

COUNCIL SUPPLEMENTARY REPORT

Panel Reference	PPSSEC-214
DA Number	DA 2022/16
LGA	Burwood
Proposed Development	Alterations and additions to Strathfield Private hospital for the demolition of the existing dwelling at 47A Wentworth Road, tree removal and the construction of a 3 storey building containing basement and ground level parking, 13 additional beds, 2 operating theatres and ancillary services
Street Address	47A Wentworth Road & 3-5 Everton Road, Strathfield NSW 2135
Applicant/Owner	Mr K Mayoh – Ramsay Health Care Australia Pty Limited
Date of DA lodgement	15 March 2022
Number of Submissions	In response to Deferral Meeting – Notification of additional information, - 1 submission received on behalf of 2 adjoining property owners.
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Proposed cost of development \$19,959,000.00
Report prepared by	Emma Buttress-Grove, Senior Town Planner & Business Improvement Officer – City Development
Report date	16 November 2022
Meeting date	14 October 2022 – Deferred 24 November 2022

Deferral of DA 2022.16 at SECPP meeting of 14 October 2022

DA 2022.16 was considered by the SECPP at the meeting of 14 October 2022. The Panel deferred their determination of the application to allow the Applicant the opportunity to submit the following additional information and the following information was provided to Council in the Record of Deferral prepared by the SECPP on 14 October 2022:

- *Additional information to address the question of site isolation for the adjoining sites at 1 & 1A Everton Road. This is to include a building envelope as to the maximum potential for these adjoining sites having regard to their overshadowing and the built form of the hospital extension.*
- *The Applicant is to provide the additional information to Council within 2 weeks from the date of this deferral record. If the additional information from the applicant is not provided within 2 weeks, the Panel may move to determine the DA based on the information currently at hand.*
- *Council is to provide a copy of the additional information to the adjoining property owners and their consultant and provide an opportunity for written submissions. The matter is to be referred back to the Panel in a timely manner with a supplementary report and an amended draft set of conditions from the Council. The Panel will then electronically determine the matter.*

Brief Timeline

- The Record of Deferral dated 14 October 2022 was emailed to Council on 17 October 2022.
- The Applicant was provided a copy of the Record of Deferral by the Panel on 18 October 2022.
- On 31 October 2022 the Applicant submitted additional information to Council consisting of:
 - Legal advice regarding isolation of adjoining sites dated 31 October 2022, prepared by Mills Oakley
 - Annexure A – Neighbourhood Potential Concept Development
- On 1 November 2022 the additional information was referred to Precise Planning acting on behalf of the Owners of No. 1 & 1A Everton Road.

- On 5 November 2022, a submission of objection was received by Council from Precise Planning by email. Precise Planning also submitted the objection directly to the SECPP.
- On 8 November 2022:
 - the Applicant submitted an amended Neighbourhood Potential Concept Development Plan to Council.
 - The amended Neighbourhood Potential Concept Development Plan was uploaded to the SECPP.
 - The amended Neighbourhood Potential Concept Development Plan was referred to Precise Planning on behalf of the Owners of No. 1 & 1A Everton Road.
- On 10 November 2022 a further submission of objection was received by Council from Precise Planning by email. Precise Planning also submitted the objection directly to the SECPP.
- SECPP meeting scheduled for 24 November 2022.

Additional Information

The additional information submitted by the Applicant has been assessed in relation to the deferral requirements of the Panel, it will be discussed in two parts, being:

1. The matter of site isolation of No's 1 & 1A Everton Road
2. Future redevelopment of No's 1 & 1A Everton Road

1. The matter of site isolation

No's 1 & 1A Everton Road are located directly south of the subject site at No. 47A Wentworth Road, and No. 1A Everton also adjoins the existing Strathfield Private Hospital site at 3-5 Everton Road on its western boundary.

The sites are considered to be accessible, located within 350m (4 mins walking distance) from Strathfield Train Station, 400m from Burwood Park, and 950m from Burwood Westfield.

Combined, No's 1 & 1A Everton Road have a site area of 1250sq.m (approx), with a 30m (approx.) frontage to Everton Road, and a 40m (approx.) frontage to Wentworth Road.

The sites have a maximum FSR potential of 2:1 and a maximum building height of 14m. The sites are zoned R1 – General Residential under the provisions of BLEP 2012. Permitted land uses within this zone are:

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Group homes; Home industries; Hostels; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Residential flat buildings; Respite day care centres; Semi-detached dwellings; Seniors housing; Serviced apartments; Shop top housing; Tank-based aquaculture; Any other development not specified in item 2 or 4

Further to the above under the provisions of the State Environmental Planning Policy (Housing) 2021, additional land uses providing affordable living are also permitted within the R1 General Residential zone.

In response to the deferral of the DA by the Panel at their meeting of 14 October 2022, the Applicant sought legal advice in relation to the matter of site isolation (of No's 1 & 1A Everton Road) as a result of the proposed development. A letter of advice regarding isolation of adjoining sites prepared by Mills Oakley dated 31 October 2022 was submitted to Council.

The legal advice includes a detailed discussion on the legal tests in relation to the principles for the assessment of isolated sites set out by Commissioner Tuor in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 (*Karavellas*) which are:

- Is amalgamation of the site feasible?
- Can orderly and economic use and development of the separate sites be achieved without amalgamation?

And provides the following assessment/conclusion:

- 5.1. *Having carefully considered the Proposed Development, in addition to the objectives of the zone, and relevant planning controls, it is clear that the Adjoining Sites cannot be considered “isolated” in a planning sense.*
- 5.2. *The legal test to be applied as part of the planning principle when considering whether orderly and economic use and development of the separate sites be achieved without amalgamation is if an adjoining Site can achieve a development that is consistent with the planning controls.*
- 5.3. *The indicative design for the redevelopment of the Adjoining Sites for the highest density form of development permitted by the controls – and fact that such a development could readily be achieved on the Adjoining Sites – confirms that the redevelopment of those properties can be done in a manner that is clearly consistent with the planning controls.*
- 5.4. *Importantly, even if the redevelopment for the purpose of an RFB is not carried out, there are several other opportunities for the orderly and economic use and development of the Adjoining Sites, including a boarding house, group home, hostel, bed and breakfast accommodation or shop top housing, all of which are subject to lower thresholds for site requirements and setbacks than the residential development modelled.*
- 5.5. *In our opinion, there are a range of viable development options for the Adjoining Sites which can readily be achieved without amalgamation. These options satisfy the requirements for the orderly and economic development of separate sites, as outlined in Karavellas v Sutherland Shire Council [2004] NSWLEC 251 and are consistent with the objectives of the R1 – General Residential zone.*
- 5.6. *In our opinion, you have clearly demonstrated that economic use and development of the Adjoining Sites can be achieved in accordance with the principles in Cornerstone Property Group Pty Ltd.*

Officer comment:

The legal advice prepared by Mills Oakley dated 31 October 2022 has been assessed. Council Officer's concur with the conclusions made by Mills Oakley as reproduced above. Specifically, the ability of the amalgamated sites to facilitate a residential flat building development permitted within the R1 General Residential zone, in a manner that is compliant with the provisions of SEPP 65, and the primary development standards for FSR and Height under Burwood LEP 2012.

It is also noted that the legal advice makes reference to a possible scenario where redevelopment of the Strathfield Private Hospital site was to include one of the adjoining properties, either No. 1 or 1A and makes the following statement:

- 4.19. *If the Proposed Development included one of the Adjoining Properties within the redevelopment and left only one Site undeveloped (with a frontage of less than 20m), the issue of potential isolation would require closer consideration however, in circumstances where the Adjoining Sites could readily be redeveloped together and meet all of the necessary planning prerequisites for the highest density form of development permitted in the R1 zone, the issue in our opinion simply does not arise.*

With respect to the above comment, it can be confirmed that Council could find it difficult to support any further redevelopment of the Strathfield Private Hospital site where only one of the 2 dwellings at 1 & 1A Everton Road were included in the redevelopment.

2. Future redevelopment of No's 1 & 1A Everton Road

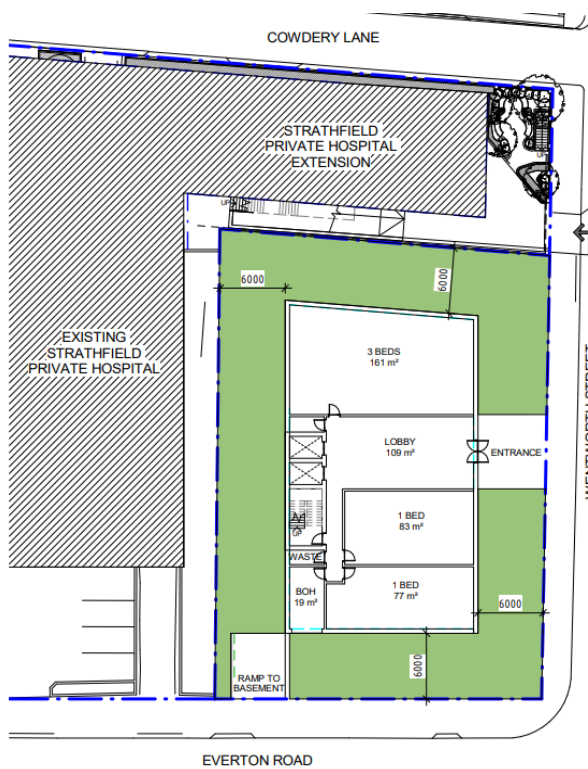
The Record of Deferral of DA 2022/16 required the applicant to provide:

“Additional information to address the question of site isolation for the adjoining sites at 1 & 1A Everton Road. This is to include a building envelope as to the maximum potential for these adjoining sites having regard to their overshadowing and the built form of the hospital extension”

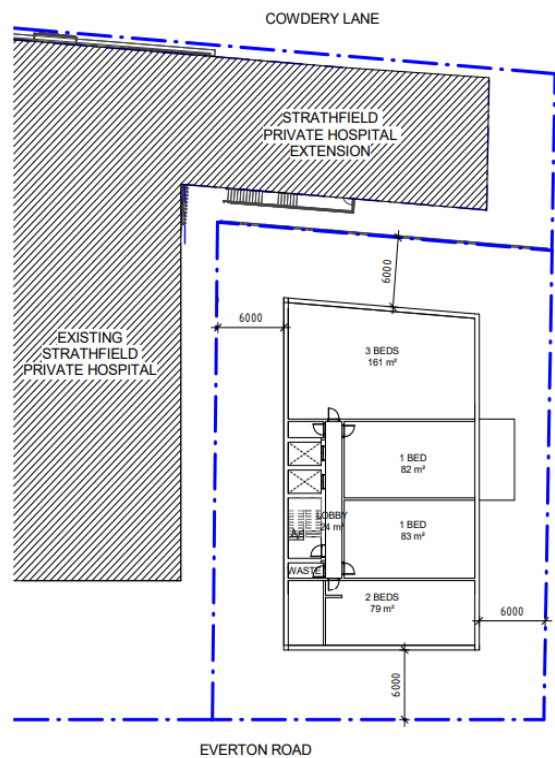
Revised Concept Development Plan received on 8 November 2022

The amended concept plan proposes an indicative building envelope for a residential flat building development. The concept plan also provides indicative floor plans and shadow diagrams

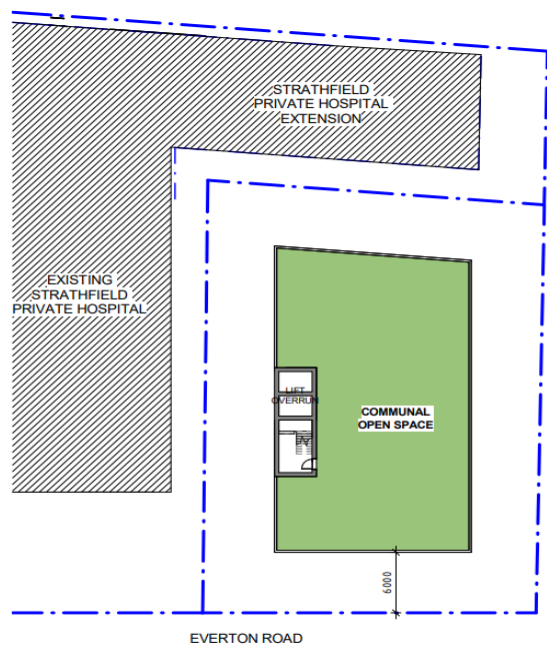
prepared for 9-11am on Winter Solstice for a future development that could occur on the adjoining properties to the south at No's 1 & 1A Everton Road as a combined development site.



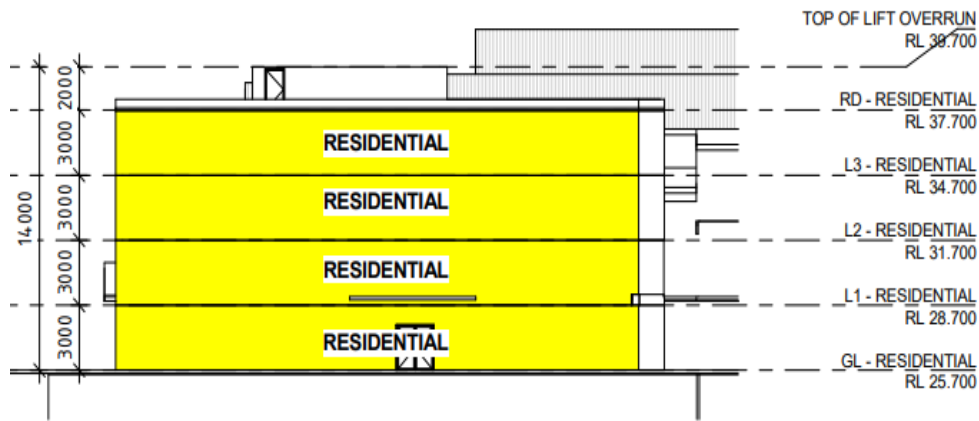
GROUND FLOOR PLAN
NEIGHBOURHOOD POTENTIAL DEVELOPMENT



TYPICAL 1, 2 AND 3 FLOOR PLAN
NEIGHBOURHOOD POTENTIAL DEVELOPMENT



ROOF DECK LEVEL - COMMUNAL OPEN SPACE
NEIGHBOURHOOD POTENTIAL DEVELOPMENT



Officer comment:

The amended concept plan proposes a residential flat building with a setback of 6m to all site boundaries, including Wentworth Road and Everton Road. The main front entrance to the residential flat building is proposed to be from Wentworth Road, with the vehicular access to the site / basement from Everton Road.

Concept development data based on the proposed building indicates that a 4 storey residential flat building containing 15 residential apartments could be constructed on the site within the maximum 14m HOB development standard, and the maximum 2:1 FSR.

The concept development can achieve compliance with the ADG for cross flow ventilation and solar access to apartments. A COS area is also proposed at the rooftop which can receive direct solar access.

Obviously should a development of this nature proceed to any Pre-DA or DA stage, it would be expected that the design would be sufficiently articulated, and a far greater level of detail provided to indicate compliance with both the ADG design requirements and Council's DCP, including a detailed Landscape Concept Design for the development.

However, for the purposes of satisfying the Record of Deferral request made by the SECPP to demonstrate that the adjoining sites at No. 1 & 1A Everton Road Strathfield are not isolated and can be redeveloped for the best use of the site given its R1 zoning, being for a residential flat building development has been achieved by the applicant.

Submissions

In accordance with the instructions of the Panel from the meeting of 14 October 2022, on 1 November 2022 the additional information which included the Legal Advice on Site Isolation, and the Initial Concept Development Plan was referred to Precise Planning acting on behalf of the Owners of No. 1 & 1A Everton Road.

On 5 November 2022, Precise Planning provided a submission of objection to Council and the Panel by email which was in reference to the Legal Advice on Site Isolation and the Initial Concept Development Plan, however as advised by Precise Planning the submission of objection dated 10 November 2022 is to supersede the objection of 5 November 2022.

In this respect, the issues raised in the submission of objection prepared by Precise Planning dated 10 November 2022 are discussed in detail below.

Issue 1: Response to Legal Advice

It is noted that the legal advice prepared by Mills Oakley includes the following comment in relation to the valuation of the two adjoining properties and offers made for their acquisition.

Nonetheless, a valuation of the adjoining sites was commissioned and offers above market value for the adjoining sites have been made and rejected by the

adjoining property owners which would satisfy the planning principle even the sites were to become isolated – which they will not.

To date, no evidence has been provided by the applicant of offers made above market value for acquisition of the adjoining properties. We are advised that such claims are incorrect and do not align with records retained by the owner-occupiers of adjoining properties. The enclosed records show all offers were made after being initially approached by Ramsay Health Care and were below market value.

It is noted that the Colliers Valuation provided by the applicant is dated 2022 and that no valuation of the properties at the time the offers were made has been provided by the applicant to date. As such, the proposal is inconsistent with the planning principle relating to site isolation and is broadly inconsistent with the requirements of the Burwood Development Control Plan, specifically control P2 of Section 3.2.6 which reads as follows.

Where a development may result in the creation of an isolated site or sites, the applicant is required to demonstrate that negotiations between the owners of the properties commenced at an early stage that was prior to the lodgement of the Development Application. Where no satisfactory result is achieved, the Development Application must include evidence of negotiations with the owners of the properties. These details must include offers to such owners. Such offers are to be reasonable and are to be based on at least one recent independent valuation and include other reasonable expenses likely to be incurred in the sale of the process.

The enclosed documentation notes that the proponent attempted to acquire 1 Everton Road sometime last year, in an attempt to further isolate one or more of the property owners.

It is our client's position that the narrative proffered by the applicant is factually incorrect and has misled both Council and the Sydney Eastern Planning Panel into believing that appropriate steps were undertaken to minimise the potential for site isolation. Had Council undertaken appropriate due diligence in corroborating these claims when they were initially made by the applicant, it is likely that this proposal would not have progressed with a recommendation for approval.

It is requested that careful consideration be given to the enclosed documentation by both Council and the Sydney Eastern Planning Panel.

Officer comment:

Development Application 2022.16 was lodged with Council on 15 March 2022. As part of the DA documentation provided to Council in relation to the matter of site isolation, the Applicant submitted evidence to Council in order to demonstrate that genuine attempts to purchase/acquire the adjoining properties at No. 1 & 1A Everton Road had been carried out prior to the lodgement of the DA.

This evidence was in the form of:

- A Valuation Assessment – Highest and Best Use, of No. 1 & 1A Everton Road Strathfield, prepared by Colliers International dated 5 July 2019. This assessment valued the properties as follows:
 - 1 Everton Road Strathfield - **\$3,400,000.00**
 - 1A Everton Road, Strathfield - **\$3,450,000.00**
- An IntelliVal Automated Valuation Estimate prepared by Core Logic dated 8 September 2022 stating:
 - 1 Everton Road Strathfield - **\$2,800,000.00** (estimated range: \$2,272,000.0-\$3,338,000.00)

- 1A Everton Road Strathfield - **\$2,775,000.00** (estimated range: \$2,219,000.00-\$3,329,000.00)
- Formal “Offer to Purchase” letters, and related correspondence which the applicant requested to be “Confidential” and not published as part of the DA documentation due to containing sensitive information (names, addresses and financial data). These documents are listed below:
 - Offer to Purchase Letter dated 30 June 2020, made to the owners of No. 1A Everton Road by Ramsay Health Care for the amount of **\$4,130,000.00**. Offer to Purchase letter
 - Offer to Purchase letter dated 30 June 2020, made to the owners of No. 1 Everton Road by Ramsay Health Care for the amount of **\$4,000,000.00**.

According to the information provided by the Applicant, in response to the formal “Offer to Purchase” letters the owners of No. 1 & 1A Everton Road had been in negotiations with Ramsay Health Care since the initial Offers to Purchase, which lead to a subsequent letters of offer as follows:

- Offer to Purchase letter dated 28 June 2021 made to the owners of No. 1 Everton Road by Ramsay Health Care for the amount of **\$4,500,000.00**.
- Offer to Purchase letter dated 1st July 2021 made to the owners of No. 1A Everton Road for the amount of **\$4,565,000.00**.

The applicant provided further correspondence which appeared to indicate that further negotiations between Ramsay Health Care and the owners of No’s 1 & 1A Everton Road were undertaken however these were unsuccessful resulting in the issuing of the following letters from the Applicant.

- Letter from Ramsay Health Care to the owner of No. 1 Everton Road dated 2 July 2021 **rejecting the counter offer of \$4,800,000.00** made by email to Ramsay Health care from the owners of No. 1 Everton Road and advising no further counter offers will be made. The letter also advised that the offer to purchase for \$4,500,000.00 remained open until 5pm 2 July 2021, and if not accepted would deem the offer rejected which would conclude the matter.
- Letter from Ramsay Health Care to the owner of No. 1A Everton Road dated 9 July 2020 (error – 2021) in relation to the rejection by **the owner of No. 1A Everton Road of the offer of \$4,565,000.00**, a statement from Ramsay Health Care advising that there would be no further increases in the offer, thereby rejecting the counter offer. The letter also stated that as a response had not been received by 5pm 9 July 2021, the dealings in relation to the proposed purchase of the property was considered to have been concluded.

The Timeline of Events submitted to Council has been reviewed including the:

- Valuation of 1A Everton Road, prepared by Abbotts Valuers dated 24 October 2019 which considered the “fair market value” of No. 1 A Everton Road as being \$4,500,000.00.
- Copy of the Offers to Purchase letters to the Owners of No’s 1 & 1A Everton Road, **omitting** the offer of \$4,565,000.00 made by Ramsay Health Care to the owner of No. 1A Everton Road dated 1 July 2021.
- Email correspondence between No. 1 Everton Road and Ramsay Health Care.

It is evident that there has been a long history of negotiations and correspondence between the owners of No. 1 & 1A Everton Road, and Ramsay Health Care since 2019.

It is also evident that Ramsay Health Care provided Offers to Purchase each property for amounts that appeared to be above the valuation prices estimated in the Valuation Assessment prepared by Colliers International dated 5 July 2019.

In summary, Council Officers consider that it has been sufficiently demonstrated by the Applicant that:

- genuine attempts to acquire the adjoining sites at No's 1 & 1A Everton Road have been made by formal Offer to Purchase letter, and further increasing the purchase offer under a second formal Offer to Purchase letter
- that no negotiation could be reached with the adjoining property owners
- that these offers and negotiations were made prior to the lodgment of the current DA.

Issue 2: Response to Concept Development Plan

2.1 Articulated Building Envelope

Control P18 of Section 4.1 of the Burwood Development Control Plan requires that "New buildings up to 4 storeys and below should have a distinguished base and top." The building envelope plan supplied by the applicant shows no articulated 'base and top' as required by the DCP. In addition, no acknowledgement has been made to the prominence of the site in addressing Everton and Wentworth Road (as a corner site). A compliant building envelope would include reduced upper-level setbacks and an additional angled setback to address the intersection of Everton and Wentworth Roads.

Officer comment:

The request made by the SECPP in their Record of Deferral for DA 2022.16 stated:

"Additional information to address the question of site isolation for the adjoining sites at 1 & 1A Everton Road. This is to include a building envelope as to the maximum potential for these adjoining sites having regard to their overshadowing and the built form of the hospital extension" '

The applicant has submitted to Council a Concept Development Plan that satisfies the above requirement, the request was to provide a building envelope that was indicative of the maximum potential for the adjoining sites. This building envelope was designed around what was considered to be the appropriate setbacks for any proposed building given the dual street frontage, the overall height of the building, density, and potential overshadowing impacts.

Details regarding the proposed fenestration and articulation of a proposed building on this site is a level of detail that would not be expected to be provided with a concept building envelope design. The purpose of the concept building envelope was to demonstrate that the adjoining sites could be redeveloped to their maximum potential and therefore establish that the sites would not be left isolated if the proposed development were to be approved.

2.2 "Additional information to address the question of site isolation for the adjoining sites at 1 & 1A Everton Road.

This is to include a building envelope as to the maximum potential for these adjoining sites having regard to their overshadowing and the built form of the hospital extension"



Figure 1 Established Street Setback

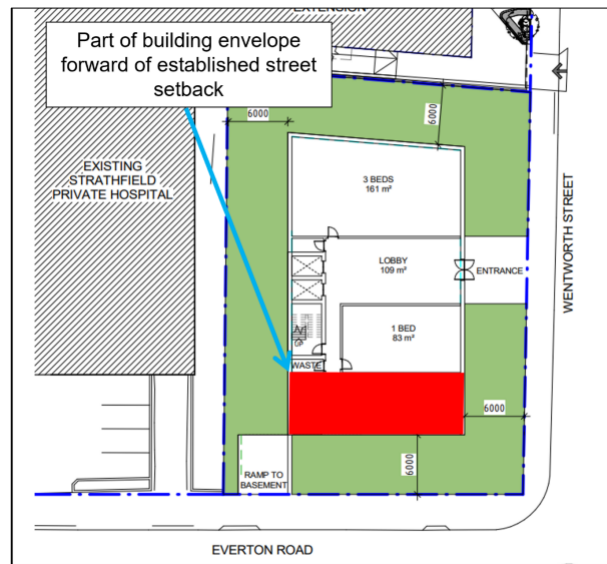


Figure 2 Inconsistent Street Setback

The incorporation of a consistent street setback (as required by the Burwood DCP) would likely result in the deletion of the “BOH” area and south-facing 1 bedroom unit on the ground floor, and the 2 bedroom south-facing units on the first, second and third floor. The deletion of these units would result in an insufficient number of units receiving cross-ventilation (see further discussion below). In addition, the rooftop communal area would be reduced.

Officer comment:

The amended concept plan proposes 6m setbacks to all site boundaries, including Wentworth Road and Everton Road. Council Officers do not disagree that any proposed development on the site should be required to “match” the setback of the existing hospital building at 3-5 Everton Road.

The existing hospital building at 3-5 Everton Road is setback approximately 11-13 m from Everton Road. This building was constructed in the 1980’s and has an at grade car park in front of the hospital building. This is a design approach that would not be supported if the hospital site were to be redeveloped, and the car parking areas would be required to be integrated into the building design.

Further to the above, Part 4.1 Residential Flat Buildings in R1 Zone, of the BDCP 2013 states:

P2 The front setback of a building is to be a minimum of 6m.

Part 4.1 of BDCP 2013 does not require developments to apply the average setback for other development in the R1 zone, and as stated above, nor would the application of such control be appropriate for the proposed redevelopment of this site. In this respect, the proposed setback of the Concept Building Envelope complies with the minimum setback requirement of the DCP.

In relation to the dual street frontage of the site, it would be envisaged that as part of the design phase for the redevelopment of the sites, that the Concept Building Envelope could comply with the requirements of BDCP 2013 for developments on corner sites:

P10 New developments on corner sites should orient to both street frontages.

P11 Accentuate the corner’s unique location with architectural features that actively engage the public realm and create a visual presence at the corner, such as: - Chamfered or rounded corners - Different material and colours - Recessed balconies or windows - Vertical articulation/modulation

2.3 Incorrect Cross-Ventilation Calculations

It is noted that the concept plans illustrate that 75% of proposed units would comprise sufficient cross- ventilation (see figure below).

SOLAR & CROSSVENT		
GROUND FLOOR	2HR SOLAR + POS	CROSSVENT
1 BED	YES	NO
1 BED	YES	NO
3 BED	YES	YES
LEVEL 01		
1 BED	YES	NO
1 BED	YES	NO
2 BED	YES	YES
3 BED	YES	YES
LEVEL 02		
1 BED	YES	NO
1 BED	YES	NO
2 BED	YES	YES
3 BED	YES	YES
LEVEL 03		
1 BED	YES	NO
1 BED	YES	NO
2 BED	YES	YES
3 BED	YES	YES
TOTAL	100%	75%

The applicant has indicated that two units on each floor of the development would not achieve sufficient cross-ventilation, comprising a total of eight (8) units. This represents a total of 53% of the total proposed units. It is evident that the above calculations are incorrect and that the building envelope would not provide for sufficient cross-ventilation to at least 75% of units. This is due to the constrained nature of the site arising from the proposed development at 47A Wentworth Road.

Officer comment:

It is agreed that the calculations provided by the applicant in the table for cross ventilation are incorrect. However, given the omission of floor plans containing room layouts and window openings it is considered difficult to accurately calculate how any prediction for cross ventilation can be made. This level of detail was not required by the SECPP, and given that the proposed building envelope could accommodate a variety of different apartment configurations and layouts, it is considered that little weight should be placed on this matter at such an early concept stage.

Council Officers do not agree that the site is constrained, whilst having frontage to 2 streets the site is >1200sq.m which is more than twice the minimum site area of 500sq.m required for residential flat buildings in R1 zones. The site has a north-south orientation, with adjoining development to the north – 2 storeys in height and to the west, 3 storeys in height. The site has optimal solar access particularly from 9am-12noon.

In this respect it is considered that as part of a further design process for any residential flat development on the site, that compliance with the cross ventilation requirements of the ADG could easily be achieved.

2.4 Omission of Basement Level

It is noted that no basement level plans have been prepared as part of the concept development plans supplied by the applicant. The original public submission(s) provided by our firm raised concerns over the potential impact the proposed basement level would have on similar subterranean development on adjoining sites. It is unclear from the provided documentation whether subterranean structures on adjoining properties would require a setback that exceeds the DCP requirements due to the boundary basement structure proposed at 47A Wentworth Road. In addition, it is unclear whether an increased basement setback would result in a shortfall in on-site parking spaces.

Furthermore, it is noted that the amended concept plans illustrate a ramp (seemingly leading to nowhere) outside the building envelope. Control P23 of Section 4.1 of the Burwood DCP requires that:

P23 Parking entrances are to be encapsulated within the building envelope on primary and secondary elevations that have direct access to a public road and are to have a maximum aperture or length of 6 metres.

The incorporation of a parking entrance into the building envelope would further limit the unit yield of a residential flat building development at the site.

Officer comment:

It is agreed that the Concept Development Plan does indicate a “ramp to basement” vehicular access from Everton Road that does “seemingly lead to nowhere” due to the absence of any basement plan, and that the BDCP 2013 controls do require any parking entrances to be encapsulated into the built form.

However as this is a Concept Development Plan, it would appear that the applicant is indicating that the vehicular access point to the site will be made from Everton Road and not Wentworth Road. Given that the request made by the SECPP in the Record of Deferral for the submission of a Building Envelope Plan, detailed floor plans including basement car parking, layout and number of car parking spaces to be provided for the development were not required to be provided.

Council is of the view that the proposed building envelope could accommodate a variety of different apartment configurations and layouts, therefore in this respect it is considered that little weight should be placed on this matter at such an early concept stage.

2.5 Insufficient Communal Open Space

Control P5 of the Burwood DCP stipulates requirements for communal open space in residential flat buildings.

P5 A minimum of 25% of the site area must be allocated for communal open space. It must have a minimum dimension of 6 metres and 50% of communal open space must be unpaved soft landscaped area.

The required communal open space for the combined site of 1 and 1A Everton Road is 316.5sqm. The rooftop communal open space illustrated on the concept plans would not meet the communal open space requirements under the DCP once a consistent street setback and articulated building envelope is accounted for. In addition, it is noted that Control P33 of Section 4.1 of the Burwood DCP requires that at least 50% of roof areas are to be vegetated and landscaped, limiting the area of usable rooftop communal open space.

In order to address the shortfall of communal open space, the area between the building envelope and side boundaries would need to be utilised. This area is largely north-oriented and meets the requirements of the Burwood DCP. However, as demonstrated on the accompanying shadow diagrams, these areas will receive no solar access during the winter solstice. The absence of solar access to these areas would provide insufficient amenity for residents and would not result in a positive planning outcome for the community.

Officer comment:

As discussed earlier, there is no requirement for any future development on the site to match the 11-13m setback of the existing hospital building on the adjoining site to the west, nor would this be considered an appropriate design response for the subject site. BDCP 2013 requires a minimum 6m front setback for residential flat buildings within the R1 zone. Noting that there is also a 6m setback proposed to Wentworth Road. Due to the generous site area of approximately 1266sq.m and dimensions, being 40m frontage to Wentworth Road and a 30m frontage to Everton Road it is considered that a residential flat building could be designed to comply with the 25% of the site area COS requirement.

In taking into account the proposed setbacks, the rooftop area as proposed would be approximately 504sq.m (not including any additional setbacks that may be proposed at the upper levels or building articulation that may occur as a result of further design phases), 25% of the site area is 316.5sq.m therefore there is approximately 187.5sq.m excess rooftop area above the 25% requirement. This would be more than adequate to facilitate building articulation and setbacks for the COS from the external walls of the building in order to provide privacy treatment and landscaping to the COS area.

In response to the comment with regard to Control P33 “Residents shall have access to rooftop and podium gardens wherever possible. At least 50% of the roof area shall be vegetated with grasses, shrubs and trees.” This condition is to be read in conjunction with Condition P5:

P5 A minimum of 25% of the site area must be allocated for communal open space. It must have a minimum dimension of 6 metres and 50% of communal open space must be unpaved soft landscaped area.

Which stipulates that whilst 25% of the site area must be allocated for COS, the control also requires that 50% of this area is unpaved/soft landscaped. This means that of the 316.5sq.m of COS area required for any residential flat development on the site, 158.25sq.m of the COS shall be soft landscaped. As stated above, based on the Concept Building Envelope proposed by the applicant, 504sq.m is available on the rooftop for COS use.

In this respect there is considered to be more than enough COS area to facilitate a compliant COS design, also incorporating landscaped setbacks, landscaped area, COS facilities, and the required building services (lift overrun, electrical, solar, fire stairs) and there would be no necessity to provide any COS at ground level.

2.6 Building Separation and Increased Setbacks

Part 2F of the Apartment Design Guide includes provisions relating to building separation that are of particular relevance.

Building separation may need to be increased to achieve adequate sunlight access and enough open space on the site, for example on slopes.

Required setbacks may be greater than required building separations to achieve better amenity outcomes.

Given the constraints imposed on 1 and 1A Everton Road as a result of the proposed development, it is likely that any future redevelopment of the site would need to incorporate greater setbacks and building separation to achieve sufficient amenity. A greater rear setback would be required to achieve sufficient solar access to ground floor communal and private open space.

Feasible Building Envelope

Based on the above identified matters, the following diagram illustrates the likely building envelope for the site.

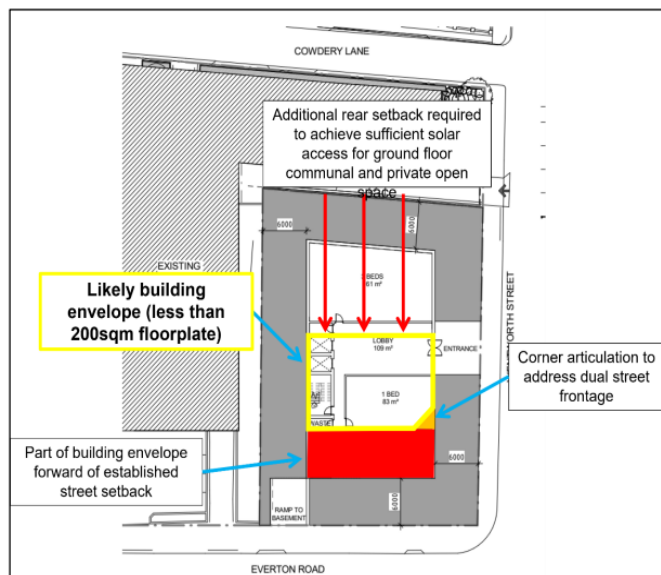


Figure 3 Likely building envelope

The likely future building envelope contains an insufficient floorplate to support a feasible residential flat building development at the site. The building envelope is insufficient to support the amenities and facilities (including parking entrances) required for a residential flat building and would not achieve the maximum height and floor space ratio allowed for the site under the LEP. It is unlikely that a residential flat building could be developed at the site in the event that the proposal at 47A Wentworth Road is approved.

The proposed development at 47A Wentworth Road would therefore unreasonably inhibit the development of a residential flat building at 1 and 1A Everton Road.

Officer comment:

The “Feasible Building Envelope” diagram provided by adjoining owners Planning consultant appears to imply that any future building on the site, in this case, being for a residential flat building must have a setback of 11-13m to Everton Road, to match the setback of the existing hospital building. This is nearly twice the minimum 6m required setback for an RFB in an R1 zone under BDCP 2013.

Further, there appears to be no reasoning for the extensive setback to the northern boundary for any future RFB on the site. As stated earlier in this report, the Concept Development site has an ideal orientation, with no building constraints to the east or south, to the north will be a 2 storey building which taking into consideration the 3m setback for the hospital addition under DA 2022.16 and the proposed 6m setback to the northern boundary will have a 9m separation distance between buildings.

The Concept Development site receives optimal solar access particularly between 9am and 12noon given its eastern-northern orientation and it is considered that given the available floor plate (area) available, an RFB design compliant with the solar access requirements contained in the ADG can easily be achieved. Noting- that on the Concept Development Plan, the table presented indicates that an RFB development on the site could achieve full compliance 100% with the ADG requirements for solar access.

It is also noted that the “Feasible Building Envelope” indicates a cut out angled section in the corner of the building, this is considered to be a rudimentary interpretation of the requirements in BDCP 2013 for RFB’s on corner sites to “*accentuate the corners unique location with architectural features*” and that the chamfering of corners of buildings is only one of the suggested ways to address the presentation, the others being “*Different material and colours - Recessed balconies or windows - Vertical articulation/modulation.*”

2.7 Financial viability of development

Part of the feasibility exercise is establishing not only whether a compliant building envelope can be provided, but whether a financially viable development can also be provided on the isolated site.

It is considered that the building envelope/floorplate illustrated in Figure 3 above would likely yield a maximum of two (2) units per floor (either studio or one-bedroom units) for a total of eight. The limited yield of units would render redevelopment of the site unviable when the cost of site acquisition is accounted for. The two properties are collectively worth around \$9 million (as evidenced in the accompanying valuation report). The acquisition of the sites by a developer would require the sale of each unit at \$1,125,000 as a minimum – this is not including any profit that the developer would potentially make. Given that the median price for a one-bedroom unit in Strathfield is around \$670,000, it is extremely unlikely that each unit would sell for almost twice the median price for the locality.

Based on the above, it is considered that the proposed development at 47A Wentworth Road would effectively ‘sterilise’ the combined site of 1 and 1A Everton Road.

Officer Comment:

In the absence of a confirmed design for an RFB development, in which provides the number of apartments, apartment type, apartment size, development amenities and car parking, an estimation of the financial viability of the project and/or the prospective profit that may be made by a developer is considered to be questionable.

Of further note, the financial viability of a prospective redevelopment of the site was not a matter that was required to be addressed by the SECPP in their Record of Deferral comments.

2.8 Procedural Fairness & Additional Matters

It is considered that the applicant has demonstrated that improper consideration has been given to the potential isolation of 1 and 1A Everton Road. The rushed nature of the building envelope exercise demonstrates is not consistent with the requirements of Karavellas v Sutherland Shire Council which requires that a proper investigation into the development potential of neighbouring land be investigated prior to the lodgement of development applications.

In addition, the initial concept plan produced by the applicant demonstrates that the applicant had a fundamental misunderstanding of the development potential of 1 and 1A Everton Road which likely informed their decision making in relation to the subject development application. It is likely that this application was prepared by the applicant on the erroneous belief that a shop-top housing development with insufficient street setbacks and articulated building envelope could be delivered at 1 and 1A Everton Road notwithstanding the redevelopment of 47A Wentworth Road.

Finally, it is considered unreasonable that the proponent is, in essence, utilising the DA assessment process to address key issues that are required to be addressed prior to the lodgement of the application. This is considered to be poor procedure and an abuse of process. The owners of 1 and 1A Everton Road have raised critical issues that both Council and the applicant failed to address throughout the assessment process. This has created considerable uncertainty for both the owners and the broader community. It is requested that the panel determine the Application for refusal and instruct the proponent to undertake appropriate detailed investigations into all matters raised in the multiple public submissions prepared by our firm. This action would provide certainty to the community over the development application process.

Officer comment:

As demonstrated under Part 1 of this report, it is evident that negotiations between the Hospital and the Owners of No. 1 & 1A Everton Road had been occurring since 2019 with no agreement having been reached by the time that the DA was lodged with Council in March 2022.

In relation to the comments regarding shop top housing being proposed under the initial Concept Development Plan submitted by the Applicant, Shop Top Housing is a permitted form of development within the R1 zone, Shop Top housing is defined as:

shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

Note—

Shop top housing is a type of residential accommodation—see the definition of that term in this Dictionary.

Whilst it is acknowledged that BDCP 2013 contains provisions requiring shop top housing to occur in conjunction with neighborhood shops, a DCP control by its nature and application cannot prohibit a permitted use under an LEP. However, the Applicant revised the concept plan proposing an RFB which as referenced in the Applicant's Legal Advice was considered to be the best use of the sites for the purpose of redevelopment potential.

In relation to comments made in regarding "process", as detailed in the initial SECPP report considered at the Panel meeting of 14th October, submissions were given due consideration with the Applicant requested by Council's RFI letter to address many of the issues raised in the submission which resulted in amended plans being submitted. These plans were also notified on behalf of the Owners of 1 & 1A Everton Road to their Planning Consultants with the further submission of objection addressed in detail in the SECPP report.

Further to this, the Applicant's response to the request for additional information by the SECPP in their Record of Deferral has been notified on 2 separate occasions to the adjoining property owners Planning consultant, whilst it is acknowledged that timeframes have been restrictive in order to achieve the SECPP meeting date of 24 November, again, the further submission received has been duly considered in this Supplementary Report.

In this respect, Council Officers consider that this supplementary report provides an opportunity for conclusion to a comprehensive assessment of the application under the provisions of the EP & A Act 1979.

Summary

The additional information provided by the Applicant has been assessed in conjunction with the detailed considerations of the submission of objection received in response to the additional information discussed in detail above.

In conclusion, Council Officers consider that the additional information provided the applicant has satisfactorily addressed the requests made by the SECPP in their Record of Deferral of the meeting of 14 October 2022.

Recommendation

That Development Application DA 2022.16 for the alterations and additions to Strathfield Private hospital for the demolition of the existing dwelling at 47A Wentworth Road, tree removal and the construction of a 3 storey building containing basement and ground level parking, 13 additional beds, 2 operating theatres and ancillary services is recommended **for approval**, subject to conditions of consent listed under Schedule 1 submitted separately.