refer to Council's Traffic Engineer comments). In summary, Council's Traffic Engineer has indicated that there is insufficient information submitted within the applicant's Traffic Report to accurately determine the traffic impact of the development on the local road network.

This issue constitutes a reason for the refusal of the application.

4. Creation of an undesirable precedent

The submissions raise concern that the approval of the development would create an undesirable precedent for similar types and/or scales of development in the area and this is a form of urban development which is not consistent with the values of the Metropolitan Rural Area.

Comment

In accordance with the provisions of the *EPA Act 1979* and the *EPA Regulation 2000*, Council is required to assess all development applications that have been lodged with Council on an individual basis and against the relevant planning controls, which apply to site at the time of lodgement.

Accordingly, the issue in relation to precedent does not warrant the refusal of the application.

5. The character of the area

A significant number of submissions raised concern that the development is not consistent with the character of the area. In particular, the following concerns have been raised:

- *The bulk, scale, and footprint of the proposal are visually offensive and unlikely to be overcome with plantings;*
- *Design is not in keeping with the current local aesthetic and neighbouring land uses in either the residential or rural zone adjoining the property;*
- *Development will change the character of the community;*
- *Large lot properties provide essential buffer between bushland and higher density residential areas; and*
- *Future widening of the road with kerb and guttering is not in keeping with the roadside verges adjoining the property and will reduce the opportunities for the equine industry.*

Comment

This issue has been discussed at length throughout this report and forms a reason for the refusal of the DA. In summary, it has been found that the development is inconsistent with the character of the area as required under the provisions of SEPP 65 and SEPP (HSPD).

6. Essential services

The submissions raise concern that the existing infrastructure will not be able to support a development of this scale. Particularly, the following specific concerns have been raised:

- *There are inadequate water pressure problems experienced by nonurban residents, this development will be further exacerbating the problem;*
- *The treatment of such a high volume of waste water/sewerage on site is inappropriate and would have significant impacts if it were to fail or overflow;*
- *Limited vehicular access in and out of Terry Hills – evacuation and congestion concerns;*
- *Telecommunication services are often disrupted and unpredictable;*
- *Unreliable electricity supply; and*
- *Insufficient supporting infrastructure and local shops could not support increase in density*

Comment

The provision of infrastructure is managed by the relevant providers (i.e. telecommunications, water, electricity etc.). The applicant has not provided written evidence confirming the availability of reticulated water supply or the means of sewage disposal.

Therefore, this issue is concurred with in part, and is included as reason for refusal where relevant.

7. Environmental Impacts

Several submissions were received which raised concerns regarding the impact upon the natural environment. The following specific concerns have been raised:

- *Insufficient landscaped area on the site with a substantial loss of green space for the community;*
- *The loss of at least 0.08 hectares of Duffys Forest EEC from within the site;*
- *Loss of habitat and impact on native birds and animals;*
- *Impact natural water courses - Significant increase to stormwater runoff*

Comment

This issue is addressed in the relevant referral section by Council's Landscape Officer and Natural Environment Sections and Development Engineers. In summary, the impact on the natural environment is found to be unsatisfactory and is included as a reason for refusal.

8. Inconsistency with the requirements of SEPP (HSPD) 2004

Concern has been raised that the proposed development is inconsistent with the requirement of the *SEPP (HSPD)*. The following specific concerns have been raised:

- *Location of the site does not meet requirements of the SEPP in respect to distance and gradients to public transport.*
- *Topography of the site inappropriate for seniors housing*
- *Exceed the maximum development height of 8 metres*
- *The proposal does not comply with Floor Space Ratio requirements*

- *Insufficient local services – GPs, dentists, and community support services*

Comment

The proposal's consistency with the objectives and standards of the *SEPP (HSPD) 2004* is considered under the *SEPP (HSPD)* section of this report. In summary, the proposed development has been found to be inconsistent with a number of the standards and requirements of this policy and these inconsistencies have been included as reasons for refusal.

9. Affordable housing

Submissions have been made that the proposed development is not affordable so there no benefit to the local community.

Comment

The proposed development seeks consent under the provisions of SEPP HSPD which does not specify requirements for affordable housing.

Therefore, this issue should not be given determining weight.

10. Inconsistency with the Greater Sydney Region Plan – A Metropolis of Three Cities and North District Plan

Concerns have been raised that no strategic planning has taken place to increase the density of Terrey Hills.

Comment

A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions to the year 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.

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 identifies Terry Hills as part of the Metropolitan Rural Area (MRA). It recognises the MRA for its contribution to habitat and biodiversity and ability to support productive agriculture, provide mineral and energy resources, and sustain local rural towns and villages. As identified in the District Plan, urban development is not consistent with the values of the Metropolitan Rural Area. A Metropolis of Three Cities has not identified any urban investigation areas in the North District. This demonstrates a clear direction from the Greater Sydney Commission to avoid future housing growth in these areas, and this position will be supported in Council's first Local Strategic Planning Statement (LSPS) to be publicly exhibited mid-2019.

Council's LSPS will be supported by a number of technical studies including an Employment Study and Environment Study and Housing Discussion Paper. These preliminary studies will provide direction in place based planning for our MRA to help manage environmental, social and economic values. Furthermore, Council's Local Housing Strategy identify the most

suitable locations for seniors housing and housing growth, and this will not be endorsed by Council until approximately March 2020.

Until Council has completed the above technical studies and adopted their LSPS and Local Housing Strategy, it is not considered appropriate to support this development which proposes a loss of land zoned for agricultural purposes and an intensification of land use within the MRA. Furthermore, this area is subject to a bushfire evacuation study for the nearby Ingleside area. Until this study is complete, it would not be appropriate to support the placement of an additional vulnerable community in an area subject to severe bushfire evacuation constraints.

MEDIATION

No mediation has been requested by the objectors.

EXTERNAL REFERRALS

External Referral Body	Recommendation/Comments
Department of Natural Resources Access Regulator	<p>Approval subject to conditions</p> <p>The application was referred to Natural Resources Access Regulator's as Integrated Development. The Department provided their General Terms of Approval (GTA) on 4 February 2019.</p> <p>The GTAs provided may be included in a consent should this application be approved.</p>
Aboriginal Heritage office	<p>Approval</p> <p>The application was referred to Aboriginal Heritage office, whom provided comments on 1 November 2018 stating:</p> <p><i>"no sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites".</i></p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p>
NSW Rural Fire Services (NSW RFS)	<p>No response received</p> <p>The application was referred to the NSW RFS under the provision of Clause 27 (2) of SEPP (HSPD) as the site is located within the vicinity of land identified on a bush fire prone land map certified under section 10.3 of the Act.</p> <p>To date, no response has been provided.</p>
Ausgrid	<p>No response received</p> <p>The application was referred to Ausgrid under clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007.</p> <p>To date, no response has been provided and it is assumed that no objection has been raised with regards to the proposal.</p>

INTERNAL REFERRALS

Internal Referral Body	Recommendation/comments
Building Assessment - Fire and Disability upgrades	<p>Approval subject to conditions</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p>
Environmental Health (Industrial)	<p>Approval subject to conditions</p> <p>No objection subject to conditions.</p>
Waste Officer	<p>Refusal</p> <p>Council's Waste Officer reviewed the proposal and has indicated that The waste facilities of the site for the serviced self-component of the development has not been design to comply with clause C9 of WDCP 2011.</p>
Natural Environment and Climate Change (Bushland and Biodiversity)	<p>Approval subject to conditions</p> <p>Council's NECC (Bushland and Biodiversity) has provided the following comments:</p> <p><i>"The proposed development has been assessed against Clause E1 Preservation of Trees or Bushland Vegetation, E2 Prescribed Vegetation, and E6 Retaining unique environmental features of the Warringah DCP. The site contains areas of remnant native vegetation present primarily within the eastern extent, south-eastern boundary and localised pockets within the centre of the site and along the western boundary which have been identified as conforming to the Duffys Forest Endangered Ecological Community (DFEEC) in the Sydney Basin Bioregion. Approximately 0.08ha of Duffys Forest EEC of 0.28ha located on site will be directly impacted. The western portion of the site associated with Neverfail Gully creek is mapped on the Biodiversity Values Map, however no native vegetation will be removed from this mapped portion of the site.</i></p> <p><i>The proposed development does not trigger the Biodiversity Offset Scheme as the proposed development will not involve clearing of vegetation in excess of 0.5 ha, and will not impact upon the area mapped on the Biodiversity Value Map. The Flora and Fauna Assessment (Narla Environmental Pty Ltd October 2018) conducted a test of significance (5-part test) and concluded that a significant impact is unlikely to the DFEEC, as well as other threatened species with potential to utilise the site.</i></p> <p><i>The Arborist Report identifies several trees on the boundary or adjoining as conditionally retained. These trees are part of the DFEEC and will be potentially impacted by changes in levels or trenching associated with half road construction, stormwater infrastructure, kerb and gutter, footpath and services. The final road reserve and stormwater designs should be developed in order to maximise the retention of these trees in these areas.</i></p> <p><i>As the proposed building footprint is sited and designed to minimise the impact on remnant native vegetation, and includes biodiversity recovery and enhancement measures, it is considered to be consistent with the objectives of E1, E2 and E6 of Warringah DCP."</i></p>
Natural Environment and Climate Change (Riparian Lands and Creeks)	<p>Refusal</p> <p>Council's NECC (Riparian Lands and Creeks) has provided the following comments:</p>

Internal Referral Body	Recommendation/comments
	<p><i>"The proposed development is located outside of the outside of the riparian zone and the riparian buffer. The proposal also includes the re-establishment of the riparian zone and buffer including planting of previously cleared areas, in addition to significant weed management. It is considered that the proposed development complies with clause E8 of Council's DCP and Protection of Waterway and Riparian Lands Policy."</i></p> <p>In principle, no objection to the proposed development is raised however, a Biodiversity Management Plan (BMP) has not been submitted with the application.</p> <p>On this basis, the application is recommended for refusal until this matter is satisfactorily addressed.</p>
Natural Environment and Climate Change (Waster Management)	<p>Refusal</p> <p>Council's NECC (Waster Management) has provided the following comments:</p> <p><i>"The MUSIC Model has not been provided with the Stormwater Management Report. The model must be provided to Council in order to undertake the required assessment"</i></p>
Landscape Officer	<p>Refusal</p> <p>Council's Landscape officer has provided the following comments:</p> <p><i>"Concern is raised regarding the proposal and its impacts and integration into the streetscape and character of the area.</i></p> <p><i>Tree removal will be required in the road reserve to accommodate road regarding, drainage, footpaths and kerb & gutter as indicated on the engineering drawings provided with the application, resulting in significantly more tree removals than indicate don the application.</i></p> <p><i>The proposed access drives and level changes result in a poor address to the streetscape at the south western end of the site. The plans indicate elevated drives which are close to the boundary, with OSD under planting less than 600mm deep. This is considered to result in an outcome whereby the built form dominates the landscape, contrary to the local character and streetscape.</i></p> <p><i>Little internal landscape amenity is provided due to the design which concentrates the building mass centrally with perimeter planting. it is considered questionable if the proposed Angophora costata trees can grow in the courtyards indicated on the plans.</i></p> <p><i>Road turning heads terminate close to the northern boundary. This provides poor amenity as the roads to the boundary provide little opportunity for planting to soften the built form along this viewscape from Cooyong Rd and to the adjoining property to the north.</i></p> <p><i>A separation of built form enabling landscape to permeate into the site and a reduction on the visual presence of vehicular access elements would be considered more appropriate.</i></p> <p><i>At this stage the proposal is not supported with regard to landscape issues.</i></p>

Internal Referral Body	Recommendation/comments
	<p><i>For purposes of submission to the Planning Panel, Without Prejudice Conditions have been included for consideration.”</i></p>
<p>Development Engineers</p>	<p>Refusal</p> <p>Council's Development Engineer has provided the following comments:</p> <p>Internal Drainage works</p> <p><i>“A review of the stormwater drainage plans details the provision of on-site stormwater detention, however to fully assess the drainage plans the following information as required by Councils On Site Detention Technical Specification is to be provided:</i></p> <ol style="list-style-type: none"> <i>1. The Drains model has not been submitted to Council for assessment and verification of input parameters. (section 4.4 computer modelling and section 3.1.3 Minimum information);</i> <i>2. Details of the OSD tank in relation to the proposed building. (Section 3.1.3); and</i> <i>3. Details of the OSD surcharge and overland flow path in the event of full blockages, including that adjoining building have adequate free board. (section 3.1.3).</i> <p>External Drainage works</p> <p><i>The applicant is to provide a Drains model to determine the catchment hydrology and design of the stormwater lines in Laitoki and Cooyong Road. Please note Councils minimum pipe size within the road way is 375mm RCP. Refer to Councils Auspec design guide for drainage design parameters.</i></p> <p>Connection to Sydney waters sewer main.</p> <p><i>A letter from Sydney water is to be provided that demonstrates that the existing sewer main in Laitoki Road has sufficient capacity to handle the increased sewerage loads from the proposed development.”</i></p>
<p>Traffic Engineer</p>	<p>Refusal</p> <p>Council's Traffic Engineer has provided the following comments:</p> <p><u>Traffic:</u></p> <p><i>The applicant has identified that the RMS data regarding the trip generation rates is not accurate and they have undertaken studies related to similar developments to produce a rate half of that provided by the RMS.</i></p> <p><i>Council Traffic Staff deem the rates adopted by the RMS to be adequate and hence the applicant should revise the report to reflect the impact of 0.4vtph as per the Technical Direction.</i></p> <p><i>The Mini Bus Service should be clearly outlined as part of this submission to properly determine the suitability of the routes to be utilised and how these can relate to any trip discounts.</i></p> <p><u>Waste Servicing:</u></p> <p><i>From Traffic grounds, it is deemed suitable for a refuse vehicle to collect</i></p>

Internal Referral Body	Recommendation/comments
	<p><i>bins from within the site, however the Waste Services Team will need to provide comment on practicality. Subject to their comment, appropriate on-street servicing may be required. Confirmation from Council's Waste Team should be sought prior to any approval or conditions being imposed.</i></p> <p><i>Further, a clear plan demonstrating how the intended refuse will be collected must be submitted to ensure suitable servicing of the site can occur, particularly in regard to height clearance where the collection may be required to occur from within the basement.</i></p> <p><u>Car Park:</u> <i>The submitted plans do not provide enough detail regarding the layout of the basement car parking arrangements. The applicant is to re-submit plans that clearly show location of columns (if any), width of the parking bays, width of aisles, clearances between obstructions, location of wheel stops and appropriate treatment of the accessible spaces and adjoining shared zones all in accordance with AS2890.1:2004 and AS2890.6.</i></p> <p><i>Due to the lack of information regarding the above, the Traffic Team cannot support the application in its current form.</i></p>
Urban Design	<p>Refusal</p> <p>Council's Urban Designer has provided the following comments:</p> <p><i>SEPP Housing For Seniors or People with a Disability</i></p> <p><i>The proposed development demonstrates an overdevelopment of the site in the context of the RU4 zone.</i></p> <p><i>Whilst peripheral deep soil planting is demonstrated through visualisations in the drawings, the natural topography of the site and the scale of the development as experienced by the adjoining properties to the western valley escarpment are of a scale that cannot be supported. (Cl.33 (a))</i></p> <p><i>Strategies to break down the building form whilst addressing Part 3 - Design Requirements of reasonable neighbourhood amenity and appropriate character above (Cl. 33 (c)) is highly recommended in order to achieve a built form outcome that responds to the characteristics of the local context.</i></p> <p><i>Residential Care Facility (RCF)</i> <i>The opportunity to break down the built form into smaller blocks still across the site with courtyard and internal landscapes treatments that optimise orientation, pedestrian amenity and environmental conditions needs to be further explored in order to respond to the character of the area and existing built form. (Cl. 33 (c)(ii))</i></p> <p><i>35 Solar access and design for climate</i></p> <p><i>Residential Care Facility</i> <i>The RCF building as a courtyard typology is supported. However it is noted there are site constraints affecting the potential for orienting of the courtyards to the north given the topography of the site sloping down to the west.</i> <i>The height of building in conjunction with the courtyard dimension</i></p>

Internal Referral Body	Recommendation/comments
	<p><i>between the two long east/west wings demonstrates there will be minimal solar gain/access in the winter months to the courtyard in the proposed design. The optimal site planning would be to orient courtyards to the north with more generous landscape design between several courtyard type blocks to encourage resident outdoor activity in the winter months whilst maintaining a scale that is more sympathetic to the RU4 zone.</i></p> <p>Independent Living Units <i>The lack of separation between buildings in the ILU part of the site represents constraints that limit solar gain and cross ventilation. Optimising the site planning through the reduction of building bulk by separation of the main building blocks to create north facing courtyards where possible and greater separation between the blank walls with the inclusion of fenestration to the blank walls assist cross ventilation and solar gain and ensure adequate amenity to units that are not optimally oriented on the site. Refer SEPP 65 below.</i></p> <p>SEPP 65 Principle 1: Context</p> <p><i>The area is predominantly characterised by rural lots and low rise residential detached dwelling typology.</i></p> <p>Independent Living Units (ILU's) <i>The cruciform planning arrangement where there is a 1m minimum access to the central stairwells from the periphery of the buildings creates a dense urban like form that is out of context of the locality and more suited to a medium density urban environment. Further separation to the double A-frame type blocks of the ILU's is recommended to address solar amenity, cross ventilation, visual and acoustic amenity.</i></p> <p>Principle 2: Scale <i>A more sympathetic landscaped ground plane treatment and reduced bulk to the blocks of the ILU's should be further developed to create not only external landscaped zones but to create substantial central landscaped spaces so as to avoid the canyon effect created by the two adjacent high blank walls of the blocks. The scale of the proposed ILU's has not been considered against the scale of existing development and as such cannot be supported in its current form and scale. Further separation in accordance with the objectives of the ADG to provide appropriate separation between these buildings, with assist to address lack fenestration into the high adjacent walls and reduce the canyon like effect of the walls' proximity.</i></p> <p>Principle 3: Built form <i>As discussed in several principles above the planning across the site of the RAC and ILU's limits internal amenity and outlook from various areas of the development. The one internal courtyard to the RAC is on a long axis oriented to the west. During the summer months there is little refuge from the heat of the day in addition to the winter months whereby overshadowing by the long wings to the courtyard will limit solar access in the winter months.</i></p> <p>Principle 7: Amenity (Cl. 4B ADG) <i>The drawings demonstrate there is 3000mm from floor to floor.</i></p>

Internal Referral Body	Recommendation/comments
	<p><i>The minimum dimension recommended in the objective as 3100mm which provides for 2700mm floor to ceiling height and 400mm ceiling services articulation zone including slab depth being a total of 3100mm.</i></p> <p>WLEP 2011</p> <p><i>Zone RU4 Primary Production Small Lots</i></p> <p><u><i>Residential Aged Care Facility (RAC)</i></u> <i>The bulk and scale of the proposed development is out of character with the Desired Future Character of the area. Whilst it is noted that substantial endemic planting and deep soil zones are proposed for the periphery of the site, in contrast to the surrounding RU4 area, impacts of the development on views toward the development in the eastern aspect from the west, the impact and intensity of the development cannot be supported. Further breaking down of the mass and bulk is highly recommended in order to reduce the impacts on natural landscape and landform and the rural nature of the area. Refer comments above in reference to site planning.</i></p> <p>DOCUMENTATION <i>There is relevant information missing from drawings which would make the assessing process much clearer;</i></p> <ul style="list-style-type: none"> <i>• Drawings show scale but not to a relevant sheet size (1:250 @ A1 or A3);</i> <i>• Existing Ground Line (or Natural Ground Line is not clearly indicating on the drawings with very little survey or spot level to correlate back to heights etc.;</i> <i>• No diagrams demonstrating adequate cross ventilation have been submitted with the proposal</i>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, EPIs (State Environmental Planning Policies (SEPPs), Regional Environment Plans (REPs) and Local Environment Plans (LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each EPIs (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs)

A further consideration is required for the following state policies

SEPP (State and Regional Development) 2011

The proposed development does not constitute State Significant Development under SEPP.

Of more relevance, clause 20 of the SEPP and Section 2.12 and 2.15 (previously 23G) of

the EPA Act, identifies a range of developments that either due to their nature, scale, value, impact or location are deemed to be of regional significance and which, as a result, require that a regional panel become the consent authority.

In this regard, Schedule 7 of the SEPP indicates that development that has a capital investment value of more than \$30 million is of regional significance. As indicated on the DA form, the proposed development has a capital investment value of \$69.6 million, as such, the SNPP is the determining authority.

SEPP (Housing for seniors or People with a Disability) 2004

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 14 July 2017, and expires 14 July 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:

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, as discussed at later sections of this report.

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

Clause 18 - Restrictions on occupation of seniors housing allowed under Chapter 3

This clause states that development allowed by Chapter 3 may only be carried out for the accommodation of:

- (a) seniors or people who have a disability,
- (b) people who live within the same household with seniors or people who have a disability,
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

Consent must not be granted to a development application unless a condition reinforcing the above through a requirement to register a restriction to user on the property title has been imposed. Subclause (3) of clause 18 states that subclause (2) does not limit the kinds of conditions that may be imposed on a development consent, or allow conditions to be imposed on a development consent otherwise than in accordance with the Act.

Clause 24 - Site Compatibility Certificates

The SCC issued for the site included at Schedule 2 identifies seven (7) issues that are required to be resolved. These issues are:

- *Access to services and facilities via appropriate pedestrian and public transport facilities;*
- *Building bulk and scale;*
- *Flora and fauna issues;*
- *Land slip issues;*
- *Flooding;*
- *Traffic; and*
- *Potential contamination*

Some of these requirements of the SCC have not been resolved by the applicant, particularly the issue of access to service and facilities and building bulk and scale as discussed at the various sections of this report.

Despite, the issuing of the SCC, the consent authority is permitted to refuse an application under the provisions of this clause, if the assessment of the consent authority finds that the development is incompatible with the surrounding environment. As detailed in this report, this assessment finds the proposed development is not compatible with the surrounding environment and is therefore recommended for refusal.

Clause 26 - Location and access to facilities

Clause 26 of SEPP (Housing for Seniors or People with a Disability) 2004 requires that services and facilities be located within 400 metres of a site or accessed via public transport which is located no more than 400 meters from the site.

Distance to Bus Stops

The site is not located within 400 metres of essential facilities and services and is substantially further than 400 metres from a public transport service (bus), being conservatively measured as 492 metres to 575 metres to the north bound bus stops on Cooyong Road from the south-east corner of the site. In addition, the grade of the road and road reserve does not satisfy the requirements of clause 26.

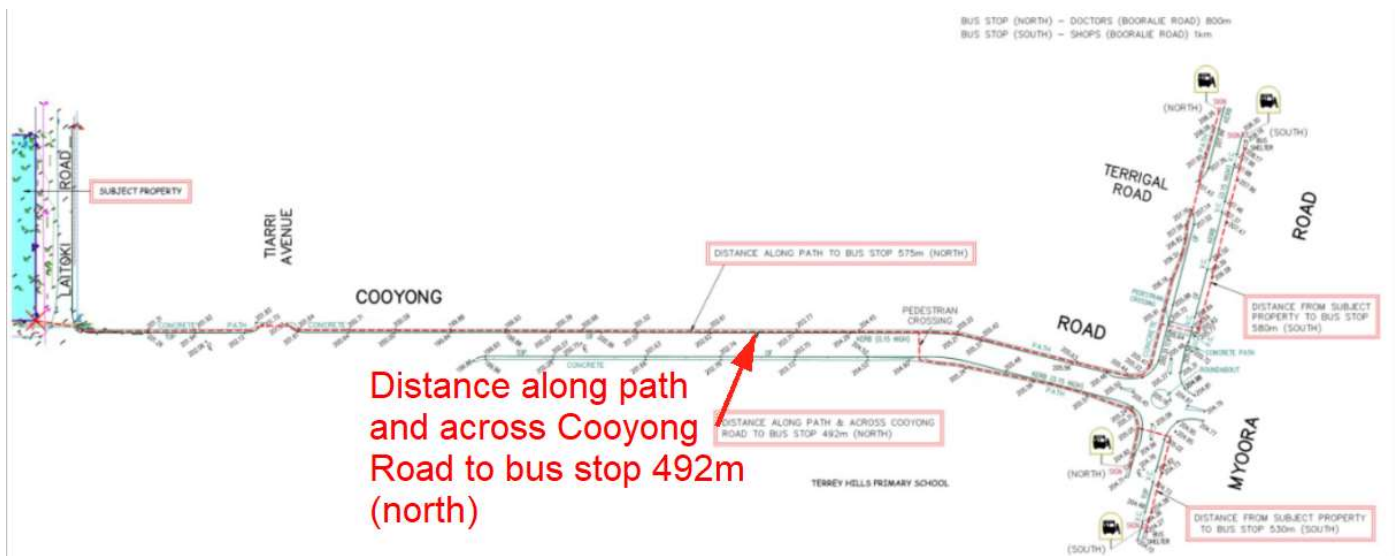


Figure 3 – Proximity of Bus Stops to the Site

(Source: Accessibility Statement, 01/02/2017, Philip Chun Building Compliance)

This application has been made on the basis that clause 26 of the SEPP (HSPD) 2004 is not applicable to the subject site, given the applicability of clause 43 of SEPP (HSPD) 2004 to the subject site. In this regard, the applicant has submitted legal advice (refer to Attachment 3) in relation to the interaction of clauses 26 and 43 of SEPP (HSPD). The applicant's position is heavily relied on Land and Environment of Information Gateways and the applicant further submitted that this is the interpretation frequently adopted by Land and Environment Court for seniors living developments on land adjoining urban land.

Council's position does not concur with the applicant's interpretation on the basis that clause 26 is a mandatory provision that is applicable to all seniors housing developments. Council considers that due to the site's location and the density of the development, the requirements of clause 26, must meet in addition to the requirements of clause 43 of SEPP.

Further, even if it was accepted that clause 43 does operate to exclude clause 26, clause 43 relates only to serviced self-contained housing while this development comprises both serviced self-contained housing and a residential care facility.

Clause 26 is a site related requirement that applies to all forms of housing covered by the SEPP. *In the Land and Environment Court judgement for Symon v Hornsby Shire Council [2015] NSWLEC 1028*, found that "the objectives of clause 26 are to provide access, whether by walking, motorised scooter or electric wheelchair to pathways or transport services to the services and facilities described in clause 26".

The SEPP does not distinguish between residential care facilities that provide high or low levels of care. (Note: the terms "high care" and "low care" were removed from the Aged Care Act in 2014). If the intention of the SEPP was to exclude residential care facilities from the location and access requirements of clause 26, this type of seniors housing would not be subject to the clause.

The proposal does not meet the specific requirements of clause 26 of the SEPP, which Council contends do apply to the current proposal and should apply to ensure a reasonable and good level/standard of access is afforded to the future occupants of the development to satisfy the intent and objectives of the SEPP.

Accordingly, the issue of non-compliance with clause 26 has been included as a reason for refusal.

Clause 27 – Bush Fire Prone Land

Clause 27 (2) states that a consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land identified in the vicinity of land identified on a bush fire prone land map unless the consent authority is satisfied that the development complies with the general location of the proposed development, the means of access to and egress from the general location and other relevant matters as listed in clause 27 (2).

The subject site is not located within a bushfire prone area on the bushfire prone land map, however, the site is identified to be within the vicinity of land identified on a bush fire prone land map. The applicant has not provided a Bushfire report which addresses the requirement of this clause, however the application has been referred to NSW RFS for comments.

At the time of writing report, no comments were received.

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.

The applicant has not provided written evidence to demonstrate that the proposed development can be connected to a reticulated water system and will have adequate facilities for the removal or disposal of sewage, as required by this clause.

Accordingly, the issue of non-compliance with clause 28 has been included as a reason for refusal.

Clause 30 – Site Analysis

This clause requires that the consent authority be satisfied that the applicant has taken into account a site analysis prepared in accordance with the requirements specified in the clause. The documentation submitted with the application complies with the requirements specified in clause 30 of the SEPP.

Clause 31 Design of in-fill self-care housing

The subject site, being zoned RU4 - Primary Production Small Lots, is not land zoned primarily for urban purposes. Therefore, clause 31 is not relevant to the application and the Urban Design Guidelines for In-fill Development do not apply to the proposed development.

Clause 32 Design of residential development

In accordance with clause 32 of SEPP (HSPD), a consent authority must not consent to a DA made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following assessment outlines compliance with the principles set out in Division 2, Part 3 of SEPP (HSPD).

Clause 33 - Neighbourhood amenity and streetscape

The site is zoned RU4 - Primary Production Small Lots. The planning controls which apply to that zone are designed to ensure that developments are sensitive to the rural character of the area and do not anticipate or promote significant or abrupt changes to the character of the area.

The SEPP requires that development should recognise the desirable elements of the locations character so that new buildings contribute to the quality and identity of the area and retain, complement the locality. In this regard, to determine the compatibility of the proposed development with the surrounding environment, reference is made to the Planning Principle established by the Land and Environment Court in the *Project Venture Developments v Pittwater Council (2005) NSWLEC 191(Project Venture)* where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment.

The following provides an assessment of the proposal against the above Planning Principle:

a) Capable of existing together in harmony

In particular circumstances, some developments are able to co-exist in harmony despite there being different densities, scales and visual appearances between the buildings.

Desirable elements of the character of the area can be described in terms of large expanses of rural open space connecting to the broader landscape context and bushland setting.

The assessment of this application has found that the development, as proposed, is significantly greater in density and scale than surrounding developments within RU4 zone. The built form is also of a visual appearance that is at odds with the prevailing detached style housing in the adjoining R2 - Low Density zone.

The character outcome generated by building density and narrow building separations which do not allow for any significant open space or landscaping is reflective of the proposed intensity of the use. The proposed development is an unsuitable and inappropriate development of the site. The built form has a relatively continuous footprint across the site. The scale of the development is uncharacteristic and therefore the proposed development would not exist in harmony with the surrounding rural land uses.

b) Relationship of built form to surrounding space.

The relationship of a building to surrounding spaces is determined by the height, setbacks and provision of open space that are afforded by development.

The height and scale of the development are not considered to be in keeping with the size and scale of existing development in the area. In this regard, the horizontal built form (massing) of the development consists of a continuous three (3) storey built form which contains little building separation.

The extent of true separation between the respective buildings is minimal. The design is not considered to be conducive to providing a good outcome for the character of the development and the area when viewed from the adjoining RU4 zoned land, as well as when viewed from the R2 zone Cooyong Road to the south of the site and Laitoki Road.

The proposed development would not be compatible with the surrounding rural land and adjoining dwellings.

c) Architectural Style

The proposed built form has been generated with a high degree of emphasis on the functional and practical needs of the development as a seniors housing. However, the resultant built form of the development is not appropriate for the site or the locality, resulting in an unacceptable character, and inconsistency with the existing low density character of the area.

The proposed scale and built form is contrary to the rural character of the site.

Conclusion on Character Assessment

In this regard, the proposal does provide a good design response to the requirements of the planning controls that apply to the site. Whilst the SEPP (HSPD) permits a higher density and occupancy of use on the land. The proposal does not recognise or implement the desirable elements of the location's current character nor contribute to the quality and identity of the area, therefore failing to meet clause 33 of SEPP (HSPD), and this issues has been included as reason for refusal.

Clause 34 - Visual and acoustic privacy

This clause states that 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.*

Comment

The proposal has addresses these requirements by incorporating appropriate setbacks, privacy screening, landscaping opportunities and sensitive window locations.

Clause 35 - Solar access and design for climate

This clause specifies that:

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.*

Comment

The shadow diagrams clearly demonstrate that the orientation of the site, location of proposed built form elements, spatial separation maintained between adjoining properties and topography will ensure that the development will not unreasonably shadow any adjoining properties at any time during the day.

Clause 36 - Stormwater

This clause specifies that:

The proposed development should:

- (a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and*
- (b) include, where practical, on-site stormwater detention or re-use for second quality water uses.*

Comment

Council's Development Engineers have reviewed the proposal and have not supported the stormwater design in its current form due to insufficient information being submitted with the application.

Clause 37 - Crime prevention

This clause specifies that:

The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:

- (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and*
- (b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and*
- (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.*

Comment

The proposal is consistent with the intent of the above controls, the internal courtyards are overlooked by private rooms and dwellings and communal areas, the front path is visible from the entry foyer and reception area.

Clause 38 - Accessibility

This clause specifies that:

The proposed development should:

- (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and*
- (b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.*

Comment

The issue as it relates to requirement (a) above has been addressed under clause 26 of the SEPP (HSPD) section of this report and found to be unsatisfactory.

Internally, the development has a series of interlinking walkways and pedestrian tracks between the buildings and around the site. The access driveway to the residential care facility and the individual residences has a separate pedestrian pathway, to provide adequate sightlines to enhance visibility for motorists and pedestrians.

Clause 39 - Waste management

This clause specifies that:

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

Comment

The waste facilities of the site for the serviced self-care component of the development has not been design to comply with Clause C9 of WDCP 2011, and therefore this issue has been included as a reason for refusal.

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP (HSPD) a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP (HSPD).

Standard	Proposed	Compliance
40 (1) - Site area: 1000m ²	Site Area: 19,536m ²	Yes
40 (2) - Minimum 20m measured at the building line.	76.435m to Laitoki Road and 237.635m to Cooyong Road.	Yes
40 (a) The height of all buildings in the proposed development must be 8 metres or less	Insufficient details provided The plans submitted with the application stipulates a building from the ground level that includes the existing fill within the site. The building height is required to be measured from natural ground level.	No
40 (b) - A building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height	There are three (3) storey elements adjacent to the northern boundary	No (refer to discussion under Clause 4.6 later in this report)
40 (c) - A building located in the rear 25% area of the site must not exceed 1 storey in height.	Compliance can readily be achieved	Yes

Clause 40 (b) - Development standards—minimum sizes and building height

Clause 40 (b) SEPP states that a building that is adjacent to a boundary of the site must not be more than two (2) storeys in height. The proposal includes three (3) storey development adjacent to its northern boundary. The applicant acknowledges that the proposal does not comply with the development standards in clause 40 (4) (b) of SEPP (HSPD) and has provided a clause 4.6 variation request.

The merits of the clause 4.6 variation request are considered under the heading, 'Clause 4.6 Exceptions to Development Standards' below and the clause 4.6 variation request from the applicant is attached with Attachment 4.

Clause 41 - Standards for hostels and self-contained dwellings

In accordance with clause 41, a consent authority must not consent to a DA made pursuant to this Chapter unless the consent authority is satisfied that the proposal complies with Schedule 3 of the SEPP which relates to standards concerning access and useability for self-contained dwellings including wheelchair access, parking space dimensions, dwelling entrances, room dimensions, bathroom fittings etc.

There is insufficient information submitted with the application to demonstrate that it complies with the requirements of Schedule 3, given the site has significant slope. Accordingly, this issue has been included as a reason for refusal.

Clause 42 - Service self-care housing

Clause 42 requires that for development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes, residents of the proposed development must have reasonable access to:

- home delivered meals, and
- personal care and home nursing, and
- assistance with housework.

Access to the above services is not considered reasonable if those services would be limited to services provided to residents under Government provided or funded community based care programs (such as the Home and Community Care Program administered by the Commonwealth and the State and the Community Aged Care and Extended Aged Care at Home programs administered by the Commonwealth).

The applicant has indicated that the residents of serviced self-care housing will have access to the abovementioned services via the proposed residential care facility. The applicant's mere assertion that the residents will have access to the abovementioned services is insufficient. In this regard, reference is made to a Land and Environment Court Case (*Information Gateways Pty Limited v Hornsby Shire Council [2005] NSWLEC 242*), this particular issue was addressed at paragraph 27, where the court held:

"While the Court accepts that it would be unreasonable to require the Applicant to provide a signed contract with a service provider for a development that has not yet been approved, letters to the effect that a service provider is able to provide services are insufficient. To be satisfied in respect of clause 2(1), 15 and 75 of SLSEPP the consent authority requires evidence that a particular service provider will provide the services, that the detailed terms under which the services are to be provided have been agreed, and that the services will be provided for the life of the development. The consent authority therefore requires:

Draft contracts with service providers together with evidence that both parties agree to the terms of the draft contract;

A Servicing Management Plan that will be part of the consent and that provides for the continuation of the services for the life of the development".

The judgement within paragraph 28 states that:

"the servicing arrangements comprise an essential ingredient of the development. In their absence, the development would be prohibited. The Court must be satisfied of the servicing arrangements when the application is determined. The application can therefore not be approved in its current form".

In the current application, the Applicant has provided a vague description of available options for service providers through the proposed RACF and Council cannot be satisfied that reasonable access will be provided to the facilities and services in the absence of documents as required.

In this regard, having regard to the form of housing to be provided and the manner in which it proposes to deliver services to residents, the proposed development does meet the criteria of clause 15 (b) of SEPP (HSPD).

Clause 43 - Transport services to local centres

Clause 43 requires that a consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that a bus capable of carrying at least ten (10) passengers will be provided to the residents of the proposed development. The applicant has stated that bus will be provided for the development and this can be included as condition of consent. Also, see discussion under clause 26.

Clause 48 - Standards that cannot be used to refuse development consent for residential care facilities

Control	Required	Proposed	Compliance
Building Height	8m or less (measured vertically from ceiling of topmost floor to ground level immediately below).	Insufficient information submitted to determine compliance. The elevations sections are inadequate to be able to identify the accurately calculate the overall height	No
Density and scale	1:1 or less	The proposed development contained two different uses being, serviced self-care and residential care facilities. However, there are no detailed provided on how the uses are divided within the site, therefore Council does not have sufficient information submitted determine compliance.	No
Landscaped area	25% per bed	Insufficient information submitted to determine compliance	No
Parking	1 space/10 beds in residential care facility (72 beds - 7 spaces), or 1 space/15 beds used for dementia care (22 beds – 2 spaces), and 1 space/2 staff employed (15 spaces), and 1 ambulance space.	31 spaces (including 1 space for the 12-seater bus) 1 ambulance bay	Yes

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

Clause 50 prescribes that consent to development for the purpose of self-contained dwellings must not be refused on the grounds of building height, density and scale, landscaped area, deep soil zones, solar access and parking, if certain numerical standards are met. It is noted that these standards do not impose any limitations on the grounds on which a consent authority may grant development consent.

The following table outlines compliance with the standards specified in clause 50 of SEPP (HSPD):

Control	Required	Proposed	Compliance
Building Height	8m or less (measured vertically from ceiling of topmost floor to ground level immediately below).	Insufficient information submitted to determine compliance. The elevations and sections are inadequate to be able to identify and accurately calculate the height of the building	No
Density and scale	0.5:1 or less	The proposed development contained two different uses being, serviced self-care and residential care facilities. However, there are no details provided on how the uses are divided within the site, therefore Council does not have sufficient information submitted to determine compliance.	No
Landscaped area	30% of the site area is to be landscaped.	Insufficient information submitted to determine compliance	No
Deep soil zone	15% of the site area and two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3m.	Insufficient information submitted to determine compliance	No
Solar Access	70% of the dwellings of the development to receive a minimum of 3 hours of direct sunlight between 9am and 3pm in mid-winter	Over 70% of apartments receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.	Yes
Private open space	15m ² of private open space per dwelling not less than 3m long and 3m wide.	This standard is applicable to in-fill self-care housing.	N/A
Parking	0.5 car spaces for each bedroom. 60 x 2 bedroom =60 spaces	60 spaces provided.	Yes

Clause 55 - Residential care facilities (RACF) for seniors required to have fire sprinkler systems

The requirement of installation of a fire sprinkler system for the proposed RACF may be reinforced via suitable condition of consent, should the application be worthy of approval.

SEPP 65 - Design Quality of Residential Apartment Development

The development is required to comply with SEPP 65 and the associated Apartment Design Guide (ADG).

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of the Self-Contained Dwellings component of the development.

Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a Design Verification Statement from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of the SEPP requires that in determining a development application for consent to carry out development to which SEPP 65 applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- a) *The advice (if any) obtained from the design review panel, and*
- b) *The design quality of the development when evaluated in accordance with the design quality principles, and*
- c) *The Apartment Design Guide (ADG).*

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment

Development to the east of the site in the R2 zone is generally characterised by low density detached dwelling houses on lots of approximately 700m². Larger lots are characteristic in the RU4 zone to the north, west and south, being developed as larger single dwelling houses and other buildings and structures which are permissible uses in the zone. These developments include horse stables, produce stores, and large outbuildings for the storage and/or production of landscape supplies.

The site frontages to Laitoki Road and Cooyong Road are not kerbed and guttered contributing to a non-urban character.

The built form controls under the WDCP 2011 which are relevant to the RU4 zone, do not envisage multi-dwelling housing of such a density as that proposed on the subject lot. The proposed development is in the form of 60 independent living units within 2 blocks which is more representative of residential flat buildings with basement parking and a 98 bed RACF within a three storey U-shaped building.

The proposed development differs in form and character to those developments on immediately adjoining sites in the R2 and RU4 zones. The development design is of a large urban style that is incongruous with the rural environment. The overall bulk and scale of the development is excessive and the proposed building form and siting is out of character with the dominant rural setting within the immediate area.

Therefore, given the above character assessment and in particular the existing built features and the character of the area, the development cannot be considered to favourably contribute or enhance the context of the area and quality and identity of the area.

Therefore, the development is not consistent with Principle 1.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment

The applicant proposes the construction of three (3) large clearly spaced modules in the form of two (2) and three (3) storeys with continuous roof form.

The proposed development would require extensive cut and fill and retaining walls. The visual impact of the final built form and scale of the development is significantly at odds with the rural character of the locality.

The street wall proportions of the proposed buildings are consistent with medium density residential flat development but are not consistent with the low density and the surrounding rural area which characterises the area.

Consequently, the proposed building type (residential flat buildings) is not considered to be an appropriate built form for the site. Figures 4 and 5 below shows the south and east elevations of the self-contained dwellings component of the development as viewed from Latoki Road (east) and Cooyong Road (south).



Figure 4 - South Elevation of the self-contained dwellings

(Source: Plan No. DA A201 (Revision A) prepared by Calder Flower Architects)

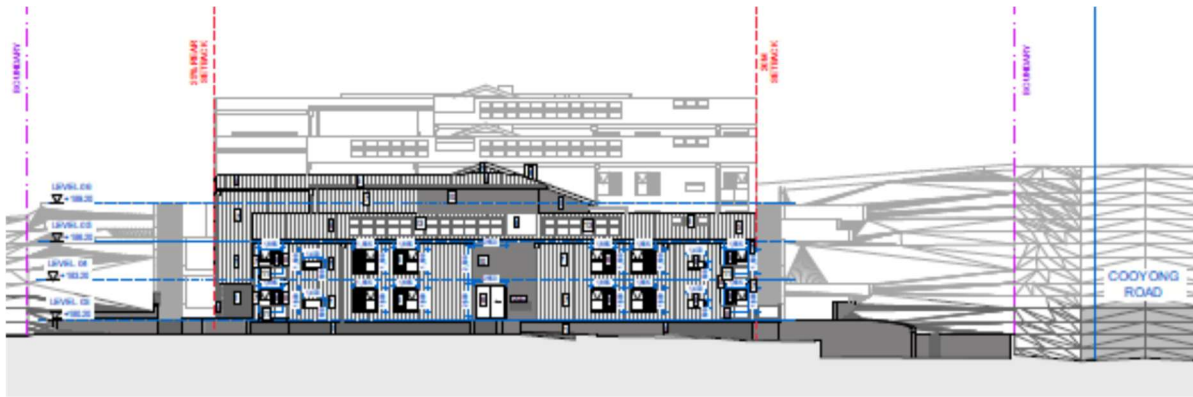


Figure 5 - East Elevation of the self-contained dwellings

(Source: Plan No. DA A201 (Revision A) prepared by Calder Flower Architects)

In this regard, the development is not regarded as a considered and sensitive response to the built form and scale of existing development.

Therefore, the development is not consistent with Principle 2.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment

The planning controls under WLEP 2011 and SEPP (HSPD) do not specify a maximum housing density for the site, rather the appropriate density for any development is a function of the other built form controls, including building height, landscaped open space and setbacks.

There is insufficient information submitted with the application for Council to accurately calculate whether the proposal meets the deemed-to-comply provisions in clause 48 and clause 50 of SEPP (HSPD) 2004 in relation density and scale for the two different types of seniors housing proposed within the site.

Therefore, the development is not consistent with Principle 3.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment

The proposed works include excavation to accommodate the new development. BASIX

certificates for the self-contained dwellings component of the development has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

A condition of consent could be imposed requiring the submission of a Construction Management Plan (CMP) detailing disposal and recycling of demolition and excavation materials, should the DA be approved.

Therefore, the development is generally consistent with Principle 4.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment

The landscape open space requirement for the proposed development is contained within SEPP (HSPD), which requires 30% of the site to be landscape open space. This requirement is in addition to the 15% of the site to be provided for deep soil planting.

Although the proposed development could readily comply with the Landscaped Open Space (LOS) requirements under the SEPP (HSPD) due to the site area, there are insufficient information submitted with the application for Council to accurately determine compliance with the LOS requirement.

Council's Landscape Officer has reviewed the landscape plans and has provided comments (see Internal Referrals in this report) which raise concerns about the inadequate amount of soft landscaping between the buildings in relation to the size of the proposed development.

The landscape design is guided by the architectural design of the buildings and associated hard surface areas within the boundaries of the site, is considered to be minimal and not considered to respect the existing and desired character of the area. In this regard, the narrow building separations will not allow for a sufficient amount of meaningful open space or landscaping considered necessary to provide a characteristic setting to offset the unsuitable residential flat building style of development. Further, the design includes basement parking structures which extend well beyond the ground level footprint of the buildings, reducing substantially the area available for deep soil landscaping which is essential for this form of development. In addition, the location of access drives in the south western corner and turning heads on the northern boundary significantly limit opportunities for soft landscape in these key areas on the boundaries.

The landscape aspect of the development should respond in both a creative and responsible way, *enhancing the development's natural environmental performance by coordinating water and soil management, solar access, micro climate, tree canopy* at a fine grain.

Furthermore, given that the built form of the development does not favourably respond to the key built features of the area (see Principle 1), it is considered the landscape design is critically important aspect of the development to be adequate and of high quality as to positively contribute to the locality and be the correct contextual fit through respect for the neighbourhood character.

Therefore, the development is not consistent with Principle 5.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment

The development has been assessed against the various amenity requirements of the Apartment Design Guideline (ADG) where it has been found that the development is capable of complying with the relevant controls.

Generally, it is agreed that the design provides a good level of amenity for future occupants, with the majority of apartments having good levels of sunlight access. The orientation and layout of the apartments on each level have taken advantage of the outlooks over the site and public roads.

Notwithstanding the above, as discussed in the attached Urban Design comments the proposed development does not provide adequate internal building separation and as result of the slope of the land, cross ventilation will be difficult to achieve.

Therefore, the development is not consistent with Principle 6.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment

The application is not accompanied by a formal Crime Risk Assessment as required by the ADG.

However, the development provides secure access which is separated from all vehicular access points. All apartments provide balconies and windows which provide passive surveillance over the adjoining Roads.

Therefore, it is considered that the proposal generally satisfies this principle.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

This principle essentially requires design to respond to the social context and needs of the local community in terms of lifestyles, affordability and access to social facilities and optimising the provision of housing to suit the social mix and provide for the desired future community.

The development proposes to construct three (3) buildings which will accommodate 60 apartments, to be occupied by seniors or people with the disability, which is considered to be a positive outcome in terms of providing a diversity type of housing within a locality with an ageing population.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

The development includes a schedule of external finishes which indicates that the external walls will be finished in painted render and face brickwork. The resulting aesthetic appearance of the development, particularly when viewed from the public domains of Laitoki and Cooyong Roads, and the adjoining residential properties, is a contemporary series of medium-rise residential flat building, which is minimalist and hard edged in design.

The material of the development may be regarded as visually neutral, the resulting aesthetic appearance will emphasise the medium density character of the development within an area identified as consisting of traditional built forms which is not suitable and appropriate for the site or the locality.

Therefore, the development is not consistent with Principle 9.

APARTMENT DESIGN GUIDE

SEPP 65 also requires consideration of the ADG prepared by NSW Department of Planning and Environment in 2015. The ADG includes development controls and best practice benchmarks for achieving the design principles of SEPP 65.

The following table sets out the proposal's compliance with the ADG:

Criteria / Guideline	Comments
Part 3 Siting the Development	
Site Analysis Does the development relate well to its context and is it sited appropriately?	Not Consistent A context plan is provided to accompany the application. The building form does not reflect the current and future character as anticipated by the Warringah LEP and DCP for the site and is therefore considered to be contextually incompatible and inappropriately sited.
Orientation Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Not Consistent The proposed senior's housing development is located within the rural area. The built form proposed is not visually compatible with the prevailing streetscape orientation.
Public Domain Interface Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Not Consistent The development is not considered to be consistent with the desired streetscape character which consists of traditional low-scale, low density residential development and rural character. The bulk and scale of the proposed buildings are not considered to be consistent with the Desired Streetscape Character in that the scale and bulk of the proposed development are not in keeping with the scale and bulk of surrounding residential development.
Communal and Public Open Space Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site; 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2	Not Consistent Insufficient details have provided within the documentation which shows clear allocation of the Communal open space for the self-contained dwellings.

hours between 9 am and 3pm on 21 June (mid-winter).													
<div>Deep Soil Zones</div> <div>Deep soil zones are to meet the following minimum requirements:</div> <table><tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr><tr><td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m² – 1,500m²</td><td>3m</td></tr><tr><td>Greater than 1,500m²</td><td>6m</td></tr><tr><td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr></table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<div>Not Applicable</div> <div>This requirement is addressed under SEPP (HSPD)</div>
Site area	Minimum dimensions	Deep soil zone (% of site area)											
Less than 650m ²	-	7%											
650m ² – 1,500m ²	3m												
Greater than 1,500m ²	6m												
Greater than 1,500m ² with significant existing tree cover	6m												
<div>Visual Privacy</div> <div>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</div> <table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<div>Not Consistent</div> <div>The issue of building separation is detailed in the Urban Design comments, and found to be unsatisfactory.</div>
Building height	Habitable rooms and balconies	Non-habitable rooms											
Up to 12m (4 storeys)	6m	3m											
Up to 25m (5-8 storeys)	9m	4.5m											
Over 25m (9+ storeys)	12m	6m											

<p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	
<p>Pedestrian Access and entries</p> <p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent</p> <p>The development provides level pedestrian access to all floor levels from the basement car parking area.</p>
<p>Vehicle Access</p> <p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Not Consistent</p> <p>The proposed vehicular access has been assessed by Council's Traffic Engineer who has raised no objections to the proposal in terms of the location of the vehicular access.</p>
<p>Bicycle and Car Parking</p> <p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre. <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off the street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Consistent</p> <p>An assessment of car parking provision, having regard to SEPP (HSPD) has been undertaken.</p> <p>In summary, the amount of car parking is sufficient for the development, as addressed elsewhere in this report.</p>

Part 4 Designing the Building									
Amenity									
<p>Solar and Daylight Access</p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ol style="list-style-type: none"> 1. Living rooms and private open spaces of at least 70% of the apartments in a building are to receive a minimum of 2 hours of direct sunlight between 9 am and 3 pm at mid-winter; 2. A maximum of 15% of the apartments in a building receives no direct sunlight between 9 am and 3 pm at mid-winter. 	<p>Consistent</p> <p>42 units (70%) will receive a minimum of 2 hours of direct sunlight between 9 am and 3 pm at mid-winter.</p> <p>4 units (6.7%) will receive less than 2 hours of sunlight.</p>								
<p>Natural Ventilation</p> <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> • At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed; • The overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	<p>Not Consistent</p> <p>The issue of Natural Ventilation is detailed in the Urban Design comments, and found to be unsatisfactory due to slope of the land.</p>								
<p>Ceiling Heights</p> <p>Measured from finished floor level to the finished ceiling level, minimum ceiling heights are:</p> <table border="1"> <thead> <tr> <th colspan="2">Minimum ceiling height</th></tr> </thead> <tbody> <tr> <td>Habitable rooms</td><td>2.7m</td></tr> <tr> <td>Non-habitable</td><td>2.4m</td></tr> <tr> <td>For two storey apartments</td><td>2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.</td></tr> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For two storey apartments	2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.	<p>Consistent</p> <p>The floor to ceiling heights of the apartments within the development meets the minimum 2.7m as required by the ADG.</p>
Minimum ceiling height									
Habitable rooms	2.7m								
Non-habitable	2.4m								
For two storey apartments	2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.								

Attic spaces	2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.											
If located in mixed used areas	2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.											
Apartment Size and Layout Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space). Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments• 4m for 2 and 3 bedroom apartments The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.		Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent All apartments within the development comply with the minimum area.
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											

<p>Private Open Space and Balconies</p> <p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Consistent</p> <p>All apartments within the development comply with the minimum balcony area and depth.</p>
Dwelling Type	Minimum Area	Minimum Depth														
Studio apartments	4m ²	-														
1 bedroom apartments	8m ²	2m														
2 bedroom apartments	10m ²	2m														
3+ bedroom apartments	12m ²	2.4m														
<p>Common Circulation and Spaces</p> <p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>Consistent</p> <p>The maximum number of apartments off a circulation core on a single level is less than eight.</p>															
<p>Storage</p> <p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	<p>Consistent (subject to condition)</p> <p>The proposed development includes resident storage areas for all units within the building and as well as within the basement levels.</p> <p>A condition of consent could be recommended, if the application were to be recommended for approval, to ensure the proposed storage areas are allocated in accordance with the size requirements of the ADG for the respective units.</p>					
Dwelling Type	Storage size volume															
Studio apartments	4m ²															
1 bedroom apartments	6m ²															
2 bedroom apartments	8m ²															
3+ bedroom apartments	10m ²															
<p>Acoustic Privacy</p> <p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.</p>	<p>Consistent</p> <p>The development has been designed in a manner to minimise impacts of external noise and to mitigate noise transmission, as discussed elsewhere in this report.</p>															

Noise and Pollution Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent <u>Noise</u> The development has been designed in a manner to minimise impacts of external noise and to mitigate noise transmission, as discussed elsewhere in this report. <u>Pollution</u> The completed development is unlikely to impact adversely on air quality or alter the microclimate of the area. No details regarding dust control relating to the construction has been provided. These details will be required to be submitted as a condition of consent, should the application be worthy of approval.										
Configuration											
Apartment Mix Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The development proposes two bedroom apartments, which are to be used for Seniors Housing.										
Facades Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Not Consistent The development is not respectful of the surrounding residential character, therefore the facade treatment is not considered to be appropriate to enhance the streetscape and character of the area.										
Roof Design Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.	Consistent The roof space is not readily accessible and cannot be used to serve the residential accommodation.										
Landscape Design Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Not Consistent Refer to Principle 5 above and Landscape referral comments.										
Planting on Structure When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or</td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m	150m ³	1,200mm	10m x 10m or	Not Consistent Refer to Principle 5 above and Landscape referral comments.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area							
Large Trees	12-18m high, up to 16m	150m ³	1,200mm	10m x 10m or							

	crown spread at maturity			equivalent	
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	
Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	
Shrubs			500-600mm		
Ground Cover			300-450mm		
Turf			200mm		
Mixed Use					Consistent
Can the development be accessed through public transport and does it positively contribute to the public domain?					The development proposes two bedroom apartments, which are to be used for seniors housing.
Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.					
Awning and Signage					Not Applicable
Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.					The DA does not propose any awning or signage and as such, this clause is not applicable in the assessment of this application.
Signage must respond to the existing streetscape character and context.					
Performance					
Energy Efficiency					Consistent
Have the requirements in the BASIX certificate been shown in the submitted plans?					A BASIX certificate report has been prepared for the development. The BASIX certificate confirms that required targets for water, thermal comfort and energy efficiency will be met.
Water Management and Conservation					Consistent
Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?					Water management and conservation through the means of retention of stormwater for reuse have been assessed as compliant and further, compliance with the supplied BASIX Certificate can be conditioned, if the application was recommended for approval.

Waste Management Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	Consistent Subject to condition/s.
Building Maintenance Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Consistent The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.

SEPP 55 - Remediation of Land (SEPP 55)

SEPP No. 55 – Remediation of Contaminated Lands establishes state-wide provisions to promote the remediation of contaminated land.

The SEPP states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals.

Clause 7 of the SEPP requires that a consent authority must not grant consent to a development if it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

In response to these requirements, the applicant has submitted a detailed site investigation report, prepared by Martens Consulting Engineers. The report recommends that a remediation action plan is required to make the site suitable for the proposed development.

A 'Remedial Action Plan' prepared by Martens Consulting Engineers dated October 2018 has also been prepared and submitted with the Application.

The application was referred to Council's Environmental Health Officer who raised no objection to the proposal subject to conditions. Accordingly, based on the information submitted, the requirements of SEPP have been satisfied and the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation and remedial action plan can be included conditions, if the application was recommended for approval.

SEPP (Infrastructure) 2007

Clause 45

Clause 45 of the SEPP requires the Consent Authority to consider any DA (or an application for modification of consent) for any development carried out:

- Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);
- Immediately adjacent to an electricity substation;
- Within 5m of an overhead power line;

- Includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line.

Comment

The proposal was referred to Ausgrid. No response has been received within the 21-day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Clause 106

Pursuant to Clause 106(1) (a) the clause applies to new premises of the relevant size or capacity. (2) In this clause, "relevant size or capacity" means: *"in relation to development on a site that has direct vehicular or pedestrian access to any road-the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3"*.

Schedule 3 of SEPP Infrastructure requires that the following residential flat developments are referred to the RMS as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to a classified road or to a road that connects to the classified road if access is within 90m of connection, measured along the alignment of the connecting road)
Apartment or residential flat building	300 or more dwellings	75 or more dwellings

Comment:

The development consists of 60 residential apartments, and the site does not have an access to a classified road or a road that connects to the classified road, therefore the requirement of clause 106 is not applicable to the subject application.

SEPP (Building Sustainability Index: BASIX) 2004

The application has been accompanied by a BASIX certificate for the self-care dwellings component of the development, that lists commitments by the applicant as to the manner in which the development will be carried out. The requirements outlined in the BASIX certificate have been satisfied in the design of the proposed development. Nonetheless, a condition could be imposed, should the application be worthy of approval to ensure such commitments are fulfilled during the construction of the development.

SEPP 44 – Koala Habitat Protection

The provisions of this policy apply as the site is greater than one hectare in size. The site does not represent potential or core koala habitat. Accordingly, no further consideration of the policy is required.

STATE REGIONAL ENVIRONMENTAL PLANS

There are no SREPs applicable to the site.

LOCAL ENVIRONMENTAL PLANS

WARRINGAH LOCAL ENVIRONMENT PLAN 2011

The Warringah Local Environmental Plan 2011 is applicable to the development.

Is the development permissible with consent?	Land Use Definition:	Permitted or Prohibited
	Senior's Housing and associated uses	No, however permissible via SEPP HSPD 2004
After consideration of the merits of the proposal, is the development consistent with:		
Aims of the LEP?	No	
Zone objectives of the LEP?	No	

Principal Development Standards

The development standards for building height (8.5m) in the WLEP 2011 do not apply to the proposal as they are overridden by the standards for height in SEPP (HSPD) 2004. Notwithstanding, there is insufficient details provided on the plans (no existing ground level is shown on the plans to demonstrate compliance with height controls).

Compliance Assessment Summary

Relevant Clauses	Compliance with Requirements
Part 1 Preliminary	
1.2 Aims of the Plan	No
Part 2 Permitted or prohibited development	
2.1 Land Use Zones	No
2.6 Subdivision –Consent requirements	Yes
2.7 Demolition requires consent	Yes
Part 4 Principal development standards	
4.1 Minimum subdivision lot size	N/A
4.3 Height of buildings	N/A
4.6 Exceptions to development standards	N/A
Part 5 Miscellaneous Provisions	
5.9 Preservation of trees or vegetation	Yes
Part 6 Additional Local Provisions	
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes
6.7 Residential Flat Buildings in Zone B4 Mixed Use	N/A

Zoning and permissibility

The site is zoned RU4 and seniors housing prohibited within the Zone. However, seniors housing development are permissible under the SEPP (HSPD).

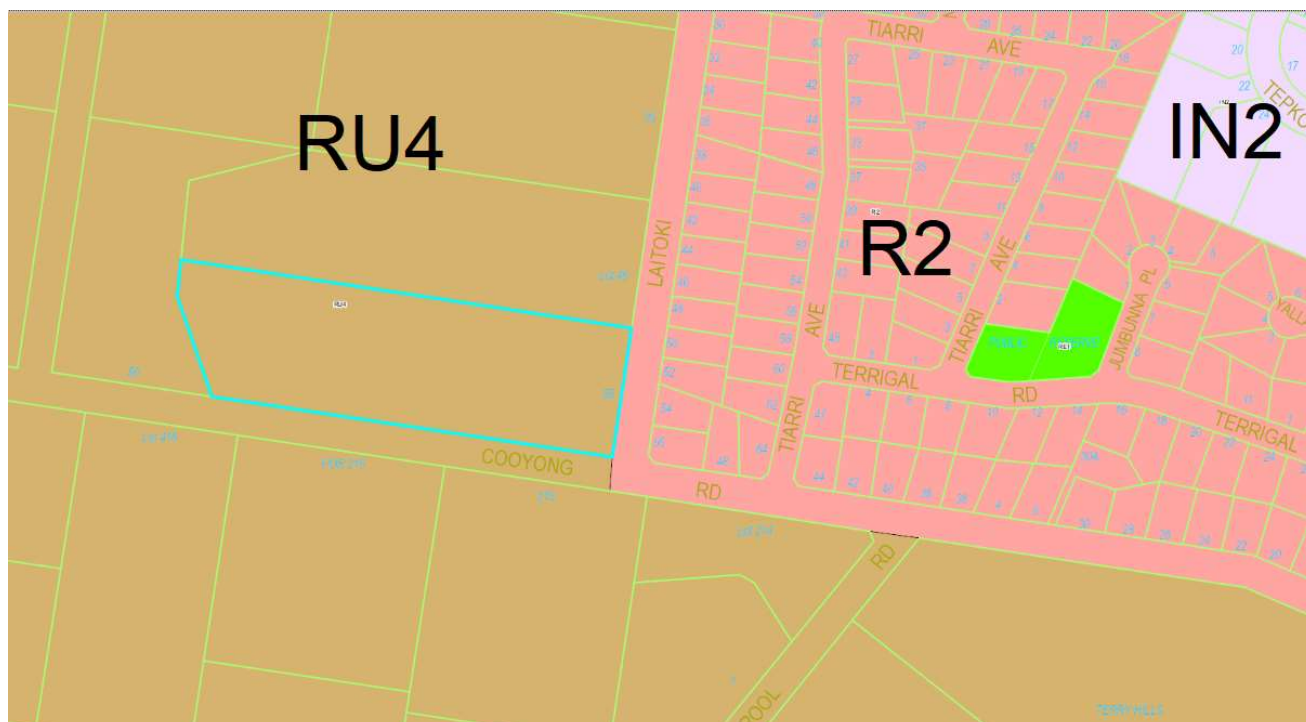


Figure 6 - Site zoning under WLEP 2011 (note: site boundaries shown in blue)

Zone objectives

Clause 2.3(2) of the WLEP 2011 requires the consent authority to have regard to the zone objectives when determining a development application. The underlying objectives of the RU4 zone and how they relate to the proposed development are addressed as follows:

The objectives of the RU4 zone are:

- *To enable sustainable primary industry and other compatible land uses.*
- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.*
- *To maintain and enhance the natural landscape including landform and vegetation.*
- *To ensure low intensity of land use other than land uses that are primary industry enterprises.*
- *To maintain the rural and scenic character of the land*

Comment

The proposal development, which consists of self-contained dwellings (serviced self-care dwelling) and Residential care facility is found inconsistent with the objectives of the zone for the following reasons:

- The scale of the development is uncharacteristic. The proposed buildings are not compatible with the context of the site that currently contemplates buildings of a scale significantly less than that proposed;
- The design is not considered to be conducive to providing a good outcome for the character of the development and the area when viewed from the adjoining RU4 zoned land;
- The proposed development does not meet the definition of low intensity as adopted by the Land and Environment Court case in *Vigor Master P/L v Warringah Council [2008] NSWLEC 1128*, which defines intensity as”

***Intensity:** is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore, “low intensity” would constitute a development which has a low level of activities associated with it.*

- The development does not provide sufficient landscape opportunities within the site commensurate with the bulk and scale of the proposed built form.

Given the strategic importance of maintaining the objectives of the zone and preserving the rural character of the land, the inconsistency of this development with the objectives of the zone has been included as reason for refusal.

Clause 4.6 - Exceptions to development standards

Clause 40 (4) (b) of SEPP (HSPD) 2004

A request to vary the development standard for building height adjacent to a property boundary has been made under clause 4.6 in relation of clause 40 (4) (b) of the SEPP HSPD 2004, as mentioned earlier in this report.

Clause 4.6 ‘Exceptions to development standards’ is the mechanism by which an applicant’s request to vary a development standard can be considered. Clause 4.6 provides flexibility in applying certain development standards on the following grounds:

1. *The objectives of this clause are as follows:*
 - a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b) *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
2. *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention by demonstrating:*

- a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
4. *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and the concurrence of the Director-General has been obtained.*

The provisions of clause 4.6 fall into two distinct parts, those for which the consent authority must be 'indirectly satisfied' (clause 4.6(4)(a)(i)) through the clause 4.6 variation request and those for which the consent authority must be directly satisfied (clause 4.6 (4)(a)(ii)).

If the consent authority finds that the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority cannot be satisfied that the development will be in the public interest for the purposes of clause 4.6(4)(a)(ii) and cannot uphold the clause 4.6 variation request.

Whether compliance with the standard is unreasonable and unnecessary in the circumstances of the case

The appropriate methodology for the consideration of this question is enunciated in the decision of Chief Justice Preston in *Wehbe v Pittwater Council*. In this decision, the Chief Justice summarised the case law on the consideration of this question and expressed the view that there are five ways in which an applicant may demonstrate that compliance with a development standard is unreasonable or unnecessary.

Applicant's Written Request

The Applicant's written request of Clause 4.6 as contained in the Statement of Environmental Effects or Clause 4.6 Report argues, in part:

"It is my opinion that strict compliance with the requirements of Clause 40(4)(b) of the SEPP is unreasonable in the circumstances of this case for the following reasons:

- a. *The section of building comprising of 3 storeys has a ceiling height which complies with the 8m maximum ceiling height as required by Clause 40(4)(a) of the SEPP.*
- b. *The section of building which creates the third storey is limited to non-habitable portions of the building identified for use as basement, storage areas and ancillary spaces.*
- c. *The area in question will not present as a storey and will appear as part of the sub-floor area of the building.*

In addition to the above it is submitted that:

- a. The non-compliance is directly attributable to the sloping nature of the site and which falls more than 28m from front to rear.*
- b. There will be no detrimental impacts directly attributable to the non-compliant section of building. This is particularly the case in relation to overshadowing and a loss of privacy.*

In addition to the above the proposal is also considered to be consistent with the general aims of the SEPP. It is considered that a contravention of the development standard in the circumstances of this case is justified given that:

- o The subject development site is a sloping allotment of land having a fall of 28m from front to rear and given that the non-compliance is directly attributable to the slope of the land.*
- o The proposal will not result in any unreasonable impacts as a result of the non-compliance, and*
- o The proposal will result in the provision of a total of 94 residential aged care beds and 60 independent living dwellings specifically designed for older people or people with a disability in a manner which will not result in any unreasonable impacts.”*

Objectives of the development standard

The SEPP states that a building that is adjacent to a boundary of the site must not be more than 2 storeys in height. The SEPP does not define the meaning of adjacent, however the dictionary meaning is, ‘Lying near, close, or contiguous; adjoining; neighbouring’.

Clause 40 (4) (b) of the SEPP does not specify any objectives for the development standard, however, the SEPP contains a note which states that the purpose of this standard is to avoid an abrupt change in the scale of development in the streetscape.

As discussed in various sections of this report, the proposed development is not sympathetic to the sensitive character of the location and its interface with low density residential development to the west and rural character to the remaining boundaries of the site. The proposal does not recognise or implement the desirable elements of the location’s current character nor contribute to the quality and identity of the area, therefore failing to meet clause 33 of SEPP (HSPD). The built form, scale, density and character of the proposed development is at odds with the existing desired future character of the locality, with a predominance of adjacent properties sited within large rural blocks.

The precinct is not identified as one that is undergoing a transition. The development form is not characteristic of, or compatible with, the surrounding built form, and the development will in abrupt change in the locality.

Accordingly, the Applicant’s written request (attached to this report as Attachment 2) has not demonstrated that the objectives of the development standard are achieved. The non-compliance is found to be inconsistent with the objectives of the standard.

1. Whether there are sufficient environmental planning grounds to justify contravening the development standard

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ stated:

- i. *The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
- ii. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

The clause 4.6 variation request does not specifically identify the ‘environmental planning grounds’ that support the case for a variation, however the following matters which fall within the scope of ‘environmental planning grounds’ have been identified:

The applicant’s justification is not agreed with and it is considered that the written request does not contain sufficient environmental planning grounds to justify contravening the development standard to such a significant extent.

In this regard, the applicant has not presented information to demonstrate that the variation to the Development Standard will achieve a better outcome compared to a compliant development. Additionally, the assessment notes that there are no site difficulties that warrant a variation to the Clause 40 of SEPP (HSPD) 2004 and trigger such flexibility in the application of the standard. Therefore, the approval of the proposed variation would create an undesirable precedent for other development to seek similar variations and would undermine the aims, objectives and requirements of the Development Standard and the strategic intent of the zone.

Conclusion on Environmental Planning Grounds

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Accordingly, Council is not satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

2. Public interest – Development consistent with the zone objectives and objectives of the development standard

Zone objectives

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the development standard (discussed above) and the objectives of the RU4- Primary Production Small Lots zone.

Assessments against these objectives is provided above and found to be unsatisfactory.

Conclusion

The non-compliance with the Clause 40 (4) (b) standard is not in the public interest as the proposed development is found to be inconsistent with the intent of the Development Standard and the zone objectives.

Therefore, it is concluded that the proposal is contrary to the public interest.

3. Concurrence of the Director General.

Circular PS 18-003, issued on 21 February 2018, advised that Sydney district and regional planning panels may assume the Secretary's concurrence where development standards will be contravened. In deciding whether to grant assumed concurrence the following matters must be considered:

- a) *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.*

The clause 4.6 variation request relates to a development standard that is contained in a State Environmental Planning Policy which overrides local planning controls and has the effect of allowing development in circumstances where it would be prohibited under the local plan. The development standard variation has regional significance as the proposal is to be determined by the Sydney North Planning Panel which is responsible for the determination of Schedule 4A Development in the Sydney North Region. If the development standard variation is endorsed, it is likely to have implications for other proposals for seniors housing development submitted pursuant to SEPP Seniors.

In *Hooker Corporation Pty Ltd v Hornsby Shire Council* (1986) 130 LGERA 428 Cripps J said:

'...Furthermore it is now established that although the discretion conferred by the SEPP No 1 is not to be given a restricted meaning and its application is not to be confined to those limits set by other tribunals in respect of other legislation, it is not to be used as a means to effect general planning changes throughout a municipality such as are contemplated by the plan making procedures set out in Part III of the Environmental Planning and Assessment Act'

The comments of Cripps J are in reference to SEPP 1, however they have also been accepted by the Land and Environment Court as being of relevance to the application of clause 4.6. The determining authority should consider whether the construction of seniors housing on land which does not comply with clause 40 and will result in significant change to character of the locality, is a planning outcome that does not affect a general planning change throughout the Sydney North Region.

- b) *The public benefit of maintaining the development standard.*

The public interest, in this case, is to maintain the standard contained in the environment planning instrument which has been duly prepared with public consultation and establishes the community expectation and is designed to protect the public interest.

- c) Any other matters required to be taken into consideration by the Director-General before granting concurrence.*

No other matters require consideration.

DEVELOPMENT CONTROL PLANS

WARRINGAH DEVELOPMENT CONTROL PLAN 2011

The Warringah Development Control Plan 2011 is applicable to the development.

Built Form Controls

Principle Numerical Controls	Requirement	Proposed	Complies
B1 Wall Height	7.2	Not Applicable due to the applicability of SEPP (HSPD) 2004	N/A
B5 Side Boundary Setbacks	10m	In excess of 10m on both northern and western boundaries	Yes
B7 Front Boundary Setbacks	20m	Laitoki Road - 11m Cooyong Road - 20	No Yes
B9 Rear Boundary Setbacks	10m	Technically not applicable as the site is a corner site having dual frontages Laitoki Road and Cooyong Road	N/A
D1 Landscaped Open Space	30%	Not Applicable due to the applicability of SEPP (HSPD) 2004	N/A

Compliance Assessment Summary

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction		
A.5 Objectives	No	No
Par B Built Form Controls		
B1 Wall Height	N/A	N/A
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	N/A	N/A
D1 Landscaped Open Space	N/A	N/A
Part C Siting Factors		
C2 Traffic, Access and Safety	No	No (refer to Traffic comments in the referral section of this report)
C3 Parking Facilities	N/A	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3(A) Bicycle Parking and End of Trip Facilities	N/A	N/A
C4 Stormwater	No	No
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Residential accommodation - 3 or more dwellings	Yes	Yes
Part D Design		
D2 Private Open Space	N/A	N/A
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment		
E1 Private Property Tree Management	No	No (refer to Landscaping comments in the referral section of this report)
E2 Prescribed Vegetation	No	No (refer to Landscaping comments in the referral section of this report)
E6 Retaining unique environmental features	Yes	Yes
E8 Waterways and Riparian Lands	No	No (refer to Riparian comments in the referral section of this report)
E10 Landslip Risk	Yes	Yes

Clause B7 - Front Setbacks

Pursuant to Clause B7, development on the land is to maintain a minimum 20 metre setback to both the Cooyong Road and Laitoki Road frontages. The front boundary setbacks are to be landscaped and generally free of any structures, basements, car parking or site facilities other than driveways, letterboxes, garbage storage areas and fences. Front building setbacks to the secondary frontage may be reduced to ten (10) metres provided the secondary road variation considers the character of the secondary road and predominant setback existing in that road.

In this regard, the proposed development provides a minimum 20 metre setback to Cooyong Road being the identified primary street frontage with a minimum ten (10) metre setback provided to Laitoki Road. The ten (10) metre setback adopted to Laitoki Road is consistent with the setbacks established by existing detached residential dwelling houses located on the eastern side of the street and the recently constructed seniors housing development at 83 Booralie Road to the north of the subject site, with the encroaching elements limited to waste collection area, fencing and the primary pedestrian entrance area incorporating letterboxes and a pergola entry statement. Such encroachments are allowed pursuant to the front boundary setback control.

The front setbacks proposed satisfy the numeric provisions of the front setback control and the associated objectives.

Clause D3 - Noise

An Acoustic Report was lodged with the application which considers both internal and external noise sources including surrounding traffic noise, noise emissions associated with traffic generated by activities on site, noise associated with mechanical plant and noise generated by the proposed development. The acoustic assessment found that noise generated by the development will comply with all relevant standards.

The proposed development is not located near any existing noise generating activities such as industry or major roads. Further, the proposed development incorporates appropriate spatial separation between proposed bedrooms and the driveway access to the subject site and found to be satisfactory in relation to the requirement of this clause.

Clause D9 - Building Bulk

Clause D9 seeks to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

The proposed development is unsatisfactory in relation to the requirement of the control for the following reasons:

- The design of the building includes extensive three storey wall planes along the side elevations. This is symptomatic of the size and nature of the proposed development within the development compared to the site area and width, which translates into excessive building bulk that is incompatible and inconsistent with the surrounding predominant pattern and scale of housing within the area; and
- The development has insufficient building articulation and modulation along the side walls and a distinct absence of any single storey elements or significant stepped-in

side walls as height increases. The resultant built form does not appropriately respond to the character of the surrounding residential area.

Therefore, this matter forms a reason for refusal.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention through Environmental Design.

The application was referred to the NSW Police who did not raise any objection to the proposed development.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$69,604,699		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$661,245
Section 94A Planning and Administration	0.05%	\$34,802
Total	1%	\$696,047

If the application is approved a condition of consent can be included to ensure the required contributions are paid prior to the issue of the Construction Certificate.

CONCLUSION

The assessment of the application has been carried out having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP (HSPD) 2004, SEPP Infrastructure, WLEP 2011, the relevant codes and policies of Council, including the relevant provisions of the WDCP 2011.

The application has been lodged pursuant to the State Policy for seniors housing (SEPP (HSPD) 2004 as a Site Compatibility Certificate is required and has been issued for the site.

The detailed assessment against the requirements of the SEPP has concluded that the proposed character and built form does not provide an appropriate contextual fit to the surrounding low density rural and residential character. The proposal is significantly at odds with the established local pattern, does not provide for a suitable and appropriate response to the existing size, scale, setbacks, street level treatment and streetscape of the surrounding area, and does not allow for adequate separation between the proposed buildings internally and with adjacent dwellings.

The location and the steepness of the subject site is a challenge in itself and problematic as evidenced by the significant non-compliance with the requirements of Clause 26 of the SEPP (HSPD), the number of ramps and lifts required internally to provide an accessible path of travel for the residents.

The site constraints associated with the shape and configuration of the site and the sloping topography of the site and the surrounding areas has a significant bearing on the capacity to support the proposed built form without generating undesirable character and amenity impacts and access issues.

Fundamentally, the proposal has failed to properly recognise and respond to the physical and locational constraints of the site and the locality. This resulted in a proposal that is considered to be:

- out-of-character with the pattern, scale, configuration and predominant built form of development in the established rural/residential locality,
- poorly situated in relation to providing a “good and reasonable standard” of pedestrian access to public transport and local services and facilities for future occupants,
- unsuitable and inappropriate for the site, and
- symptomatic of an over-development of the site.

Accordingly, the current proposal is recommended for refusal.

The assessment of the proposed development against the provisions of WLEP 2011 has found that the development is inconsistent with the objectives of the relevant Development Standard and the objectives of the RU4 zone. Furthermore, the applicant has not provided sufficient justification in terms of Environmental Planning Grounds for the substantial departure from the Development Standard under Clause 40 (4) (b) of SEPP (HSPD).

The notification of the development resulted in 175 individual submissions with 174 being in opposition to the proposal. The majority of the submissions raised concerns with regards to:

- the density and scale,
- traffic congestion,
- impact on the surrounding road network, and
- the impact on the locality in general.
- the process and determination of the SCC for the site.
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The issues raised in the submissions are generally concurred with and justify the refusal of the application. They are addressed in the “Public Notification Section” of this report.

Based on the detailed assessment contained in this report, it is recommended that the Sydney North Planning Panel (SNPP) refuse the application for the reasons detailed within the recommendation attached to this report.

RECOMMENDATION (REFUSAL)

That the Sydney North Planning Panel, as the relevant consent authority pursuant to Clause 4.16(1) (a) of the EP&A Act 1979 (as amended), refuse to grant consent to Development Application No. DA2018/1752 for Demolition works and Construction of a Seniors Housing Development, comprising a Residential Care Facility and Independent Living Units,

community and strata title subdivision at Lot 368 DP 752017, 58 Laitoki Road, Terrey Hills for the following reasons:

1. State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004 (SEPP HSPD 2004).

The proposed development is unsatisfactory in respect to Section 4.15 of the EPA Act, as the application is found to be inconsistent with the provisions of SEPP (HSPD) 2004.

Particulars:

- a) The proposed development is inconsistent with Aims of Policy and the requirement of Clause 24 in relation to design and compatibility.
- b) The proposal fails to comply with the requirement of clause 26 in that site is not located within 400 metres of essential facilities and services and is substantially further than 400 metres from the public transport service (bus).
- c) The requirements imposed on determination of the proposal under the SCC (Schedule 2) are not appropriately resolved.
- d) The proposed development is inconsistent with the requirements of clause 33 Neighbourhood Amenity and Streetscape.
- e) Insufficient details have been provided to demonstrate that residents of the serviced self-care housing component of the proposed development will have reasonable access to home delivered meals, personal care and home nursing, and assistance with housework, as required by clause 42 of SEPP.
- f) No written evidence has been provided to demonstrate that the proposed development can be connected to a reticulated water system and will have adequate facilities for the removal or disposal of sewage, as required by clause 28.
- g) The variation to the development standard of clause 40 (4) (b) does not satisfy clause 4.6 'Exceptions to development standards' and the development will not be in the public interest as it is not consistent with the objectives of the RU4 zone in which the development is proposed to be carried out.
- h) The elevations, sections and other plans are inadequate to be able to determine compliance of the development in relation to clause 40 (4) (a) Development Standard and deemed to satisfy provisions in clause 48(a) (for residential care facilities) and clause 50(a) (for self-contained dwellings) of SEPP (HSPD) 2004.
- i) The development does not comply with the requirement of Schedule 3 - Standards concerning accessibility and useability for self-contained dwellings in that development is unable to provide continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or internally within the development.

2. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and Associated Apartment Design Guide (ADG)

The proposed development should not be approved in its current form as it is inconsistent with a number of the design quality principles of SEPP 65 insofar as they apply to context and neighbourhood character, built form, scale, density, landscaping, amenity, and aesthetics:

Particulars:

- a) The proposed building is not compatible with the context of the site that currently contemplates buildings of a scale significantly less than that proposed.
- b) The development does not provide sufficient landscape area within the boundaries of the site commensurate with the bulk and scale of the proposed built form.
- c) The proposal is inconsistent with a number of the requirements as contained in the ADG referenced in SEPP 65.

3. Warringah Local Environmental Plan (WLEP 2011)

The proposed development is unsatisfactory in respect to Section 4.15 (1) (a) (i) of the EPA Act, as the application is found to be inconsistent with the provisions of WLEP 2011.

Particulars:

- a) The development is inconsistent with the aims of the Plan, as it relates to promoting development that is compatible with neighbouring development in terms of bulk, scale and appearance and use.
- b) The development is inconsistent with the objectives of the RU4 Primary Production Small Lots.

4. Non-compliance with Warringah Development Control Plan (WDCP)

The proposed development fails to comply with the following clauses of the WDCP:

Particulars:

- C2 Traffic, Access and Safety;
- Clause C4 – Stormwater;
- C9 Waste Management;
- Clause D9 – Building Bulk; and
- Clause E1 – Private Property Tree Management

5. Public Interest

The proposal is not in the public interest.

Particulars:

- a) A significant number of objections have been received from surrounding properties raising a range of concerns with the proposal which are concurred with in large part, therefore the proposal is not in the public interest.

- b) The site is not considered to be suitable for the development given its location for housing for seniors or people with a disability, given the excessive distance and steep grades to the closest public transport services.
- c) The development is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and within the respective localities.

6. Inadequate Information

The proposal is deficient in a number of respects with regard to the information submitted.

Particulars:

- a) The applicant has not provided any detailed plans to demonstrate compliance with Clause 48 and Clause 50 of SEPP (HSPD) in relation to landscaped area and density and scale for the two different types of seniors housing proposed within the site.
- b) The traffic report submitted with the application is not based on data regarding the trip generation rates provided by RMS, and is therefore inadequate to determine the traffic impact of the development.
- c) Insufficient details have been provided in the plans to determine that the basement layout will achieve compliance with the Australian standard (AS2890.1:2004 and AS2890.6).
- d) The plans submitted with the application stipulates a building height measured from the ground level that includes the existing fill within the site. The building height is required to be measured from natural ground level.
- e) The applicant has not provided a MUSIC Model with the Stormwater Management Report, and therefore Council is unable to undertake the required assessment to determine if the stormwater management system complies with Council's Water Management Plan.
- f) The applicant has not provided a Drains model to accompany the Stormwater Management Report. Council is unable to verify input parameters as required by section 4.4 and 3.1.3 of Councils On Site Detention Technical specification as referenced in the Water Management Policy.
- g) The applicant has not provided details of the on-site detention tank in relation to the proposed building, surcharge and overland flow paths and freeboard requirements as required by section 3.1.3 of Council's On Site Detention Technical specification.
- h) The applicant has not provided a Drains model to determine the external catchment hydrology and design of the proposed stormwater lines in Laitoki and Cooyong Road. The design is to be undertaken in accordance with Council's Auspec One design guidelines.