

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSEC-307
DA Number	DA-22/2024 (PAN-399197)
LGA	Waverley
Proposed Development	Demolition of all structures and construction of a seniors housing development comprising of 30 units contained within four-storey buildings, with retail and business premises at ground floor level, two basement levels of vehicle parking and consolidation of lots.
Street Address	669-683 Old South Head Road VAUCLUSE
Applicant/Owner	Blare Management P/L
Date of DA lodgement	23 January 2024
Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> 48 unique submissions Petition within 212 signatures
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Section 2.19(1) and Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: the application involves general development with a capital investment value (CIV) of more than \$30 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Resources and Energy) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Waverley Local Environmental Plan 2012 Waverley Development Control Plan 2022 Two offers to enter into a planning agreement under section 7.4
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> Architectural plans Landscape plans Six written objections to vary development standards under clause 4.6 Conditions of consent (Appendix A)
Clause 4.6 requests	<ul style="list-style-type: none"> Section 87 of the Housing SEPP provides a development standard of the maximum permissible floor space ratio plus a bonus of 15%. The proposal seeks an FSR of: <ul style="list-style-type: none"> R3 zone: 1.37:1 (5287m²) exceeding the development standard by 1284.6m² or 32%.

	<ul style="list-style-type: none"> ○ E1 zone: 1.96:1 (935m²) exceeding the development standard by 110.6m² or 13.4%. • Section 108(2)(c) of the Housing SEPP provides a non-discretionary FSR development standard of 0.5:1. The proposal exceeds this standard by 4049.48m² or 186%. • Section 84(3)(c) of the Housing SEPP provides a development standard of 11.5m for servicing equipment on the roof of a building. The proposal exceeds this standard by 2.392m or 21%. • Section 108(2)(a) of the Housing SEPP provides a non-discretionary building height development standard of 9.5m for development for the purpose of independent living units. The proposal exceeds this standard by 4.392m or 46%. • Section 108(2)(b) of the Housing SEPP provides a non-discretionary building height development standard of 11.5m for servicing equipment on the roof of a building of development for the purpose of independent living units. The proposal exceeds this standard by 2.392m or 21%. • Clause 4.3 of WLEP 2012 establishes a maximum building height of 12.5m to the northern part of the site (R3 zone) and 13m to the southern part of the site (E1 zone). The proposal exceeds these standards as follows: <ul style="list-style-type: none"> ○ E1 zone: The proposal has a maximum height of 13.892m exceeding the development standard by 892mm or 6.9%. ○ R3 zone: The proposal has a maximum height of 14.57m exceeding the development standard in the R3 zone by 2.07m or 16.6%.
Summary of key submissions	<ul style="list-style-type: none"> • Traffic and parking • Density, FSR, overdevelopment • Visual and acoustic privacy • Safety • Lack of public transport • Height, bulk, scale • Overshadowing • Stormwater and sewage • Streetscape character • Noise impacts • Tree removal and landscaping • Sustainability and environmental impacts • Restrictions for use as seniors housing • Excavation • Setbacks
Report prepared by	Kylie Lucas, Senior Development Assessment Planner, Waverley Council
Report date	15 October 2024

Summary of s4.15 matters	
Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction	
Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
<i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	
Clause 4.6 Exceptions to development standards	
If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
Special Infrastructure Contributions	
Does the DA require Special Infrastructure Contributions conditions (S7.24)?	No
<i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	
Conditions	
Have draft conditions been provided to the applicant for comment?	Yes
<i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	

1. PREAMBLE

1.1. Executive Summary

The development application seeks consent for demolition of the existing structures on each lot of the site, amalgamation of the lots and construction of a four-storey seniors housing development with 30 apartments and two levels of basement parking. The proposal includes a retail shop at ground level on the corner with Oceanview Avenue. The proposed development will contain two levels of basement parking for 47 car spaces with vehicular access provided from Old South Head Road on the northern boundary of the site.

Part of the site is zoned E1 *Local Centre* being 669 Old South Head Road and the remainder of the site, being 771 to 683 Old South Head Road, is zoned R3 *Medium Density Residential*. The proposal is a mixed use development comprising of a commercial premises and seniors housing, which are permitted with consent, having regard to Part 5 of the *State Environmental Planning Policy (Housing) 2021* ('Housing SEPP').

The proposal has been assessed under Chapter 3 Part 5 *Housing for seniors and people with a disability* and Chapter 4 *Design of residential apartment development* of the Housing SEPP. There are a number of development standards of the Housing SEPP for which variations are sought and as such six written objections to development standards under clause 4.6 have been submitted in relation to various clauses relating to height and FSR of both the Housing SEPP and Waverley Local Environmental Plan 2012 (LEP 2012). The written objections are available for the Panel's consideration as the consent authority. The written objections are summarised as follows:

- Section 87 of the Housing SEPP provides a development standard of the maximum permissible floor space ratio plus a bonus of 15%. The proposal seeks an FSR of:
 - R3 zone: 1.37:1 (5287m²) exceeding the development standard by 1284.6m² or 32%.
 - E1 zone: 1.96:1 (935m²) exceeding the development standard by 110.6m² or 13.4%.
- Section 108(2)(c) of the Housing SEPP provides a non-discretionary FSR development standard of 0.5:1. The proposal exceeds this standard by 4049.48m² or 186%.
- Section 84(3)(c) of the Housing SEPP provides a development standard of 11.5m for servicing equipment on the roof of a building. The proposal exceeds this standard by 2.392m or 21%.
- Section 108(2)(a) of the Housing SEPP provides a non-discretionary building height development standard of 9.5m for development for the purpose of independent living units. The proposal exceeds this standard by 4.392m or 46%.
- Section 108(2)(b) of the Housing SEPP provides a non-discretionary building height development standard of 11.5m for servicing equipment on the roof of a building of development for the purpose of independent living units. The proposal exceeds this standard by 2.392m or 21%.
- Clause 4.3 of WLEP 2012 establishes a maximum building height of 12.5m to the northern part of the site (R3 zone) and 13m to the southern part of the site (E1 zone). The proposal exceeds these standards as follows:
 - E1 zone: The proposal has a maximum height of 13.892m exceeding the development standard by 892mm or 6.9%.

- R3 zone: The proposal has a maximum height of 14.57m exceeding the development standard in the R3 zone by 2.07m or 16.6%.

The height non-compliances are limited to the plant and the northern edge of the northern building where the site slopes downhill. The variations do not result in increased unreasonable overshadowing of surrounding properties; loss of public or private views; or privacy impacts upon surrounding properties. The variation will not lead to unreasonable amenity impacts upon surrounding properties nor unreasonably increase the bulk and scale of the building when viewed from the public domain and surrounding properties.

The proposal has been amended since it was first submitted to ensure that there will be no overshadowing of habitable windows and private open spaces of surrounding residential properties between 9am and 3pm on the winter solstice to preserve the amenity of adjoining sites. The proposed development presents to Old South Head Road and Oceanview Avenue as a four-storey building consistent with the desired future character of the area and the scale anticipated by the height development standard of the LEP (which allows heights of 12.5m and 13m for these sites). The lower ground floor level of the building will be predominantly contained below the existing ground level achieved by excavating the rear communal open space to be consistent with the lowest part of the site on the northern end. In this regard, the majority of the additional floor space is located below the existing ground level where there will be limited impacts upon the streetscape and the amenity of surrounding properties.

The proposal is accompanied by two offers to enter into a planning agreement (PA) which involves a monetary contribution that would allow for the realisation of affordable housing by Waverley Council. The PA is to the value of the affordable housing (ie, four dwellings) that would otherwise have been realised at No. 671-683 Old South Head Road in accordance with a previous consent on the site under DA-455/2021. Further, the PA provides for additional monetary contributions relating to the additional gross floor area (and based upon Council's Planning Agreement Policy) that is in excess of the gross floor area (GFA) envisaged by the development standard relevant to the southern part of the site, being 669 Old South Head Road.

The building has been designed to meet the requirements of the Apartment Design Guide (ADG) meeting the key guidelines relating to solar access, cross ventilation and private open space requirements of the development. The configuration of the apartments meets the guidelines for room sizes, storage and layout and have acceptable amenity. The development provides several areas of common open space for residents of the development which meet the Housing SEPP benchmarks. The visual separation controls are predominantly met, and acceptable on merit, following the guidance of the ADG.

The application was also referred to Transport for NSW for consideration under clause 2.119 of the SEPP (Transport and Infrastructure) 2021 and section 138 of the *Roads Act 1993*. Transport for NSW provided concurrence for the proposal subject to conditions provided in Appendix A.

The proposal provides vehicular access to the site from Old South Head Road. Given the location of the site, this is considered appropriate. The safety, efficiency and ongoing operation of Old South Head Road will not be adversely affected by the development as all vehicles are able to enter and exit in a forward motion. Further, the proposal incorporates a *porte cochere* (ie, a covered drop off / pick up zone) to allow drop off and pick up of residents in a safe location without disrupting traffic on Old South Head Road.

A total of 48 unique submissions were received and a petition containing 212 signatures was also received. Nine submissions were forwarded to Council from the Member of NSW Parliament for the Legislative Assembly District of Vaucluse, Kellie Sloane MP. The matters raised are discussed in this report and can be summarised to relate to overdevelopment of the area, height, overshadowing, privacy, parking, traffic, stormwater disposal, streetscape character, tree removal and landscaping, excavation and nuisances during construction. Some of these matters have been addressed with the recommendations of the report (including conditions) and other matters are not considered to have sufficient merit to warrant refusal of the application.

The proposal has been considered against Section 4.15 of the Environmental Planning and Assessment Act 1979 and based on the assessment below is recommended for approval subject to conditions within Appendix A.

1.2. Site and Surrounding Locality

A site inspection was undertaken on 25 September 2024.

The site comprises nine allotments, detailed below:

- Lot A DP324744 known as 669 Old South Head Road, Vaucluse
- Lot 2 in DP 10314 and Lot B in DP 324744 known as 671 Old South Head Road, Vaucluse
- Lot 1 in DP 169310 known as 673 Old South Head Road, Vaucluse
- Lot 4 in DP 192614 known as 675 Old South Head Road, Vaucluse
- Lot 1 in DP 168877 known as 677 Old South Head Road, Vaucluse
- Lot 1 in DP 167942 known as 679 Old South Head Road, Vaucluse
- Lot 1 in DP 666626 known as 681 Old South Head Road, Vaucluse
- Lot 2 in DP 316716 known as 683 Old South Head Road, Vaucluse.

The site is irregular in shape with a frontage to Old South Head Road, measuring 105.17m (western boundary) and a secondary frontage to Oceanview Avenue measuring 33.53m. The combined sites have an area of 4,354.03m² and falls from the south towards the north by approximately 3.5m.

The site is occupied by nine allotments with the corner allotment at 669 Old South Head Road containing a two-storey shop top housing development and the other lots each containing either a single or double storey detached dwelling house. Vehicular access to the site is currently available from separate multiple driveways from Old South Head Road and one driveway from Oceanview Avenue.

The site is adjoined by a variety of residential and retail development. To the north is 685-687 Old South Head Road, containing a three to five-storey residential flat building. To the east is 2 Oceanview Avenue, which is a four-storey residential flat building and the rear of detached dwellings at 9 and 11 Wilfield Street. To the west on the opposite side of Old South Head Road are mostly one and two-storey dwellings.

To the south is the Rose Bay North Village Centre which comprises a mix of retail, commercial and residential uses. The site is serviced by public transport bus services along Old South Head Road.

Figures 1 to 7 are photos of the site and its context.



Figure 1: 669 Old South Head Road (existing mixed use building) on the corner with Oceanview Avenue



Figure 2: Adjoining residential flat building to the north at 687 Old South Head Road



Figure 3: Opposite side of Old South Head Road local shops (Woollahra Council area)



Figure 4: Rose Bay North Local Village Centre located to the south of the site (Waverley Council area)



Figure 5: Development to the east on Oceanview Avenue



Figure 6: Adjoining residential flat building to the east (2 Oceanview Ave)



Figure 7: Aerial image of subject site (outlined in blue) and surrounding area (Source: Nearmap)

1.3. Relevant Development History

A search of Council's records revealed the following recent and relevant development history of the site:

- 671-679 Old South Head Road, Vaucluse - DA-355/2018, approved on 27 November 2019. The Waverley Local Planning Panel (WLPP) granted consent for demolition of existing dwellings and construction of a four-storey residential flat building comprising 16 units, basement car parking and Strata subdivision. The approved building exceeds the height of buildings development standard by 0.5m (4%) and the floor space ratio (FSR) development standard by 325.43m² (13.7%).
- 669 Old South Head Road, Vaucluse – DA-374/2020 for the demolition of all structures on site and the construction of a four-storey building with retail space at ground floor level, seven residential units above and basement car parking was approved by the WLPP on 26 May 2021. The approved building exceeds the height of buildings development standard by 1.08m (8%) and the FSR development standard by 89.6m² (13.7%).



Figure 8: Perspective view looking north-east towards the corner of Old South Head Road and Oceanview Avenue of the development approved under DA-374/2020

- 671-683 Old South Head Road, Vaucluse - DA-455/2021 for demolition of dwellings and construction of a four-storey seniors living building with 37 units including basement parking and associated landscaping works, approved on 18 October 2022 by the WLPP. The approved building exceeds the height development standard by 1m (8%) and complies with the FSR development standard which allowed a 0.5:1 bonus under the previous (and now repealed) SEPP (Housing for Seniors or People with a Disability) 2004. The approved building also includes four 'affordable housing' apartments, as defined in the now repealed SEPP (Affordable Rental Housing) 2009, and condition 5 Development Consent No. DA-455/2021 requires that these apartments are to be provided onsite and managed by a registered community housing provider.

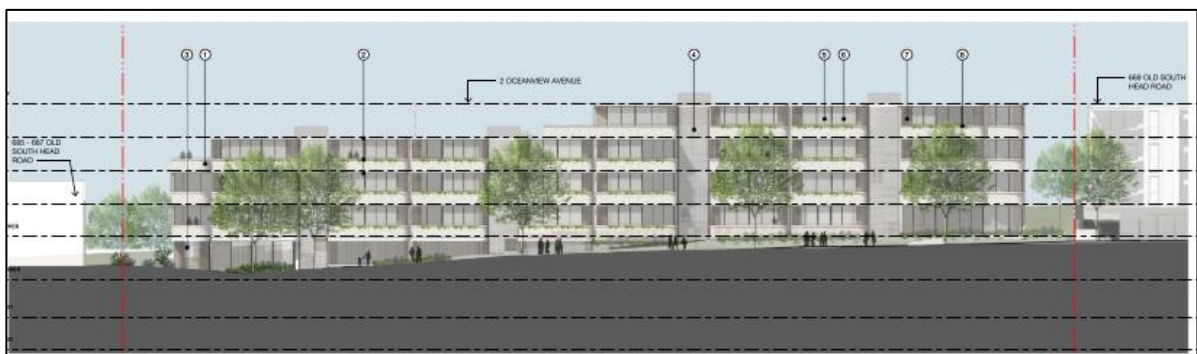


Figure 9: Approved elevation to Old South Head Road for DA-455/2021 also showing the approved elevation for DA-374/2020 for the shop top housing at 669 Old South Head Road which was not part of the site



Figure 10: Photomontage of approved development to Old South Head Road (southern) under DA-455/2021



Figure 11: Photomontage of approved development to Old South Head Road (northern) under DA-455/2021

- 669-683 Old South Head Road, Vaucluse – PD-5/2023 – the applicant sought pre-DA advice on the development the subject of this development application. Formal advice was provided to the applicant on 14 April 2023 which outlined details in regard to the consideration and calculation of FSR, urban design and land remediation.

1.4. Proposal

The development application seeks consent for demolition of the existing structures on each lot of the site, amalgamation of the lots and construction of a four-storey seniors housing development with 30 apartments comprised of the following:

- 16 x two-bedroom apartments

- 12 x three-bedroom apartments
- 2 x four-bedroom apartments.

The proposed development will contain two levels of basement with vehicular access provided from Old South Head Road on the northern boundary of the site. The basement will provide the following:

- 47 car spaces including six visitor spaces and two car share spaces
- 17 motorbike spaces
- 38 bicycle spaces
- 27 storage spaces (with another 12 storage spaces provided at the lower ground level)
- loading zone
- waste bin storage
- plant and services.

Resident amenities, including spa treatment rooms, library, communal lounge areas, cinema, wine room, bar/café, gymnasium, indoor pool, plant, substation and storage rooms, will be provided at the lower ground floor level.

The ground floor level will provide the residential lobby, reception and common areas including meeting rooms, residential apartments. A retail shop will be provided on the southern corner of the site with Oceanview Avenue.

The upper level will be comprised of residential apartments with balconies for private open space. The roof level will contain plant and lift overrun, and photovoltaic cells.

The site will be landscaped within the front and rear setbacks particularly around the perimeter of the site. The rear open space contains a communal swimming pool, outdoor seating and alfresco dining areas.

The proposal is accompanied by an offer to enter into two separate planning agreements (PA) which involve a monetary contribution that would allow for the realisation of affordable housing by Waverley Council. One PA is to the value of the affordable housing (ie, 4 dwellings) that would otherwise have been realised at No. 671-683 Old South Head Road in accordance with DA-455/2021. The other PA provides for additional monetary contributions relating to the additional GFA (and based upon Council's PA Policy) that is in excess of the GFA envisaged by the development standard relevant to the southern part of the site, being 669 Old South Head Road.



Figure 12: Photomontage of proposed development viewed from the west from Old South Head Road



Figure 13: Photomontage of the proposed development viewed from the south at the corner with Oceanview Avenue (shop top housing part of the proposal)



Figure 14: Photomontage of the proposed development viewed from the north within the rear communal open space

1.5. Background

The chronology of the assessment process of the development application is summarised as follows:

1. 23/01/2024: The development application was lodged.
2. 23/04/2024: Briefing with the Sydney Eastern City Planning Panel (SECPP).
3. 08/05/2024: The application was deferred for the following reasons (summarised):
 - Correction of documentation to address the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) rather than SEPP 65.
 - Floor space ratio (FSR).
 - Calculations of gross floor area (GFA) and inaccuracies in calculations.
 - Height.
 - Apartment Design Guide (ADG) including separation distances and solar access to neighbours.
 - Driveway and potential queuing on Old South Head Road as raised by the Design Excellence Advisory Panel (DEAP).
 - Landscaping and communal open space.

- Waste management.
 - Stormwater.
 - Plans and documentation including wall/fence details; substation treatment; solar panels location; sanitary facilities to shop; EV charging points; exhausting/ducting to shop; details of external structures in common areas.
4. 13/05/2024: Transport for NSW provided concurrence for the proposed development.
 5. 26/07/2024: Amended plans and documentation were received with the amendments summarised as follows:
 - Addition of a bin hoist from the basement to the street.
 - Internal changes at 'Ground Lower' level.
 - Addition of a sanitary facility to the retail shop (internal)
 - Addition of a planter along the northern boundary of the balcony at 'Level 02' (northern building apartment 02.01) and associated reduction of balcony area.
 - Solar panels to satisfy BASIX requirements shown on the roof.
 - Changes to the balcony to APT 03.01 (southern building) at 'Level 03' and internal alterations to apartment.
 - Reduction in the roofline of the southern building to reduce overshadowing of the adjoining RFB to the east.

Given that the plans are essentially similar to that originally submitted and publicly notified and the changes have a lesser impact upon surrounding properties, the application was not renotified.

6. 19/09/2024: The proposal was further deferred to address the following (summarised):
 - Calculation of GFA.
 - Address variations to the development standards of the Housing SEPP.
 - Demonstrate gradients to bus stops and shops in accordance with the Housing SEPP.
 - Address Schedule 4 of the Housing SEPP.
7. 27/09/2024: The amended documentation, including amended plans reducing the number of apartments from 31 to 30 and a reduction in the size of the lower ground floor level, were received. These plans form the basis of the assessment. Given that the plans are essentially similar to that originally submitted and publicly notified and the changes have a lesser impact upon surrounding properties, the application was not renotified.

2. ASSESSMENT

The following matters are to be considered in the assessment of this development application under section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act).

2.1. Planning Instruments and Development Control Plans

The following is an assessment against relevant legislation, environmental planning instruments, including State Environmental Planning Policies (SEPPs), and development control plans.

2.1.1. State Environmental Planning Policies (SEPPs)

The following SEPPs apply and have been considered acceptable in the assessment of this development application:

- SEPP (Sustainable Buildings) 2022
- SEPP (Resilience and Hazards) 2021
- SEPP (Transport and Infrastructure) 2021
- SEPP (Housing) 2021
- SEPP (Biodiversity and Conservation) 2021
- SEPP (Planning Systems) 2021.

A detailed discussion is provided for relevant SEPPs as follows:

SEPP (Resilience and Hazards) 2021

Chapter 4 of SEPP (Resilience and Hazards) 2021 promotes the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 4.6 requires Council to consider whether a site is contaminated.

Before determining an application, Clause 4.6(2) requires the consent authority to consider a report specifying the finding of a preliminary investigation of the land concerned. The application is accompanied by a Preliminary and Detailed Site Contamination Investigation prepared by Geo-Environmental Engineering dated 16/11/2023 and Remedial Action Plan prepared by Geo-Environmental Engineering dated 16/11/2023.

The Preliminary and Detailed Site Contamination Investigation concludes that near surface topsoil/fill material across the site is sporadically contaminated with lead at concentrations greater than those permitted for the proposed land use, and that the site can be made suitable for the proposed land use by undertaking standard and conventional remediation measures.

Interim advice by an EPA Accredited Auditor prepared by Geo-Logix Pty Ltd dated 17 /11/2023 states that a Site Audit Statement shall be issued at the completion of the Remedial Action Plan. It is therefore recommended that a Site Audit Statement be submitted to confirm that the site is suitable for the proposed use prior to the use of a Construction Certificate (refer to consent conditions).

SEPP (Transport and Infrastructure) 2021

SEPP (Transport and Infrastructure) 2021 Division 17 Subdivision 2 *Development in or adjacent to road corridors and road reservations*, specifically Clause 2.119 applies to the development as Old South Head

Road is a classified road. Under Clause 2.119(2), the consent authority must not grant consent to development on land than has a frontage to a classified road unless it is satisfied that:

- (a) Where practical and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) Where safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of –*
 - i. The design of the vehicular access to the land, or*
 - ii. The emission of smoke or dust from the development, or*
 - iii. The nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) The development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and design, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

A Traffic Report was provided with the application which assesses the impact of road noise upon the subject proposal in accordance with the Department of Planning's *Development near Rail Corridors and Busy Roads – Interim Guideline (2008)*. The report concludes that road traffic noise can be addressed through appropriate glazing selection, as well as other building envelope treatments to achieve compliance with the internal design noise levels. The Traffic Report, and the recommendations it contains, is referenced in the conditions of consent.

The application was also referred to Transport for NSW for consideration under clause 2.119 of the SEPP and section 138 of the *Roads Act 1993*. Transport for NSW provided concurrence for the proposal subject to conditions provided in Appendix A.

The proposal provides vehicular access to the site from Old South Head Road. Given the location of the site, this is considered appropriate. The safety, efficiency and ongoing operation of Old South Head Road will not be adversely affected by the development as all vehicles are able to enter and exit in a forward motion. Further, the proposal incorporates a *porte cochere* (ie, a covered drop off / pick up zone) to allow drop off and pick up of residents in a safe location without disrupting traffic on Old South Head Road. The development will not emit smoke or dust and the nature, volume and frequency of vehicles using Old South Head Road to gain access to the land will not have a significant impact.

The development has been appropriately located and designed, including measures to ameliorate potential traffic noise or vehicle emissions from Old South Head Road. The building is set back from the Old South Head boundary and planters and balconies have been incorporated on the front façade. Most apartments have dual frontages and/or outlooks. Communal open space has been orientated towards the rear of the building, away from noise and vehicle emissions.

The development is considered to satisfy the requirements of SEPP (Transport and Infrastructure) 2021 with regards to development on a classified road.

It is noted that many submissions received noted objection regarding traffic generation as a result of the proposed development. SEPP (Transport and Infrastructure) 2021 Clause 2.122 notes traffic-generating development as the development specified in Schedule 3 of the SEPP. Schedule 3 of the SEPP notes residential accommodation with 300 or more dwellings as traffic-generating development for the purposes of the SEPP. Therefore, the proposal is not classified 'traffic-generating development'.

The application was also referred to AUSGRID for comment under section 2.48 of the SEPP. Comments were received that raised no objection to the development subject to advice contained in Appendix A.

SEPP (Housing) 2021

Chapter 3 Part 5 Housing for seniors and people with a disability

Part 5 of Chapter 3 of the Housing SEPP applies to the subject development, being a seniors housing development. The proposed development is for 'independent living units'. An assessment against the applicable sections of the Housing SEPP is provided in **Table 1** of this report.

Table 1: Housing SEPP (2021) Compliance table

Provision	Compliance	Comment
Division 2 Preliminary		
79 Land to which this Policy applies	Yes	The land is located within the R3 and E1 zones, both of which are applicable zones under the Housing SEPP.
Division 3 Development standards		
84 Development standards – general		
<i>(1) This section applies to development for the purposes of seniors housing involving the erection of a building.</i>	Yes	The proposal is for the erection of a building for seniors housing.
<i>(2) Development consent must not be granted for development to which this section applies unless—</i>	Yes	The site has an area of 4345.03m ² with a frontage to Old South Head Road, measuring 105.17m (western boundary) and a secondary frontage to Oceanview Avenue measuring 33.53m.
<i>(a) the site area of the development is at least 1,000m², and</i>		Residential flat buildings are permitted on that part of the site zoned R3 however are prohibited on the land zoned E1.
<i>(b) the frontage of the site area of the development is at least 20m measured at the building line, and</i>		Notwithstanding section 84 (2)(c) does not apply as the E1 zone is a business zone and not a residential zone.
<i>(c) for development on land in a residential zone where residential flat buildings are not permitted—</i>		

Provision	Compliance	Comment
<p>(i) <i>the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and</i></p> <p>(ii) <i>if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and</i></p> <p>(iii) <i>if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.</i></p> <p>(3) <i>The servicing equipment must—</i></p> <p>(a) <i>be fully integrated into the design of the roof or contained and suitably screened from view from public places, and</i></p> <p>(b) <i>be limited to an area of no more than 20% of the surface area of the roof, and</i></p> <p>(c) <i>not result in the building having a height of more than 11.5m.</i></p> <p>(4) <i>Subsection (2)(a) and (b) do not apply to development if the development application is made by a social housing provider or Landcom.</i></p>	<p>No</p> <p>N/A</p>	<p>The servicing equipment is integrated throughout the building including in the basement. The proposal contains lift overrun, plant and photovoltaic cells on the roof of both buildings which are set back from the edges of the building and screened to ensure limited visibility from the public domain.</p> <p>Excluding the photovoltaic cells, the services zones are approximately 20% of the roof area however, the height of the plant exceeds 11.5m. A written objection to vary this development standard has been provided and is discussed following this table.</p> <p>The application is not made by a social housing provider or Landcom.</p>
<p>85 Development standards for hostels and independent living units</p> <p>(1) <i>Development consent must not be granted for</i></p>	<p>Yes</p>	<p>Schedule 4 contains standards concerning accessibility and usability for hostels and independent living units.</p> <p>The applicant has provided an undertaking to comply with the requirements of Schedule 4</p>

Provision	Compliance	Comment
<p><i>development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4.</i></p> <p><i>(2) An independent living unit, or part of an independent living unit, located above the ground floor in a multi-storey building need not comply with the requirements in Schedule 4, sections 2, 5–13 and 15–21 if the development application is made by, or by a person jointly with, a social housing provider or Landcom.</i></p>		<p>in the construction stage. Plan DA00.000B Revision A outlines the requirements in Schedule 4 and is referenced in the conditions of consent.</p>
86 Development standards for seniors housing – Zones RE2, SP1 SP2 and RU5	N/A	The site is not located within any of these zones.
<p>87 Additional floor space ratios</p> <p><i>(1) This section applies to development for the purposes of seniors housing on land to which this Part applies if—</i></p> <p><i>(a) development for the purposes of a residential flat building or shop top housing is permitted on the land under Chapter 5 or another environmental planning instrument, or</i></p> <p><i>(b) the development is carried out on land in Zone E2 Commercial Centre or Zone B3 Commercial Core.</i></p> <p><i>(2) Development consent may be granted for development to which this section applies if—</i></p> <p><i>(a) the site area of the development is at least 1,500m², and</i></p> <p><i>(b) the development will result in a building with the maximum permissible floor space ratio plus—</i></p>	<p>Yes</p> <p>No</p>	<p>This part of the SEPP applies as residential flat buildings are permitted in the R3 zone and shop top housing is permitted in the E1 zone.</p> <p>The site has an area greater than 1500m².</p> <p>Section 87 2(b)(i) applies to the subject development as the proposal is for 'independent living units' and as such a bonus floor space of 15% is applicable.</p>

Provision	Compliance	Comment
<p>(i) <i>for development involving independent living units—an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or</i></p> <p>(ii) <i>for development involving a residential care facility—an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or</i></p> <p>(iii) <i>for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and</i></p> <p>(c) <i>the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.</i></p>	Yes	<p>Applying the additional 15% to each part of the site allows a maximum of:</p> <ul style="list-style-type: none"> R3 zone: 1.035:1 (0.9:1 + bonus 0.135:1) maximum GFA of 4002.4m² E1 zone: 1.725:1 (1.5:1 + bonus 0.225:1) maximum GFA of 824.4m². <p>The proposal seeks an FSR of:</p> <ul style="list-style-type: none"> R3 zone: 1.37:1 (5287m²) exceeding the development standard by 1284.6m² or 32%. E1 zone: 1.96:1 (935m²) exceeding the development standard by 110.6m² or 13.4%. <p>A written objection to vary the various base and bonus FSR development standards has been provided and is discussed following this table.</p> <p>The proposal will not have a maximum height of more than 3.8m above the maximum height development standard under Waverley Local Environmental Plan 2012 (LEP 2012). Notwithstanding, as the proposal does not comply with 2(b)(i) in relation to FSR of this clause, the additional height may not be applicable. In this regard, the height would revert to the maximum development standard under LEP 2012 of 13m (E1 zone) and 12.5m (R3 zone). For an abundance of caution, a written request to vary the height development standard under</p>

Provision	Compliance	Comment
		LEP 2012 has been provided and is discussed following this table.
88 Restrictions on occupation of seniors housing <i>(1) Development permitted under this Part may be carried out for the accommodation of only the following—</i> <i>(a) seniors or people who have a disability,</i> <i>(b) people who live in the same household with seniors or people who have a disability,</i> <i>(c) staff employed to assist in the administration and provision of services to housing provided under this Part.</i> <i>(2) Development consent must not be granted under this Part unless the consent authority is satisfied that only the kinds of people referred to in subsection (1) will occupy accommodation to which the development relates.</i>	Yes	An appropriate condition is included in Appendix A specifying the requirements of this part.
89 Use of ground floor of seniors housing in business zone <i>(1) This section applies to a building used for the purposes of seniors housing on land in a business zone.</i> <i>(2) Development consent must not be granted for development under this Part unless the part of the ground floor of the building that fronts a street will not be used for residential purposes.</i> <i>(3) Subsection (2) does not apply to a part of a building that—</i> <i>(a) faces a service lane that does not require active street frontages, or</i> <i>(b) is used for 1 or more of the following purposes—</i>	Yes	<p>Only No. 669 Old South Head Road is located in a business zone, being on land zoned E1. The ground floor level of this part of the development is a retail shop fronting both Old South Head Road and Oceanview Avenue.</p> <p>The proposal also contains part of the fire stairs on the Old South Head Road frontage. This is consistent with the provisions of the SEPP.</p>

Provision	Compliance	Comment
<p>(i) <i>a lobby for a residential, serviced apartment, hotel or tenanted component of the building,</i></p> <p>(ii) <i>access for fire services,</i></p> <p>(iii) <i>vehicular access.</i></p> <p>(4) <i>Subsection (2) does not apply if another environmental planning instrument permits the use of the ground floor of the building for residential purposes.</i></p>		
90 Subdivision	N/A	No subdivision as part of this application.
91 Fire sprinkler systems in residential care facilities	N/A	The proposal is not for a residential care facility.
Division 4 Site related requirements		
<p>93 Location and access to facilities – independent living units</p> <p>(1) <i>Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services—</i></p> <p>(a) <i>by a transport service that complies with subsection (2), or</i></p> <p>(b) <i>on-site.</i></p> <p>(2) <i>The transport service must—</i></p> <p>(a) <i>take the residents to a place that has adequate access to facilities and services, and</i></p> <p>(b) <i>for development on land in the Eastern Harbour City, Central River City, Western Parkland City or Central Coast City—</i></p> <p>(i) <i>not be an on-demand booking service for</i></p>	Yes	<p>Facilities referred to in this clause includes shops, banks and other retail and commercial services that may be reasonably required, community services, recreation facilities and the practice of a GP. The site is located within proximity to the Rose Bay North local village centre, located on Old South Head Road which contains these facilities.</p> <p>The development complies with section 93 (2)(b) as there is a bus stop located approximately 100m from the subject site on Old South Head Road, serviced by bus route 387 (South Head Cemetery to Bondi Junction). Approximately 100m to the north of the site on Military Road is a bus stop serviced by route 380 (Watsons Bay to Bondi Junction via Bondi Beach).</p> <p>The bus stops are regularly serviced in compliance with (b)(iii).</p> <p>Plans have been provided with details of suitable gradients provided along the pathways, which are acceptable and supported.</p>

Provision	Compliance	Comment
<p><i>the transport of passengers for a fare, and</i></p> <p>(ii) <i>be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day, and</i></p> <p>(c) <i>for development on other land—be available both to and from the site during daylight hours at least once each weekday.</i></p> <p>(3) <i>For the purposes of subsections (1) and (2), access is adequate if—</i></p> <p>(a) <i>the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and</i></p> <p>(b) <i>the distance is accessible by means of a suitable access pathway, and</i></p> <p>(c) <i>the gradient along the pathway complies with subsection (4)(c).</i></p> <p>(4) <i>In subsection (3)—</i></p> <p>(a) <i>a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and</i></p> <p>(b) <i>the distance is to be measured by reference to the length of the pathway, and</i></p> <p>(c) <i>the overall average gradient must be not more than 1:14 and the gradients along the pathway must be not more than—</i></p>		

Provision	Compliance	Comment
<ul style="list-style-type: none"> (i) 1:12 for a maximum length of 15m at a time, or (ii) 1:10 for a maximum length of 5m at a time, or (iii) 1:8 for a maximum length of 1.5m at a time. 		
<p>95 Water and sewer</p> <p>(1) A consent authority must not consent to development under this Part unless the consent authority is satisfied the seniors housing will—</p> <ul style="list-style-type: none"> (a) be connected to a reticulated water system, and (b) have adequate facilities for the removal or disposal of sewage. <p>(2) If the water and sewerage services will be provided by a person other than the consent authority, the consent authority—</p> <ul style="list-style-type: none"> (a) must consider the suitability of the site in relation to the availability of reticulated water and sewerage infrastructure, or (b) if reticulated services are not available—must satisfy the responsible authority that the provision of water and sewerage infrastructure, including environmental and operational considerations, is satisfactory for the development. 	Yes	<p>Stormwater collection has been considered in the assessment as detailed in section 3.2 of this report. Conditions of consent are recommended to ensure adequate stormwater disposal from the site in accordance with Council's Water Management Technical Manual.</p> <p>Sewage is a matter for Sydney Water and a condition is included in the consent requiring the applicant to obtain a Section 73 Certificate from Sydney Water, due to the proposed increase in services.</p>
Division 5 Design requirements		
<p>97 Design of seniors housing</p> <p>(1) In determining a development application for development for the purposes of seniors housing, a consent authority</p>	Yes	Refer to discussion later in this table.

Provision	Compliance	Comment
<p><i>must consider the Seniors Housing Design Guide, published by the Department in December 2023.</i></p> <p><i>(2) Development consent must not be granted to development for the purposes of seniors housing unless the consent authority is satisfied the design of the seniors housing demonstrates that adequate consideration has been given to the design principles for seniors housing set out in Schedule 8.</i></p>		
Division 7 Non-discretionary development standards		
<p>108 Non-discretionary development standards for independent living units – the Act, s 4.15</p> <p>Height</p> <p><i>(a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,</i></p> <p><i>(b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—</i></p> <p><i>(i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and</i></p> <p><i>(ii) is limited to an area of no more than 20% of the surface area of the roof, and</i></p> <p><i>(iii) does not result in the building having a height of more than 11.5m,</i></p>	No	<p>The building exceeds the 9.5m height control. A written objection under clause 4.6 has been provided which is discussed in detail following this table.</p> <p>As previously discussed, the servicing equipment is suitably screened from view and set back from the edges of the building to ensure limited visibility from the public domain.</p> <p>Excluding the photovoltaic cells, the services zones are approximately 20% of the roof area however, the height of the plant exceeds 11.5m. A written objection to vary this development standard has been provided and is discussed following this table.</p>
<p>FSR</p> <p><i>(c) the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,</i></p>	No	<p>As previously discussed, the proposal exceeds the FSR development standard of 0.5:1. A written objection under clause 4.6 has been provided which is discussed in detail following this table.</p>
Landscaping		

Provision	Compliance	Comment
<p>(d) <i>a minimum landscaped area that is the lesser of—</i> <i>(i) 35m² per dwelling, or</i> <i>(ii) 30% of the site area,</i> (e) <i>(Repealed)</i> (f) <i>a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,</i></p>	<p>Yes</p> <p>Yes</p>	<p>The 30 apartments would require 1050m² of landscaped area under (i) and 1306m² under part (ii). Given that the proposal has landscaped area of 1912m² or 44% of the site it complies with both minimum requirements.</p> <p>The proposal provides 771.2m² or 18% of the site as deep soil. Approximately 50% of the deep soil is located at the rear and 50% at the front. The deep soil is located throughout the site, including within the front and rear setbacks to facilitate landscaping for privacy and to contribute to the streetscape.</p>
<p>Solar access (g) <i>at least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces,</i></p>	Yes	Overall, 93% of the apartments achieve 2 hours solar access to living rooms and private open spaces at mid-winter. The apartments facing east (rear) receive solar access in the morning hours and the apartments facing west (Old South Head Road frontage) receive solar access in the afternoon hours.
<p>Private open space (h) <i>for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building—</i> <i>(i) at least 15m² of private open space per dwelling, and</i> <i>(ii) at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor,</i> (i) <i>for a dwelling in a multi-storey building not located on the ground floor—a balcony accessible from a living area with minimum dimensions of 2m and—</i> <i>(i) an area of at least 10m², or</i></p>	<p>Yes</p> <p>Yes</p>	<p>The apartments on the ground floor upper level (UG.05, UG.06 and 2B-E2) have courtyards accessed from living areas that are in excess of both the area and dimension requirements.</p> <p>All upper floor apartments have balconies that meet the minimum requirements accessed from living areas, with most having multiple balconies that accumulatively exceed the minimum area.</p>

Provision	Compliance	Comment
<i>(ii) for each dwelling containing 1 bedroom—an area of at least 6m²,</i>		
Parking <i>(j) for a development application made by, or made by a person jointly with, a social housing provider or Landcom—at least 1 parking space for every 5 dwellings,</i> <i>(k) if paragraph (j) does not apply—at least 0.5 parking spaces for each bedroom.</i>	<p>N/A</p> <p>Yes</p>	<p>The application is not made by a social housing provider or Landcom and as such subclause (k) applies.</p> <p>The proposal provides 76 bedrooms within the development equating to a requirement for a minimum of 38 parking spaces for residents. The proposal provides 39 resident parking spaces complying with this subclause.</p>
108CB Considerations before carrying out development <i>(1) Before carrying out development to which this division applies, the relevant authority must consider—</i> <i>(a) the Seniors Housing Design Guide, published by the Department in December 2023, and</i> <i>(b) the design principles for seniors housing set out in Schedule 8.</i>		
The Seniors Housing Design Guide	Yes	<p>The proposal is consistent with the relevant design guidance of the Seniors Housing Design Guide, noting that many considerations of the guide are ingrained within the standard conditions of consent (construction), environmental sustainability and waste management practices of the DCP (discussed later) and landscaping principles.</p> <p>The proposal is sympathetic and responsive to the local context and environment and provides a quality development to the neighbourhood.</p> <p>The modulation of the bulk and form of the development, and setbacks, respond appropriately to the context, the surrounding area and the desired future character, presenting to the street as a four-storey residential flat building with a contemporary design. The proposal has been designed to appear as two separated buildings along the street to lessen the perceived scale of the development by breaking up the bulk along the Old South Head Road frontage.</p>

Provision	Compliance	Comment
		<p>The proposed development considers the amenity, health and wellbeing of the residents providing adequate cross-ventilation, solar access, private and communal open space and internal and external areas for social connection.</p> <p>The senior's housing development has been designed to consider physical ageing encompassing accessibility throughout, including in private and public spaces, and areas of shelter and shade.</p> <p>The proposal is generally consistent with the design criteria for independent living units in a medium density development.</p>
Schedule 8 Design principles for seniors housing		
1. Neighbourhood amenity and streetscape	Yes	<p>The proposed development is considered to contribute to the quality and identity of the area and responds to the streetscape. Reasonable neighbourhood amenity and appropriate residential character is maintained. The height of the building, street frontage and setbacks, massing and scale are compatible with the streetscape.</p>
2. Visual and acoustic privacy	Yes	<p>The proposal incorporates sufficient separation distances from surrounding properties at the rear in some areas exceeding the minimum requirements of the Apartment Design Guide (ADG) as discussed later in this report.</p> <p>Visual and acoustic privacy impacts are considered reasonable as discussed in detail in Table 3 of this report (ADG compliance table).</p>
3. Solar access and design for climate	Yes	<p>The proposal meets the solar access requirements of the SEPP as previously discussed. The communal open spaces also provide sufficient solar access for comfortable use.</p> <p>Overshadowing of surrounding properties is considered reasonable.</p>

Provision	Compliance	Comment
4. Stormwater	Yes	Stormwater collection has been considered in the assessment as detailed in section 3.4 of this report. Conditions of consent are recommended to ensure adequate stormwater disposal from the site in accordance with Council's Water Management Technical Manual.
5. Crime prevention	Yes	<p>The proposal incorporates balconies and windows on all elevations overlooking both the street and the communal open space at the rear. This increases the physical and perceived security within these areas.</p> <p>The proposal provides a separation between the private and public uses and limits the number of entries in each lobby. A secure entry and basement parking is provided further enhancing the security within the development.</p> <p>The proposed development is considered able to provide security for residents and visitors.</p>
6 Accessibility	Yes	<p>The proposal incorporates obvious and safe pedestrian links within the development and externally to local shops and public transport.</p> <p>A basement parking area for residents and visitors is included in the development with lift access directly to the public and private areas of the building.</p> <p>An Access Report has been submitted as part of the application and is referenced in the conditions of consent.</p>
7 Waste management	Yes	<p>The application was referred to Council's Waste and Recycling section who have advised that the proposed waste facilities are satisfactory, subject to conditions of consent.</p> <p>Sufficient waste storage within the basement is provided with collection either through a private contractor or via a hoist to the Oceanview Avenue for Council collection.</p>

The following is a detailed discussion of the issues identified in the compliance table above.

Clause 4.6 Exceptions to Development Standards - Floor Space Ratio

The application seeks to vary the FSR development standards as follows:

- Section 87 of the Housing SEPP provides a development standard of the maximum permissible floor space ratio plus a bonus of 15%. The proposal seeks an FSR of:
 - R3 zone: 1.37:1 (5287m²) exceeding the development standard by 1284.6m² or 32%.
 - E1 zone: 1.96:1 (935m²) exceeding the development standard by 110.6m² or 13.4%.
- Section 108(2)(c) of the Housing SEPP provides a non-discretionary FSR development standard of 0.5:1. The proposal exceeds this standard by 4049.48m² or 186%.

Section 108(2)(c) is a non-discretionary development standard that if complied with, prevent the consent authority from requiring more onerous standards for the matters. Section 4.15(3) of the EP&A Act does not prevent development consent being granted if a non-discretionary development standard is not complied with.

The applicant has also submitted a written request to vary the FSR development standard contained in Waverley Local Environmental Plan 2012. Although Council Officers are of the opinion that this is not required, it has been submitted for an abundance of caution. All three written requests are included in this discussion.

Separate written requests to vary the development standards under sections 87 and 108(2)(c) of the Housing SEPP and clause 4.4 of WLEP 2012 have been submitted to Council in accordance with clause 4.6(3)(a) and (b) of Waverley LEP 2012 seeking to justify the contravention of the development standards 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 standard.

Copies of the applicant's written requests have been provided to the Sydney Eastern City Planning Panel (SECPP) for consideration.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

The applicant seeks to justify the contravention of the FSR development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The proposal achieves the objectives of the FSR standard outline in Clause 4.4 of WLEP 2012 despite the non-compliance.

- (ii) The proposed development is generally consistent with the maximum building height development standard albeit that there is a minor non-compliance with that standard for the purpose of lift overruns and a small component of the northern end of the building due to the slope of the land.
 - (iii) The fact that the proposed FSR effectively 'fits' within the applicable building height, apart from very minor elements, demonstrates that there is an appropriate correlation between the proposed FSR and the applicable WLEP building heights for the site.
 - (iv) The proposal is demonstrably consistent with the desired future character objectives for the locality as stated within Council's controls.
 - (v) The proposal is well designed with a high standard of street modulation and articulation and is responsive to the existing built form with appropriate street frontage heights of four storeys consistent with the buildings immediately adjacent and within the North Rose Bay Centre.
 - (vi) The proposal will assist in encouraging diversity in the range of shops and services by providing contemporary new retail floor space at the corner of Old South Head Road and Oceanview Avenue.
 - (vii) The proposed building envelope and building scale are also consistent with the building envelope and four-storey scale of development approved at the site under the two recent approvals (i.e. DA-455/2021 for No. 671-683 Old South Head Road, Vaucluse and DA-374/2020 for No. 669 Old South Head Road, Vaucluse. The proposal achieves a height, a density and setback arrangement that is commensurate with the approved developments at the site.
 - (viii) The amended DA has been designed to minimise any potential impacts upon the environmental amenity of neighbouring properties and the locality in terms of overshadowing, visual privacy, and views.
 - (ix) The development (including the non-compliant building height components) will not result in additional overshadowing upon any openings in the western elevation of the existing residential flat building to the east of the site at 2 Oceanview Avenue from 9am to 3pm in mid-winter.
 - (x) Further, the proposed development will result in greater solar access to the western openings of the residential flat building at 2 Oceanview Avenue when compared to the developments approved under DA-455/2021 and DA-374/2020.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) There is a disconnect between the height and FSR standards as despite non-compliance with the FSR standards, the proposed development remains compliant with the building heights allowable under the Housing SEPP which provide for greater building height at the site above those allowable under the WLEP i.e. the proposed building height is well below the building height allowable under the provisions of s87(2)(c) of the Housing SEPP. The fact that the proposed FSR effectively 'fits' within the applicable building height demonstrates that there is an appropriate correlation between the proposed FSR and the applicable WLEP building heights for the site.

- (ii) The variation to the FSR standard does not result in a development that will give rise to significant adverse overshadowing, privacy impacts, or view loss.
- (iii) The proposal is consistent with the density, height and scale of the adjacent development and the desired future character of the locality as envisaged with the WDCP 2022.
- (iv) The proposed density, height, scale and building envelope are consistent with the density, height and building envelope of existing approvals for the site. Specifically, notwithstanding the breach in FSR, the proposal achieves a FSR that is commensurate with the combined FSR of DA-455/2021 and DA-374/2020, (ie, 1.43:1).
- (v) It can be demonstrated that the proposed development will result in a better planning outcome compared to the previous approvals at the site for the following reasons:
 - The development proposes an overall scale and density commensurate with previous approvals for the site, however it replaces an approved residential flat building component at the corner of Old South Head Road and Oceanview Avenue, with seniors housing. This is considered to be a benefit to the local and broader community in providing a land use that is in demand in the area.
 - The proposal delivers greater amenity and benefit to residents and the public through the synergies that will be achieved by delivering seniors housing across both sites (i.e. car parking, storage, use of open space and other facilities are able to be consolidated across the wider site). The synergies and improvements achieved through the consolidated approach include:
 - A more cohesive and higher quality urban design and architectural response to the prominent site. The proposal allows for a two-building solution to the site (similar to the previous approvals) albeit with the separation of the buildings in a more favourable and appropriate location along Old South Head Road compared to the two approved buildings,
 - This results in a superior streetscape character through a reduction in the visual massing of the buildings along the Old South Head Road elevation. It also results in reduced overshadowing of the residential flat building to the east of the site at 2 Oceanview Avenue, because of the more northern placement of the building separation.
 - A reduction in on-site car parking from 64 to 49 spaces and thereby reduction in traffic generation.
 - An increase in deep soil area.
 - An increase in basement storage volume for residents.
 - Reduction in overshadowing to the residential flat building at 2 Oceanview Avenue to a point that no openings in the western elevation of that building will be in shadow between 9am and 3pm in mid-winter.
- (vi) The proposal is accompanied by a Planning Agreement (PA) which involves a monetary contribution that would allow for the realisation of affordable housing by Waverley Council. The PA is to the value of the affordable housing (i.e. 4 dwellings) that would otherwise have been realised at No. 671-683 Old South Head Road in accordance with Development Consent DA-455/2021. Further, the PA provides for additional monetary contributions relating to the additional GFA (and based upon Council's PA Policy) that is in

excess of the GFA envisaged by the development standard relevant to the southern part of the site, being 669 Old South Head Road.

- (vii) The proposal is in the public interest as the development remains consistent with the objectives of the FSR standard and the objectives for the E1 and R3 land use zones and the Principles of the Housing SEPP.

Consideration of Applicant's Written Request

The applicant's written requests have correctly identified the development standard to be varied, relevant legislation and calculated the FSR using the definition in the Housing SEPP. The document also addressed those matters required in Clause 4.6(3)(a) and (b). The evaluation of the justification included in the applicant's written requests has been provided below.

Consideration of 4.6(3)(a) whether compliance is unreasonable or unnecessary in the circumstances of the case

The applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and has referenced one or more of the following justifications as set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446:

- (a) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- (b) to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- (c) to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
- (d) to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and*
- (e) to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

The applicant specifically relies upon justification (a) of *Wehbe v Pittwater Council* (2007) 156 LGERA 446]. The written request provides sound justification for exceeding the FSR development standard and has appropriately argued that compliance is unreasonable or unnecessary by demonstrating the relevant objectives of the FSR development standard expressed in clause 4.4(1) of Waverley LEP 2012 have been achieved despite the non-compliance with the development standard that is encountered by the proposed development. These are:

- (b) to provide an appropriate correlation between maximum building heights and density controls,*

(c) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,

(d) to establish limitations on the overall scale of development to preserve the environmental amenity of neighbouring properties and the locality.

Consideration of 4.6(3)(b) whether there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has satisfactorily argued that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development presents to Old South Head Road and Oceanview Avenue as a four-storey building consistent with the desired future character of the area and the scale anticipated by the height of buildings development standard of the LEP (which allows heights of 12.5m and 13m for these sites). As demonstrated in the sections within the architectural plans, the lower ground floor level of the building will be predominantly contained below the existing ground level achieved by excavating the rear communal open space to be consistent with the lowest part of the site on the northern end. The lower ground floor level has a GFA of approximately 907m² comprising 71% of the FSR exceedance across the R3 zoned part of the site. In this regard, the majority of the additional floor space is located below the existing ground level where there will be limited impacts upon the streetscape and the amenity of surrounding properties.

The proposed development is considered to provide an appropriate response to the streetscape, the setting and is consistent with the desired future character of the area (detailed discussion provided in **Table 8** of this report). The proposal provides adequate separation distances to ensure that the visual and acoustic privacy of the surrounding properties, and the occupants of the subject development, are reasonably protected. Views from the public and private domain will not be adversely impacted and there will be no unreasonable overshadowing of windows and private open spaces of adjoining residential properties. For these reasons, the proposal is considered to preserve the amenity of surrounding properties.

It should be acknowledged that there are currently two development consents for this site that remain active as follows:

- DA-374/2020 (669 Old South Head Road) for a shop top housing development which exceeds the height development standard by 1.08m (8%) and the FSR development standard by 89.6m² (13.7%). This consent is subject to a planning agreement for the additional floor space to the amount of \$253,210 (as required by condition). This approval has a GFA of 745m².
- DA-455/2021 (671-683 Old South Head Road) for construction of a four-storey seniors living building with 37 units exceeds the height development standard by 1m (8%) and complies with the FSR development standard which allowed a 0.5:1 bonus under the previous SEPP (Housing for Seniors or People with a Disability) 2004. Under this SEPP, the bonus floor space is granted on the proviso that 10% of the GFA is to be affordable housing. This resulted in the dedication of four apartments as affordable housing. This approval has a GFA of 5388m².

The combined GFA for these developments equates to 6133m² whereas the subject application has an overall GFA of 6222m² providing an additional 89m² beyond that approved under the two previous consents. This additional gross floor area can be attributed to a differing definition for GFA (and subsequently exclusions/inclusions) under the current Housing SEPP that now applies. Accordingly, the size of the proposed development is essentially similar to the previous approvals applicable to the site. Under the current Housing SEPP, the bonus equates to only 15%, rather than 0.5:1, and as such although the developments are similarly sized, the variation to the FSR development standard is much greater under the current proposal simply due to differing bonus provisions between the previously applicable SEPP for seniors housing and the current Housing SEPP.

Notwithstanding the non-compliance with the FSR development standards, the proposal results in a better planning outcome for the site given that the overshadowing of surrounding sites will be reduced and the proposed building is separated into two buildings along the Old South Head Road frontage providing an improved presentation to the street and setting. The integration of the shop top housing development at the corner with the overall site also results in an improved streetscape and a greater amount of deep soil on the site overall.

The applicant has submitted offers to Council regarding their commitment to enter into planning agreements for the market value of the four affordable housing apartments that would otherwise have been released in the approved development at No. 671-683 Old South Head Road in accordance with DA-455/2021 and for additional gross floor area above the overall FSR development standard with respect to the *Waverley Council Planning Agreement Policy 2014* (the Policy).

The Policy provides a mechanism to address the public benefit offset of additional reasonable impacts from developments exceeding development standards. The offer to enter into a planning agreement addresses the public benefit aspect of maintaining the FSR development standard when Council considers a variation with the standard by way of assessing and determining a development application.

The fundamental principle of the Policy is that any benefit that arises from agreement to vary development standards is shared between developer and the community and must be acceptable on environmental impact grounds. The reasonableness of impacts associated with the additional floor space of the proposed development has been considered against the likely public interest (i.e. public domain improvements in the area), which has been found to be acceptable in this instance. The reasonableness relates to the merits of this case only as discussed in the body of this assessment report.

The proposal is in accordance with other variations which have been permitted in conjunction with public benefits or purpose, such as affordable housing, public domain works or the like. The proposed development is not against the public interest as it complies with the limitations set in the Policy.

A suitable public purpose or benefit is considered to be provided in the form of the forthcoming execution of a planning agreement, which would contribute to affordable housing, public works or a

similar public benefit within the catchment of the site. Appropriate conditions are included in Appendix A in relation to the Planning Agreement.

The written requests to vary the FSR development standards under the Housing SEPP and WLEP 2012 make similar arguments. These have been reviewed and are considered provide sound justification for exceeding the FSR development standards of the Housing SEPP and WLEP 2012 and have appropriately argued that compliance is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standards.

Conclusion

The written requests provided by the applicant to vary FSR development standards under the Housing SEPP and WLEP 2012 have adequately addressed clause 4.6 of the WLEP 2012 and the justification provided by the applicant is satisfactory.

Clause 4.6 Exceptions to Development Standards - Building Height

The application seeks to vary the height of buildings development standards as follows:

- Section 84(3)(c) of the Housing SEPP provides a development standard of 11.5m for servicing equipment on the roof of a building. The proposal exceeds this standard by 2.392m or 21%.
- Section 108(2)(a) of the Housing SEPP provides a non-discretionary building height development standard of 9.5m for development for the purpose of independent living units. The proposal exceeds this standard by 4.392m or 46%.
- Section 108(2)(b) of the Housing SEPP provides a non-discretionary building height development standard of 11.5m for servicing equipment on the roof of a building of development for the purpose of independent living units. The proposal exceeds this standard by 2.392m or 21%.
- Clause 4.3 of WLEP 2012 establishes a maximum building height of 12.5m to the northern part of the site (R3 zone) and 13m to the southern part of the site (E1 zone). The proposal exceeds these standards as follows:
 - E1 zone: The proposal has a maximum height of 13.892m exceeding the development standard by 892mm or 6.9%.
 - R3 zone: The proposal has a maximum height of 14.57m exceeding the development standard in the R3 zone by 2.07m or 16.6%.

Section 108(2)(a) and (b) are non-discretionary development standards that if complied with, prevent the consent authority from requiring more onerous standards for the matters. Section 4.15(3) of the EP&A Act does not prevent development consent being granted if a non-discretionary development standard is not complied with.

The applicant has submitted three separate written requests to vary the height development standards contained in WLEP 2012 and the Housing SEPP. All three written requests are included in this discussion.

Figure 12 is a height plane diagram demonstrating the height blanket over the site and the areas which exceed the WLEP development standards. However, it should be noted that in addition to maximum height of buildings outlined in Clause 4.3 of WLEP 2012, additional height is achievable at the site under the provisions of the "Additional Floor Space Ratios" development standard under the Housing SEPP. Specifically, Section 87(2)(c) of the Housing SEPP as detailed in **Table 1** which allows a bonus 3.8m above the maximum building heights equating to 16.8m on the E1 zoned land and 16.3m on the R3 zoned land. The proposal complies with this clause however given that the additional height is subject to additional floor space, with which this proposal exceeds as discussed previously, the additional height may not be applicable and the height of buildings development standard of WLEP 2012 applies instead. In this regard, the written request to vary the development standard under WLEP 2012 has been provided for an abundance of caution.



Figure 15: Building height plane diagram provided by the Applicant (non-compliant elements are shown in grey)

Written requests have been submitted to Council in accordance with clause 4.6(3)(a) and (b) of Waverley LEP 2012 seeking to justify the contravention of the development standards 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 standard.

Copies of the applicant's written requests have been provided to the Sydney Eastern City Planning Panel for consideration.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

The applicant seeks to justify the contravention of the height development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
 - (i) The proposed development is of an appropriate height and scale within the context of the site and locality. The new building responds to the height of surrounding development as well as the height that is anticipated for development at the site by WLEP 2012.
 - (ii) The amended proposal has been designed to minimise any potential impacts upon the environmental amenity of neighbouring properties and public spaces in terms of overshadowing, visual privacy, and views.
 - (iii) The proposed development will result in greater solar access to the western openings of the residential flat building at 2 Oceanview Avenue when compared to the developments approved under DA-455/2021 and DA-374/2020. In that regard, it can be stated that the proposal will not only preserve amenity but will improve it.
 - (iv) The proposal (including the non-compliant building height components) will not result in overshadowing of any public park, reserve or the like and will not inhibit important or significant existing views to or from a public place.
 - (v) The proposed non-compliant building height elements, being the lift overruns and the northern edge of the northern building, do not result in a building that is inconsistent with the stated desired future character of the locality. The non-compliant elements are minor in nature and do not result in a change in the overall scale of the development (ie, it remains a four-storey building) and do not adversely affect the buildings relationship with adjacent existing buildings or diminish the streetscape character of the development.
- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
 - (i) Notwithstanding the non-compliance with the WLEP 2012 building height development standard, the proposed buildings remain well under the maximum height allowable under the provisions of section 87(2)(c) of the Housing SEPP.
 - (ii) The variation to the building height control does not result in a development that will give rise to significant adverse overshadowing, privacy impacts, or view loss.
 - (iii) The elements of the proposed buildings that are non-compliant with the height standards relate to lift overruns and some rooftop plant areas, which will provide access for mobility impaired residents and visitors throughout the proposed buildings and services that will significantly enhance the amenity of future senior residents. The other non-compliant element is the northern end of the northern building which is located directly above a significant fall in the topography of the site.

- (iv) The non-compliant elements do not result in non-compliance with relevant privacy controls and do not result in adverse impacts to the amenity of existing adjacent residential development at 2 Oceanview Avenue and 687 Old South Head Road with regard to privacy.
- (v) The proposal is consistent with the density, height and scale of the adjacent development and the desired future character of the locality as envisaged with the WDCP 2022.
- (vi) The proposed density, height, scale and building envelope is consistent with the density, height and building envelope of existing approvals for the site.
- (vii) The proposal will result in public benefit as it seeks to provide for seniors housing at the site within a development that is commensurate in terms of density and building height with previous approvals for the site, but that will be superior in a public benefit and planning sense in that it will reduce impacts for adjacent development, improve the streetscape and urban design outcomes and improve amenity for future residents in comparison to the previous approvals.
- (viii) The proposal is in the public interest because, notwithstanding the numerical non-compliance with the standards, the development remains consistent with the objectives of the height of buildings standard and the objectives for the E1 and R3 land use zones.

Consideration of Applicant's Written Request

The applicant's written requests have correctly identified the development standard to be varied, relevant legislation and measured height using the correct existing ground level. The document also addressed those matters required in Clause 4.6(3)(a) and (b). An evaluation of the justification provided in the applicant's written requests is provided below.

Consideration of 4.6(3)(a) whether compliance is unreasonable or unnecessary in the circumstances of the case

The applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and has referenced one or more of the following justifications as set out in *Wehbe v Pittwater Council* (2007) 156 LGERA 446:

- (a) *the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- (b) *to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- (c) *to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
- (d) *to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and*
- (e) *to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it*

applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary.

The applicant specifically relies upon justification (a) of *Wehbe v Pittwater Council* (2007) 156 LGERA 446]. The written requests provide sound justification for exceeding the height of buildings development standard and have appropriately argued that compliance is unreasonable or unnecessary by demonstrating the relevant objectives of the height of buildings development standard expressed in clause 4.3(1) of Waverley LEP 2012 have been achieved despite the non-compliance with the development standard that is encountered by the proposed development. These are:

- (a) to ensure building heights preserve the environmental amenity of neighbouring properties and public spaces and, if appropriate, the sharing of views,*
- (c) to maintain satisfactory solar access to existing buildings and public areas,*
- (d) to establish building heights that are consistent with the desired future character of the locality.*

Consideration of 4.6(3)(b) whether there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has satisfactorily argued that there are sufficient environmental planning grounds to justify contravening the development standard.

As shown in **Figure 15** the height non-compliances, in terms of the WLEP, are limited to the plant and the northern edge of the northern building where the site slopes downhill. The variations do not result in increased unreasonable overshadowing of surrounding properties; loss of public or private views; or privacy impacts upon surrounding properties. The plant is set back from the building edges, contained central to the roof, and will only be obscurely visible from the public domain. The variations to the height of the plant will not harm the streetscape appearance of the building or increase the bulk and scale of the development.

The height non-compliance on the northern edge of the development is attributable to the slope of the land, partly due to the site being excavated in the past. The variation will not lead to unreasonable amenity impacts upon surrounding properties nor unreasonably increase the bulk and scale of the building when viewed from the public domain and surrounding properties. The development has been designed to step with the height of the land along the street, with both the northern and southern buildings presenting to the street with a four-storey scale, consistent with the desired future character of the area.

The proposal has been amended since it was first submitted to ensure that there will be no overshadowing of habitable windows and private open spaces of surrounding residential properties between 9am and 3pm on the winter solstice to preserve the amenity of adjoining sites. It is noted that

the amended design will result in overshadowing of the side setback of No. 2 Oceanview Avenue which is used as pathway to the entry of the building and the street and footpaths of surrounding shops. This is considered reasonable in terms of overshadowing. **Figure 16** below demonstrates the overshadowing impact between 2pm and 3pm to the adjoining RFB to the east as at all other times this property is not overshadowed by the subject development.

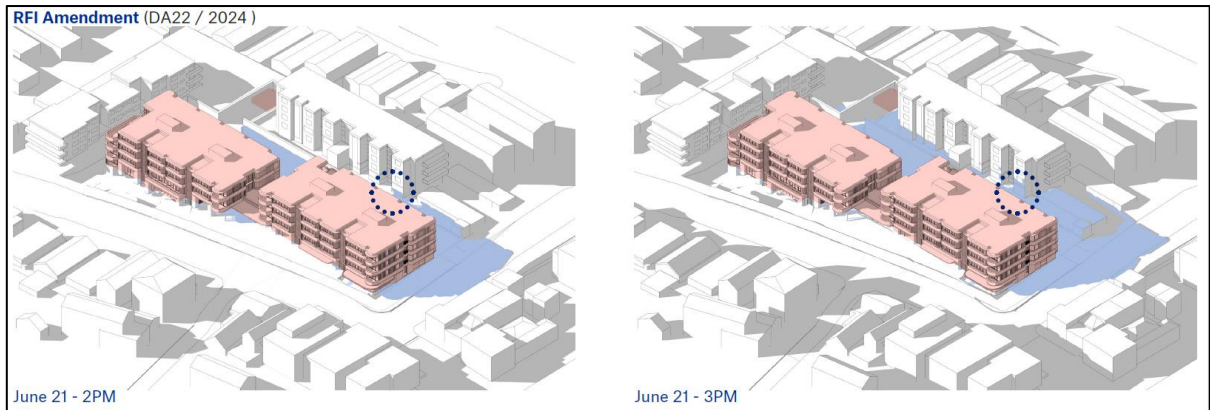


Figure 16: Overshadowing diagrams demonstrating impact upon No. 2 Oceanview Avenue at 2pm and 3pm on the winter solstice

The written requests to vary the building height development standards under the Housing SEPP make similar arguments to those presented for the variation to the height of buildings development standard of WLEP 2012. These have been reviewed and are considered to provide sound justification for exceeding the building height development standards of the Housing SEPP and have appropriately argued that compliance is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.

Conclusion

The written requests provided by the applicant to vary the height development standards contained in the Housing SEPP and WLEP 2012 has adequately addressed clause 4.6 of the WLEP 2012 and the justification provided by the applicant is satisfactory.

Chapter 4 Design of residential apartment development

The proposal is for a seniors housing development containing independent living units within a residential flat building and as such, Chapter 4 of the Housing SEPP applies.

The application was referred to the Waverley Design Advisory Excellence Panel (DEAP) on 14/02/2024. The DEAP's comment of the proposed development against the nine design principles for residential apartment development under Schedule 9 of the Housing SEPP and the Apartment Design Guide and a planning response to each comment, where necessary, are set out in **Table 2** of this report.

Table 2: Assessment against the Nine Design Quality Principles for Residential Apartment Development under the Housing SEPP

Principle 1: Context and Neighbourhood
<p><i>The proposal does achieve this principle in the following ways:</i></p> <ul style="list-style-type: none"> • <i>Provides retail use to corner of Old South Head Road and Oceanview Avenue.</i> • <i>Is consistent in scale.</i> • <i>Integrates landscaping to streetscapes and rear courtyards between adjoining lots.</i>
Principle 2: Built Form and Scale
<p><i>The proposal consolidates two previous DAs noted in the SEE into a combined DA for the entire site. The new proposal is consistent in the majority of architecture with the approved DA 455/2021 however represents improved urban outcomes through consolidated servicing, parking and retail connectivity. And improvements in the urban form.</i></p> <p><i>The proposal is consistent with the previous approval as noted above and achieves this principle in the following ways:</i></p> <ul style="list-style-type: none"> • <i>Provides further articulation of the massing over the previous approval which supports identification of the porte cochere and entry.</i>
Principle 3: Density
<p><i>The proposal is consistent with the previous approval in regard to density and impacts.</i></p>
Principle 4: Sustainability
<p><i>The proposal is consistent with the previous proposal and pre-DA advice including sustainable measures including PV's, ceiling fans, electric car charging, and positive social amenity.</i></p>
Principle 5: Landscape
<p><i>The proposal is consistent with the previous approval and demonstrates high levels of landscape design and amenity appropriate to street edges and open spaces.</i></p>
Principle 6: Amenity
<p><i>The proposal demonstrates high levels of amenity including diverse and inclusive landscape open spaces and internal program.</i></p>
Principle 7: Safety
<p><i>The proposal improves on the previous approval by separating the parking entry from building entry. It is otherwise consistent with the previous approval.</i></p> <p><i>However, it isn't clear if the entry/exit ramp connecting the Level 1 basement to the street is wide enough to allow cars to fit going up and down at the same time. If it isn't then that may create issues with cars waiting on Old South Head Road if there are lots of cars existing at any time. Given the size of the building and the number of car spaces in the basement, it would be better to have a two way</i></p>

ramp, even if that means some of the storage space on Basement 01 and apartment space on the Lower Ground need to be relocated elsewhere.

Planning comment: A car waiting bay is located inside the property boundary at the top of the proposed ramp. The Traffic Report submitted with the application, Council's Traffic Engineers nor Transport for NSW have raised queuing on Old South Head Road as an issue.

Principle 8: Housing Diversity and Social Interaction

The proposal responds to this principle in providing seniors living.

Principle 9: Aesthetics

The proposal is consistent with the previous approval and demonstrates a high quality architectural design.

As demonstrated in **Table 2** of this report, the proposed development is considered to satisfy the design principles for residential apartment development that are outlined in Schedule 9 of the Housing SEPP.

Apartment Design Guide

An assessment against the provisions within the ADG is provided in **Table 3** of this report.

Table 3: Apartment Design Guide

Design Criteria	Compliance	Comment
Part 3 Siting the development		
3A Site analysis	Yes	A satisfactory site analysis was provided with the application.
3B Orientation	Yes	<p>The proposed building has been orientated and designed to relate to the shape of the site, addressing the street frontages and properties at the rear.</p> <p>The proposal has been amended since it was first submitted to ensure that there is no overshadowing of windows or private open spaces of the residential flat building at No.2 Oceanview Avenue to the east of the site (as discussed in detail elsewhere in this report).</p>
3C Public domain interface	Yes	The proposed building provides a satisfactory interface with the public domain providing a retail frontage at ground level at the corner consistent with the part of the site zoned E1. The remaining frontage along Old South Head Road

Design Criteria	Compliance	Comment
		zoned R3 presents to the public domain with landscaping and public access.
3D Communal and public open space ADG control: Minimum of 25% of site Minimum of 50% direct sunlight to the principal usable part on winter solstice	Yes	<p>The proposal provides 1490m² of active communal open space equating to 34% of the site (excluding passive areas for landscaping in the front setback).</p> <p>The communal open space is located on the eastern side of the development site within the rear yard and will receive solar access from 9am to 1pm to at least 50% of the area. There are also communal dining areas within the front setback of the site that will receive solar access in the afternoon.</p> <p>The proposal also provides extensive internal communal space at the lower ground floor level with direct access to the rear and front communal spaces.</p>
3E Deep soil zones ADG control: 7% of the site, deep soil zones should be provided	Yes	<p>The landscaping development standards of Chapter 3 Part 5 Housing for seniors and people with a disability applies and requires 15% for deep soil as previously discussed in Table 1.</p> <p>Notwithstanding, the proposal provides 771.2m² or 18% of the site as deep soil.</p>
3F Visual privacy Min separation distances from buildings (windows and balconies) to side and rear boundaries: Up to 12m (4 storey) – 6m habitable & 3m non-habitable	No	Refer to discussion following this table.
3G Pedestrian access and entries	Yes	The proposal provides pedestrian entry from Old South Head Road that is separate from the vehicular entry and the <i>porte cochere</i> . Public entry to the retail shop is provided from the corner of Old South Head Road and Oceanview Avenue.

Design Criteria	Compliance	Comment
3H Vehicle access	Yes	The vehicular entry to the basement car park is provided along the northern boundary of the site. In addition, a drop-off/pick-up zone (<i>porte cochere</i>) will be provided from Old South Head Road.
3J Bicycle and car parking	Yes	<p>The car parking will be provided within an underground car park accessed via a driveway along the northern side boundary of the site.</p> <p>The car parking rates are development standards in Chapter 3 Part 5 <i>Housing for seniors and people with a disability</i> and as such are a higher order control than the rates in the ADG. This matter has been previously discussed in Table 1.</p> <p>The proposal provides bicycle storage for 38 bicycles within the basement carpark.</p>
Part 4 – Designing the building		
4A Solar and daylight access <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of units receive minimum of 2 hours direct sunlight between 9am-3pm mid-winter A maximum of 15% receive no direct sunlight between 9am-3pm mid-winter. 	Yes	<p>Overall, 93% of the apartments achieve 2 hours solar access to living rooms and private open spaces at mid-winter.</p> <p>There are no apartments that do not receive any direct sunlight.</p>
4B Natural ventilation <ul style="list-style-type: none"> All habitable rooms are naturally ventilated Number of units with natural cross ventilation is maximised: <ul style="list-style-type: none"> - At least 60% of units naturally ventilated in the first 9 storeys of the development. 	<p>Yes</p> <p>Yes</p>	<ul style="list-style-type: none"> All habitable rooms are provided with a window for natural ventilation. 67% of apartments will be naturally ventilated.
4C Ceiling heights	Yes	Ceiling height to the residential level are 2.7m.

Design Criteria	Compliance	Comment
<ul style="list-style-type: none"> Habitable rooms – 2.7m Non-habitable rooms – 2.4m 		Ceiling heights to the retail shop are 3m.
<p>4D Apartment size and layout</p> <p>The following minimum internal areas apply:</p> <ul style="list-style-type: none"> 2-bed = 70m² 3 Bed = 90m² Add 5m² for each additional bathroom (above 1) <p>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.</p> <p>Maximum depth of open plan living layouts is 8m.</p>	Yes	<p>All units have internal areas in excess of the minimum ADG requirements. In this regard, the proposed unit sizes and layout are acceptable.</p> <p>The proposal is capable of achieving compliance with the minimum glazed area to each habitable room.</p> <p>Habitable room depths and widths are in accordance with the design criteria. All bedrooms meet the minimum requirements in terms of dimensions and area.</p> <p>All kitchens are separate to the circulation spaces.</p> <p>The proposal is generally consistent with the objectives and design guidance of this part of the ADG.</p>
<p>4E Private open space and balconies</p> <p>All apartments provide primary balcony as follows:</p> <ul style="list-style-type: none"> 2-bed - 10m² & 2m depth 3-bed - 12m² & 2.4m depth 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 	Yes	<p>All apartments are provided with a balcony or courtyard accessed from the main living areas, which meet the minimum requirements of the ADG in terms of area and depth. Many apartments have more than one balcony for the use of the occupants accessed from bedrooms.</p> <p>The design of the balconies and courtyards is integrated into, and contributes to, the architectural form and detail of the building. The finishes of the balconies are consistent with the contemporary palette of materials in the building overall. Screens or solid side walls are provided to enhance privacy.</p>
<p>4F Common circulation and spaces</p> <ul style="list-style-type: none"> Max of 8 units accessed off a 	Yes	The proposal provides a maximum of four apartments accessed off a circulation core.

Design Criteria	Compliance	Comment
circulation core on a single level		
4G Storage In addition to kitchens, bathrooms and bedrooms, the following is provided: <ul style="list-style-type: none"> • 2-bed – 8m³ • 3-bed – 10m³ 	Yes	The proposal provides separate storage within each apartment and storage allocated to each apartment within the basement carpark. The storage provided meets the requirements and objectives of the ADG. A condition is recommended to ensure compliance in this respect.
4H Acoustic privacy	Yes	<p>Windows and door opening are generally oriented away from noise sources.</p> <p>The internal planning of apartments is consistent with the ADG in regard to this issue.</p>
4J Noise and Pollution	Yes	As detailed previously, an Acoustic Report was provided to assess the noise impact of Old South Head Road upon the development itself. The Acoustic Report made recommendations to address this issue and is referenced in the consent conditions.
4K Apartment mix	Yes	The proposal provides a mix of two and three-bedroom apartments.
4L Ground floor apartments	Yes	The ground floor apartments are provided with landscaped courtyards within the front and rear setbacks where appropriate. Although they are not provided with direct entry from the street, this is appropriate to the use as a seniors housing development. The main ground floor uses relate to the common facilities of the senior's housing use.
4M Facades	Yes	The proposal provides visual interest along the street and respects the character of the area. The palette of materials is considered appropriate and reflective of the desired future character for the area.
4N Roof design	Yes	The roof provides plant and solar panels which are set back an appropriate distance from the outer edges of the roof or are largely concealed

Design Criteria	Compliance	Comment
		by a screen to ensure low visibility from surrounding areas and within the streetscape.
4O Landscape design	Yes	The proposal provides extensive landscaping around the site, including around the perimeter to enhance privacy to adjoining properties. The landscaped courtyards within the front setback contribute to the streetscape, enhancing the setting.
4P Planting on structures	Yes	Appropriate conditions are recommended for planting on structures to ensure plant growth and maintenance.
4Q Universal Design	N/A	Universal housing design relates to accessibility and 'ageing in place'. The proposal must comply with the development standards contained within Schedule 4 of the Housing SEPP instead which has more onerous requirements for accessibility.
4S Mixed Use	Yes	The proposal will provide a mix of retail and residential uses appropriately contributing to the public domain and the character of the area.
4T Awnings and signage	Yes	The proposal provides an awning along the retail frontage of the corner which is appropriate. The use of each retail premise is unknown at this stage and signage is not proposed.
4U Energy efficiency	Yes	All apartments within the building incorporate passive environmental design, meeting the cross-ventilation requirements in the ADG. Adequate natural light and solar access are provided to the majority of apartments.
4V Water management and conservation	Yes	A BASIX Certificate has been provided with the application which indicates that the proposal will meet the required water target.
4W Waste management	Yes	Separate waste storage rooms for the commercial and residential uses are provided. Waste management is discussed further in Table 5 .

Design Criteria	Compliance	Comment
4X Building maintenance	Yes	The guideline suggests that building design should provide protection from weathering, systems and access for maintenance and materials which reduce ongoing maintenance costs. There is no evidence to suggest that the proposed building could not achieve this through the detailed construction certificate documentation process.

The following is a detailed discussion of the issues identified in **Table 3** above.

Separation distances

The site adjoins residential flat buildings on the eastern boundary (No. 2 Oceanview Avenue) and the northern boundary (No. 685-687 Old South Head Road). The ADG sets a minimum separation distance from side and rear boundaries of 6m to habitable rooms/balconies and 3m to non-habitable rooms to ensure sufficient separation from adjoining properties for reasonable visual and acoustic privacy.

Windows and balconies are set back a minimum of 8.148m and 12.064m from the eastern boundary with 2 Oceanview Avenue exceeding the control of 6m. Given the limited setbacks of the existing residential flat building (RFB) at No. 2 Oceanview Avenue, the increased setback to the subject development results in a minimum separation of 12m between the proposal and the existing RFB.

The proposal is set back from the northern boundary by 4.5m instead of the required 6m. The lower three levels of the building (described as 'Ground Lower', 'Ground Upper' and 'Level 01') have windows to non-habitable rooms or are otherwise screened on the northern boundary to ensure privacy impacts to the adjoining RFB are not unreasonable. At the uppermost level (described as 'Level 02') the proposal contains a 35m² balcony along the northern side of the building which is set back 4.5m rather than 6m. However, given that the RFB to the north is more than 4m lower in height than the subject development, there are no windows/balconies opposite the top level of the proposal (refer to **Figure 17** below). As demonstrated in **Figure 18** the balcony contains a planter along the northern edge to inhibit overlooking down into the adjoining property.

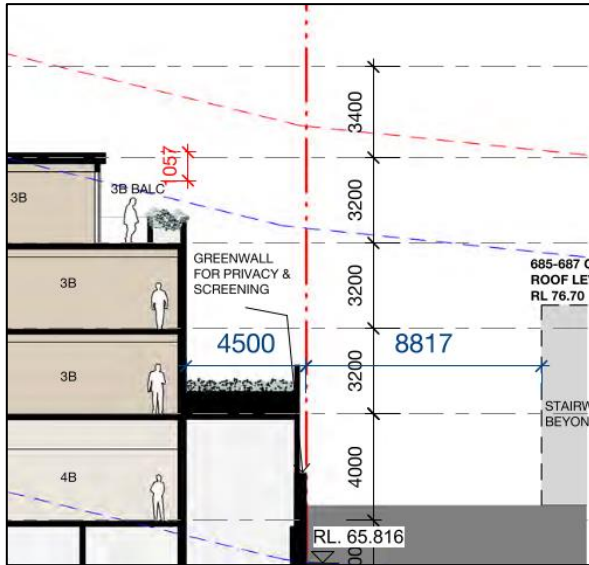


Figure 17: Extract of the section adjoining 658-687 Old South Head Road to the north of the site

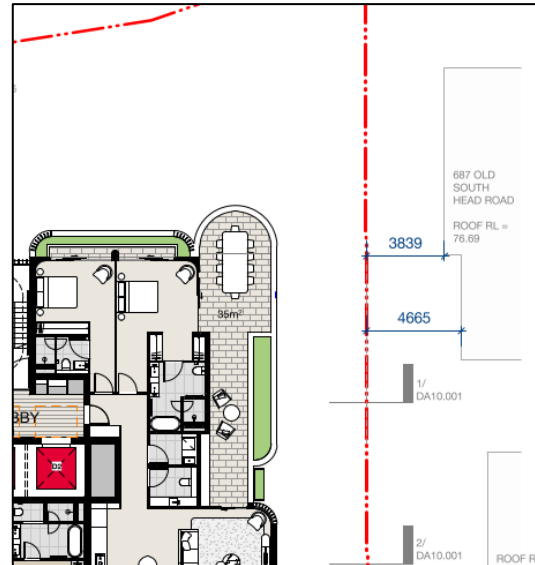


Figure 18: Extract of the plan (Level 2 of the northern building) adjoining 658-687 Old South Head Road to the north of the site

The separation distances, and privacy measures proposed, are considered sufficient to ensure that there are no unreasonable visual or acoustic privacy impacts upon surrounding properties.

2.1.2. Waverley Local Environmental Plan 2012 (Waverley LEP 2012)

The relevant matters to be considered under the Waverley LEP 2012 are outlined below:

Table 4: Waverley LEP 2012 Compliance Table

Provision	Compliance	Comment
Part 1 Preliminary		
1.2 Aims of plan	Yes	The proposal is consistent with the aims of the LEP.
Part 2 Permitted or prohibited development		
Land Use Table <ul style="list-style-type: none"> • <i>E1 Local Centre Zone (669 Old South Head Rd)</i> • <i>R3 Medium Density Residential Zone (771-683 Old South Head Rd)</i> 	Yes	<p>Part of the site is zoned E1 <i>Local Centre</i> being 669 Old South Head Road and the remainder of the site, being 771 to 683 Old South Head Road, is zoned R3 <i>Medium Density Residential</i>.</p> <p>The proposal is a mixed use development comprising a commercial premises and seniors housing (in the formation of shop top housing in the E1 portion and a residential flat building in the R3 portion). The shop top housing is contained to that part of the site zoned E1 which is permitted with consent in the E1 zone. The remainder of the development is a residential flat building</p>

Provision	Compliance	Comment
		<p>which is permitted with consent in the R3 zone. Accordingly, each use is contained to that part of the site that the zoning permits. The proposal is therefore permitted with consent.</p> <p>That part of the proposal that sits within the E1 zone is considered to be consistent with the zone objectives in that it provides a retail use that serves the needs of the community; the use generates employment opportunities and economic growth; maximises public transport patronage through the restriction of parking to no more than required rates and provides alternative modes of transportation (eg bike parking); the standard and scale are consistent with the desired future character; and the retail shop provides an active ground floor use to create vibrancy within the local centre.</p> <p>That part of the proposal that sits within the R3 zone has also been considered against, and is considered consistent with, the zone objectives in that it contributes to the housing needs of the community and provides a variety of housing types within a medium density residential environment; maximises public transport patronage through the restriction of parking to no more than required rates and provides alternative modes of transportation (eg bike parking); increases residential density on the site by replacing seven dwellings with 30 dwellings; is compatible with the desired future character and amenity of the surrounding area; and provides sufficient landscaping and deep soil to reduce the urban heat island effect.</p>
Part 4 Principal development standards		
4.3 Height of buildings <ul style="list-style-type: none"> E1: 13m (669 Old South Head Rd) R3: 12.5m (771-683 Old South Head Rd) <p>Applying the additional 3.8m bonus under the Housing SEPP to each part of the site allows a maximum of:</p>	No	<p>E1 zone: The proposal has a maximum height of 13.892m exceeding the development standard by 892mm or 6.9%.</p> <p>R3 zone: The proposal has a maximum height of 14.57m exceeding the development standard in the R3 zone by 2.07m or 16.6%.</p> <p>However, it is worth noting that under the Housing SEPP a bonus of 3.8m above the</p>

Provision	Compliance	Comment
<ul style="list-style-type: none"> E1: 16.8m (669 Old South Head Rd) R3: 16.3m (771-683 Old South Head Rd) 		maximum permissible building height may be applicable with which the proposal complies across the site.
<p>4.4 Floor space ratio and</p> <ul style="list-style-type: none"> R3: 0.9:1 (771-683 Old South Head Rd); Site area = 3867.1m²) E1: 1.5:1 (669 Old South Head Rd); Site area = 477.93m²) <p>Applying the additional 15% bonus under the Housing SEPP to each part of the site allows a maximum of:</p> <ul style="list-style-type: none"> R3: 1.035:1 (0.9:1 + bonus 0.135:1) - max GFA of 4002.4m² E1: 1.725:1 (1.5:1 + bonus 0.225:1) - max GFA of 824.4m² 	No	<p>The proposal seeks an FSR of:</p> <ul style="list-style-type: none"> R3 zone: 1.37:1 (5287m²) exceeding the development standard by 1284.6m² or 32%. E1 zone: 1.96:1 (935m²) exceeding the development standard by 110.6m² or 13.4%.
4.6 Exceptions to development standards	See discussion	<p>The application is accompanied by a written request pursuant to clause 4.6 of Waverley LEP 2012 to vary the height development standard. A detailed discussion of the variation to the development standard has been considered previously in this report under Table 1.</p> <p>It should be noted that the variations to the development standards of the Housing SEPP are also considered under Clause 4.6 of LEP 2012. However, for clarity these variations have been considered previously in this report under Table 1.</p>
Part 6 Additional local provisions		
6.2 Earthworks	Yes	<p>The proposal includes excavation with three levels contained below the existing ground level comprised of two levels of basement and the lower ground level providing communal facilities and storage.</p> <p>Geotechnical Investigation Advice has been provided with the application which is</p>

Provision	Compliance	Comment
		referenced in the consent conditions in addition to all standard excavation conditions.
6.9 Design excellence	Yes	The site is located within Zone E1 and as such the design excellence clauses of the LEP apply. The application was referred to the Waverley Design Excellence Advisory Panel (DEAP) for an assessment of the design excellence of the proposed development. The full comments of the DEAP are contained in Table 3 of this report. The proposal is considered to exhibit design excellence.
6.14 Waste minimisation and recycling	Yes	As discussed in detail in Table 5 of this report, the proposal provides appropriate waste storage arrangements on site and is considered acceptable in this regard.
6.15 Stormwater management	Yes	The proposal was referred to Council's stormwater engineers. Conditions of consent have been recommended and are included in Appendix A in relation to stormwater matters.
6.16 Development in Zone E1 <i>Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered—</i> <i>(a) the impact of the development on—</i> <i>(i) the amenity of surrounding residential areas, and</i> <i>(ii) the desired future character of the area.</i> <i>(b) whether the development is consistent with the hierarchy of centres.</i>	Yes	<p>The proposal does not have an unreasonable impact upon the amenity of surrounding properties as discussed throughout this report.</p> <p>The amended proposal is consistent with the desired future character of the area as described in Table 8 which contains a detailed assessment against the controls for the Local Village Centre in which the E1 site is contained (Rose Bay North Village Centre).</p> <p>Part E3 of Waverley Development Control Plan 2022 (DCP 2022) provides a statement regarding the 'hierarchy of centres' as follows:</p> <p><i>The zones reflect a hierarchy, where E1 Local Centre is either a cluster of shops (neighbourhood centre), a larger centre or high-street strip of shops, E2 Commercial Centre is a major centre with office buildings and major retail, while MU1 Mixed Use supports a mix of commercial and residential particularly in strategic centres around a E2 Commercial Centre zone.</i></p>

Provision	Compliance	Comment
		This site sits within the Rose Bay North Centre, which is a Neighbourhood Centre. Neighbourhood Centres are “a cluster of shops”. The proposal retains the shop use at the ground floor and is consistent with the relevant Local Village Centre controls in Part E3 of DCP 2022 (discussed further in Table 8 of this report).
6.17 Affordable housing contributions	Yes	The affordable housing contribution applies to independent living units and as such, a condition requiring a contribution to affordable housing within the area equivalent to 1% of the GFA of the residential component of the development is recommended.

2.1.3. Waverley Development Control Plan 2022 (Waverley DCP 2022)

The relevant matters to be considered under the Waverley DCP 2022 are outlined below noting that any controls where are inconsistent with the development standards of the Housing SEPP *Housing for seniors and people with a disability* have been removed as these are higher order controls and override the provisions of the DCP:

Table 5: Waverley DCP 2022 – Part B General Provisions Compliance Table

Development Control	Compliance	Comment
1. Waste <ul style="list-style-type: none"> <i>Garbage bins are to be stored in an appropriate location.</i> 	Yes	<p>The proposal provides separate bin storage areas within the basement for the retail and residential uses.</p> <p>A waste collection point within the basement carpark is also included for on-site collection of waste. The basement cannot accommodate the larger size of the Council Waste Collection Vehicles and as such, the applicant will have the waste collected by a private contractor with smaller trucks.</p> <p>Notwithstanding, given that independent living units are residential uses and require a domestic waste service, incurring a domestic waste charge regardless of private collection, a waste hoist is included in the basement carpark as a measure that allows Council to be able to collect the bins from the kerbside on Oceanview Avenue.</p>

Development Control	Compliance	Comment
		The proposal incorporates acceptable waste management arrangements subject to conditions.
2. Ecologically Sustainable Development <ul style="list-style-type: none"> <i>Ceiling or wall mounted fans</i> <i>Gas cooktops, gas ovens or gas internal space heating systems.</i> 	Yes	<p>The proposed development is oriented to maximise solar access to living rooms and private open spaces, promoting energy efficiency and natural lighting.</p> <p>The design incorporates PV cells and rainwater tanks, enhancing the sustainability of the development.</p> <p>In line with the DCP the development includes ceiling fans, induction cooktops, and electric ovens, which are energy-efficient choices.</p>
3. Landscaping, Biodiversity and Vegetation Preservation	Yes	<p>The landscaping plan has been reviewed and is considered acceptable and is cohesive with the site and streetscape.</p> <p>The proposal includes the removal of 55 trees on the site, including two trees from the footpath. An Arboriculture Impact Assessment was provided with the application and reviewed by Council's Tree Preservation Officer who raised no objection subject to conditions (included in Appendix A). The landscape plan includes four different canopy tree species which will have mature heights between 6m to 15m to compensate for the loss of trees from the site. Conditions require the replacement of the two street trees with appropriate species.</p>
5. Water Management	Yes	Satisfactory subject to conditions as contained in Appendix A. Refer to detailed referral discussion in section 3.4 of this report.
6. Accessibility and Adaptability	Yes	The proposal has been designed for accessibility and adaptability given it is for seniors housing. The proposal provides four sets of lifts for accessibility to all levels and level access throughout the development. The shops are accessible from the footpath level. An accessible sanitary facility is provided for the use of the ground floor shop. Appropriate conditions are recommended.

Development Control	Compliance	Comment
7. Transport 7.1 Streetscape 7.2 On-Site Parking 7.2.1 Vehicle Access 7.2.2 Parking Rates <ul style="list-style-type: none"> <i>Housing SEPP for resident rates: 38 spaces</i> <i>Visitors: 1/5 units = 6 spaces</i> <i>Retail: Min of nil and max of 7 spaces</i> 7.2.5 Motorcycle Parking <i>Resident: 16 spaces</i> 7.2.6 Bicycle Parking <i>Resident: 30</i> <i>Visitor: 3</i> <i>Commercial: 1</i> 7.3 Loading Facilities 7.4 Pedestrian/Bicycle Circulation and Safety 7.7 Car Share 7.8 Electric Vehicle Charging Points	Yes	<p>The subject site is located within Parking Zone 2.</p> <p>The proposal provides 47 car parking spaces comprised of:</p> <ul style="list-style-type: none"> 39 resident car spaces 6 visitor spaces 2 car share spaces. 17 motorbike spaces. <p>Parking rates for residents are specified by the Housing SEPP as previously discussed which requires a minimum of 38 resident spaces. The proposed development meets this requirement.</p> <p>A condition is recommended to ensure that the development remains compliant with the minimum provisions of the Housing SEPP.</p> <p>Schedule 4 of the Housing SEPP requires that for a group of 8 or more parking spaces—</p> <ol style="list-style-type: none"> <i>at least 15% of the parking spaces must comply with AS/NZS 2890.6, and</i> <i>at least 50% of the parking spaces must—</i> <ol style="list-style-type: none"> <i>comply with AS/NZS 2890.6, or</i> <i>be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.</i> <p>Schedule 4 of the Housing SEPP overrides the provisions of the DCP, being development standards. A condition will require compliance in this regard.</p> <p>The driveway crossings to access the basement carpark and the <i>porte cochere</i> have been reviewed by Transport for NSW and concurrence has been provided.</p> <p>The proposal provides 38 bicycle spaces complying with the DCP.</p> <p>Loading spaces/zones are provided within the basement for garbage collection and also for deliveries.</p> <p>Spaces to accommodate EV charging for both vehicles and motor scooters are included.</p>

Development Control	Compliance	Comment
9. Safety	Yes	Satisfactory.
10. Public Art	No	Developments located within an E1 zone, with a construction value exceeding \$10 million are required to integrate a public artwork into the development to a minimum value of 1% of the construction costs (excluding administration and associated costs). A condition to this effect is included in Appendix A.
11. Design Excellence	Yes	Satisfactory.
13. Excavation	No	<p>The excavation is considered satisfactory. The basement carpark is fully located below ground and will not add to the visual bulk and scale of the building with the excavated sections being contained to the rear and the building presenting to the street frontages as four-storeys.</p> <p>The DCP requires a 1.5m setback from boundaries and shall occur within the footprint of the building except where access to a basement carpark is required. The proposed basement is built up to the northern boundary of the site however this is to provide access to the basement carpark. The basement is also excavated up to the southern boundary with Oceanview Avenue.</p> <p>A Geotechnical Report and Structural Report have been provided with the application which are referenced in the consent conditions in addition to all standard excavation conditions.</p>
15. Public Domain	Yes	Satisfactory.
17. Social Impact Assessment		A Social Impact Assessment (SIS) was provided with the development that states that generally, the number of people aged 60 years or more residing in both Vacluse and the Waverley Local Government Area has increased since 2011. The suburb of Vacluse has accommodated an increase in the proportion of the population aged 70 years or more since 2016. This suggests an increase in the proportion of the population above the age of 70 years who will require seniors housing development and independent living to suit their changing needs, which the proposal is tailored to.

Development Control	Compliance	Comment
		<p>In addition, a Planning Agreement has been submitted to support the provision of affordable housing with the Waverley LGA, which intends to provide significant public benefit and promote positive social outcomes through the provision of affordable housing above what is required by the current planning legislation.</p> <p>The proposal will provide housing for seniors and people with a disability which is considered to have a positive social outcome for the area.</p>

Section 149 of SEPP (Housing) 2021 requires that development control plans (DCPs) cannot be inconsistent with the Apartment Design Guide (ADG) in respect of the following:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

If a DCP contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect and have been removed from **Table 6** below.

Table 6: Waverley DCP 2022 – Part C2 Other Residential Development Compliance Table

Development Control	Compliance	Comment
2.1 Site, scale and frontage		
<ul style="list-style-type: none"> <i>Minimum frontage: 15m – R3 zone</i> 	Yes	The site frontage exceeds the minimum frontage control and does not result in site isolation of surrounding properties.
2.2 Height		
<ul style="list-style-type: none"> <i>Maximum external wall height: R3/12.5m – 9.5m</i> 	No	<p>There are no specific wall height controls for the portion of the site zoned E1.</p> <p>The R3 portion has a 9.5m wall height control. The proposal exceeds this control across the site with exceedances ranging from 10.5m to 13.5m. The height has been previously discussed in detail in the report and found to be acceptable. The wall height variation will not result in unreasonable overshadowing, impact upon views</p>

Development Control	Compliance	Comment
		or have a detrimental effect on the streetscape. The variation is considered acceptable.
2.3 Setbacks		
2.3.1 Street setbacks <ul style="list-style-type: none"> <i>Consistent street setback</i> 	Yes	The street setbacks on both frontages are considered acceptable within the streetscape.
2.3.2 Side and rear setbacks <ul style="list-style-type: none"> <i>Minimum side setback: 1.5-2.5m</i> <i>Minimum rear setback: 6m or predominant rear building line, whichever is the greater setback</i> <i>Deep soil along side boundary min 2m wide</i> 	No	<p>The proposal is set back from the northern side boundary by 4.5m exceeding the control. The proposal will be built up to the southern side boundary with Oceanview Avenue which is appropriate given the E1 zoning and retail use.</p> <p>The proposal is set back from the eastern (rear) boundary by over 6m to the upper levels. At the lower levels, which are largely excavated into the site and sit lower than the surrounding properties, the setback from the rear is reduced to 2m – 4.5m. These areas are contained below the existing ground level contained at the rear and will not be visible from the public domain or overlook adjoining properties.</p> <p>The deep soil zone is located along the rear boundary of the site to provide a landscaped buffer with the adjoining residential flat building to the east.</p> <p>The setbacks are considered to appropriately respond to the context and surrounding properties.</p>
2.4 Length and depth of buildings		
<ul style="list-style-type: none"> <i>Maximum building length: 24m</i> <i>Façade to be articulated</i> <i>Maximum RFB depth: 18m</i> 	No	<p>The proposed building has been designed to present as two buildings linked by a central foyer. Both buildings have a length of approximately 45m to the street separated by a 9m wide lobby at ground.</p> <p>Although this exceeds the DCP control, it is appropriate to this site which is wider in length than in depth. The building is appropriately articulated with massing and form which is appropriate to the context.</p>
2.5 Building design and streetscape		
<ul style="list-style-type: none"> <i>Respond to streetscape</i> <i>Sympathetic external finishes</i> 	Yes	As previously discussed in this report, the proposal exhibits design excellence.

Development Control	Compliance	Comment
<ul style="list-style-type: none"> Corner sites to address both streets as primary frontages 		<p>The consideration of materiality within the context ensures consistency with the neighbourhood. The proposal demonstrates thoughtful consideration for massing and form, providing a well-balanced structure.</p> <p>The proposal addresses both frontage of the site as primary frontages.</p>
2.7 Fences and walls		
<p><u>Front fence:</u></p> <ul style="list-style-type: none"> Maximum height 1.2m Maximum 2/3 solid Maximum height of 1.8m and solid when secondary wall set within property if required for traffic noise <p><u>Side fence:</u></p> <ul style="list-style-type: none"> Maximum height: 1.8m <p><u>Rear fence:</u></p> <ul style="list-style-type: none"> Maximum height: 1.8m 	Yes	<p>The proposal provides low front walls as this is the main communal entry and provides vehicular access via the <i>porte cochere</i>. There are private courtyards to several apartments within the front setback and these will be distinguished from the communal areas and entries through low walls and landscaping.</p> <p>The site is to be lowered within the rear and as such retaining walls and fencing appear higher however is due to the lowering of the ground level. A condition is imposed that the side and rear boundary fences must not exceed 1.8m in height from the ground level of the adjoining property to which the fence relates, unless agreement is reached between the adjoining landowners.</p>
2.8 Pedestrian access and entry		
<ul style="list-style-type: none"> Entry at street level and respond to pattern within the street Accessible entry Separate to vehicular entry Legible, safe, well-lit 	Yes	<p>The proposal provides pedestrian entry from Old South Head Road to the senior's housing development that is separate from the vehicular entry and the <i>porte cochere</i>. Public entry to the retail shop is provided from the corner of Old South Head Road and Oceanview Avenue.</p>
2.10 Communal open space		
<ul style="list-style-type: none"> Minimum 15% communal (R3 zone) Minimum dimensions: 6m x 6m Minimum of 30% of communal area must receive three hours of sunlight 	Yes	<p>The proposal provides 1490m² of communal open space equating to 34% of the site with dimensions well in excess of the DCP controls.</p> <p>The communal space at the rear receives solar access within the morning hours meeting the solar access requirements.</p>
2.12 Vehicular access and parking		
<ul style="list-style-type: none"> Car parking to be integrated into the design of the development 	Yes	<p>The carpark has been previously discussed in Table 6 of this report.</p>

Development Control	Compliance	Comment
<ul style="list-style-type: none"> • <i>Max 1 x 2 way vehicle access point</i> • <i>Provided from secondary street or lane</i> • <i>Pedestrian safety considered</i> • <i>Basement parking should not contravene deep soil zone controls</i> 		<p>The proposal provides three driveway crossings, being one for the basement driveway and two for the <i>porte cochere</i> (forward motion only so one for entry and one for exit). This replaces six driveway crossings presently on Old South Head Road and one from Oceanview Avenue, potentially adding 2-3 on-street parking spaces in front of the site. Transport for NSW have provided concurrence for the driveway crossing from Old South Head Road, required as it is a classified road.</p> <p>The low fences within the front setbacks allows adequate pedestrian safety for vehicles entering and leaving the site. The pedestrian pathways are separate from the vehicular entry and exits points.</p> <p>The basement carpark does not contravene the deep soil requirements of the Housing SEPP as previously discussed.</p>
2.13 Solar access		
<ul style="list-style-type: none"> • <i>New development should maintain at least 2 hours of sunlight to solar collectors on adjoining properties in mid winter</i> • <i>Direct sunlight to north facing windows of habitable rooms on all private open space areas of adjacent dwellings to less than 3 hours of sunlight on 21 June</i> 	Yes	Overshadowing has been discussed in detail previously in this report. The proposal will not result in unreasonable overshadowing of surrounding sites.
2.14 Views and view sharing		
<ul style="list-style-type: none"> • <i>Minimise view loss through design</i> • <i>Landscaping on sites adjacent to a Council Park or reserve should be sympathetic to soften the public/private interface</i> • <i>Views from public spaces to be maintained</i> 	Yes	No known public or private views will be impacted by the proposed development.
2.15 Visual privacy and security		
<ul style="list-style-type: none"> • <i>Dwellings to be orientated to the street with entrances and street numbering visible</i> 	Yes	The apartments are oriented to each street frontage as well as the rear.

Development Control	Compliance	Comment
<ul style="list-style-type: none"> <i>Above ground open space must not overlook rooms and private landscaped areas of adjoining properties or be screened</i> <i>Privacy be considered in relation to context density, separation use and design</i> <i>Prevent overlooking of more than 50% of private open space of lower-level dwellings in same development</i> 		<p>The balconies generally do not overlook the spaces of adjoining apartments due to them being inset or stacked over each other. There is some overlooking of the ground level courtyards however sufficient covered private open spaces are maintained.</p> <p>The proposal incorporates sufficient separation distances to ensure no adverse privacy impacts to surrounding properties as discussed previously in this report.</p>
2.19 Acoustic privacy		
<ul style="list-style-type: none"> <i>Internal amenity by locating noisy areas away from quiet areas</i> 	Yes	<p>Acoustic privacy has been considered in the design. The proposal is largely residential which is appropriate to the area. The noise generation from a residential use, including a swimming pool, is not expected to result in unreasonable acoustic privacy impacts.</p> <p>The use of the retail shop is unknown at this stage and any noise issues will be considered upon further assessment at a later date. This could reasonably be controlled with operational conditions.</p>
2.21 Building services		
<ul style="list-style-type: none"> <i>Services are to be integrated into the design of buildings (garbage rooms, mail boxes, fire hydrants boosters, electrical substations, down pipes, plant rooms, satellite/communications structures</i> <i>Outdoor Communal clothes drying area to be provided</i> <i>Plant rooms away from entry communal and private open spaces and bedrooms.</i> <i>Services on roof not to be seen from street or impact public or private views and be min 2m from the building edge.</i> 	Yes	<p>Services at roof level are set back from the edges to be screened from the street. Plant, services and exhausts are integrated into the design of the building.</p> <p>There is sufficient area within the communal open space for clothes drying areas. A condition to this effect is included in Appendix A. Balconies are also deep set with sufficient space for external clothes drying.</p> <p>The size of the plant rooms within the basement carpark appear of sufficient area for the size of the development.</p>

Development Control	Compliance	Comment
<ul style="list-style-type: none"> <i>The maximum volume permitted for a plant room is the minimum required to meet Australian Standards, accommodate typical dimensions of equipment required and the associated circulation space to access the equipment for maintenance.</i> 		

Table 7: Waverley DCP 2012 – Part D1 Commercial and Retail Development Compliance Table

Development Control	Compliance	Comment
1.2 Design		
1.2.1 Frontages	Yes	The street frontage of the commercial shop has been appropriately designed to be sympathetic to the overall proportion of the building and provide an active street level frontage.
1.2.2 Awnings	Yes	The proposed awning responds to the existing character of the streetscape further south and provides sufficient cover over the corner site. The design of the awning will fit in with the context of the local village further south along Old South Head Road.
1.1.3 Lighting	Yes	The proposed awning will assist in reducing light pollution to the residential uses above.
1.2.3 General Amenity	Yes	Plant rooms will be located internally.
1.2.4 Noise	Yes	<p>Sound insulation between floors is a standard requirement under the BCA/NCC.</p> <p>All other standard conditions in regard to noise are included in Appendix A.</p> <p>Noise controls with regard to the specific use of the retail tenancies will be assessed and determined once an application for that use is lodged.</p>

Table 8: Waverley DCP 2012 – Part E3 Local Village Centres Compliance Table

Development Control	Compliance	Comment
3.1 Specific controls		
3.1.11 Rose Bay North	Yes	<p>No. 669 Old South Head Road, on the corner of Oceanview Avenue, is located within the Rose Bay North Local Village Centre.</p> <p>The shop top housing portion of the development addresses the corner with Oceanview Avenue however maintains Old South Head Road as the primary streetscape.</p> <p>The entry to the retail shop is located on the corner and is clear and accessible. The design of the retail frontage is integrated into the design of the development overall rather than drawing from the character of the local centre. This is considered appropriate given it is separated from the local centre by Oceanview Avenue and the local centre currently presents with a non-descript character that is not worth replicating. The integration of the design of the shop top housing into the development within which it is contained is considered a better response to the setting.</p>
3.2 Generic controls		
3.2.1 Land Uses	Yes	<p>The land uses are appropriate to the zoning of each part of the site. The shop top housing is contained to the E1 zoned portion of the site and does not extend to within the R3 zoned part of the site. The residential apartments are consistent with both the R3 and E1 zone.</p> <p>At this stage, the specific use of the retail shop is unknown and condition will require separate development consent, unless otherwise permissible under <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>.</p>
3.2.2 Public Domain Interface	Yes	<p>The proposal provides a strong retail frontage at the ground floor level addressing the corner with Oceanview Avenue. The ground floor retail maximises the frontage on Old South Head Road and Oceanview Avenue and is active, open and inviting. Additionally, the retail frontage is provided with an awning to the corner.</p> <p>The commercial and residential entries are separated and are clear, legible and safe.</p>

Development Control	Compliance	Comment
		The proposal that sits within the E1 zone is consistent with this part of the DCP.
3.2.3 Built Form	Yes	<p>Although the Housing SEPP allows a greater FSR and height than the development standards of the LEP, the proposal does not take full advantage of the uplift in height. The proposal presents to the corner as a four-storey building with retail at the ground level. The height development standard of 13m set by the LEP anticipates a four-storey control with which the subject development is consistent. In this regard, the built form of the proposal is consistent with the desired future character of the local centre.</p> <p>The retail shop has increased ceiling heights to accommodate displays and internal toilets to separate the uses. Loading areas are contained in the basement car park and will not affect the built form.</p> <p>The building is to be set back from the eastern boundary on Oceanview Avenue to provide a buffer to the adjoining residential flat building and a substation.</p> <p>The built form of the proposal is considered to be consistent with the setting, surrounding uses and the desired future character of the area.</p>
3.2.4 Building Facade Articulation	Yes	<p>The shop top housing part of the development provides a strong street wall along both road frontages with the retail shop being open and glazed to both frontages with the emphasis on the corner.</p> <p>The balconies above are solid and integrated into the design of the building recessed behind the principal building façade.</p> <p>The proposal is appropriately articulated to both street frontages.</p>
3.2.5 Buildings of Historic Character	N/A	The site is not identified as a building of historic character.
3.2.6 Building Services and Site Facilities	Yes	<p>All waste storage and services are contained within the basement and are not visible from the public domain.</p> <p>The proposal provides an appropriate interface with the adjoining residential flat building to the east on Oceanview Avenue being set back and</p>

Development Control	Compliance	Comment
		landscaped where possible. A small retail courtyard is provided which would be subject to further controls upon the submission of an application for the use in the future. Notwithstanding, the courtyard is small and located along the street so would be unlikely to result in detrimental amenity impact to surrounding residential properties. Internal ducting/venting is incorporated into the design of the commercial shop.

2.2. Other Impacts of the Development

The proposal is considered to have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

2.3. Suitability of the Site for the Development

The site is considered suitable for the proposal.

2.4. Any Submissions

The application was notified for a minimum of 28 days between 12/02/2024 and 11/03/2024 and a site notice erected on the site in accordance with the *Community Engagement Strategy 2023*. While the application is accompanied by offers to enter into planning agreements, the application was not specifically required to be publicly exhibited as the planning agreement instruments associated with the offer that is part of this application have yet to be drafted. Once the instruments are drafted, they will be required to be publicly exhibited in accordance with the Community Engagement Strategy and the EP&A Act.

Following receipt of amended plans and additional information, the application was not renotified as the amended form of the proposal represents a lesser impact than that of the original form that was publicly notified, as the height, setbacks and built form of the development remain as originally proposed.

A total of 48 unique submissions were received as per the table below and a petition containing 212 signatures. Nine submissions were forwarded to Council from the Member of NSW Parliament for the Legislative Assembly District of Vaucluse, Kellie Sloane MP.

Table 9: Submission details

Count	Property Address
1. – 2.	2/10 Diamond Bay Road, Vaucluse (2 submissions)
3.	16/31-39 Diamond Bay Road, Vaucluse

4.	2/183 Hopetoun Avenue, Vaucluse
5.	30 Old South Head Road, Vaucluse
6.	32 Old South Head Road, Vaucluse
7.	36 Old South Head Road, Vaucluse
8.	38 Old South Head Road, Vaucluse
9.	40 Old South Head Road, Vaucluse
10.	192 Old South Head Road, Vaucluse
11.	368 Old South Head Road, Vaucluse
12.	10/685 Old South Head Road, Vaucluse
13.	3 Oceanview Avenue, Vaucluse
14.	5 Oceanview Avenue, Vaucluse
15.	1/2 Oceanview Avenue, Vaucluse
16.	7/2 Oceanview Avenue, Vaucluse
17.	9/2 Oceanview Avenue, Vaucluse
18.	10/2 Oceanview Avenue, Vaucluse
19.	11/2 Oceanview Avenue, Vaucluse
20.	13/2 Oceanview Avenue, Vaucluse
21.	20/2 Oceanview Avenue, Vaucluse
22.	10 Oceanview Avenue, Vaucluse
23.	4/1 Young Street, Vaucluse
24.	1/693A Old South Head Road, Vaucluse
25.	8 Wilfield Avenue, Vaucluse
26. – 28.	9 Wilfield Avenue, Vaucluse (3 submissions)
29.	11 Wilfield Avenue, Vaucluse
30.	3 Captain Pipers Road, Vaucluse
31.	11 Captain Pipers Road, Vaucluse
32.	12 Captain Pipers Road, Vaucluse
33. - 48	16 submissions that did not provide address details
-	Petition with 212 signatures

The following issues raised in the submissions have already been discussed and addressed in the body of this report and/or the recommendation:

- traffic and parking
- density, FSR, overdevelopment
- visual and acoustic privacy
- safety
- lack of public transport
- height, bulk, scale
- overshadowing
- stormwater and sewage
- streetscape character
- noise impacts
- tree removal and landscaping
- sustainability and environmental impacts
- restrictions for use as seniors housing
- excavation

- setbacks.

All other issues raised in the submissions are summarised and discussed below.

Issue: *Construction issues (noise, disturbance, trade traffic and parking etc); construction hours should be limited.*

Response: Construction issues are not a reason that the consent authority would refuse an application. All standard conditions of consent are included to address impacts during construction. Council recommends standard construction hours to ensure equality for all developments across the LGA and to ensure that construction works can be completed within a timely manner. Limiting construction hours will only prolong and extend the construction timeframe.

Issue: *Wind tunnel and overshadowing of the road causing problems for traffic due to lack of visibility.*

Response: Shadows are spread throughout the day and will predominantly fall over the road. This is considered to be a better outcome than shadows falling over surrounding private properties. There will remain sufficient light to ensure no impacts to traffic visibility.

A four-storey building with setbacks from the street is unlikely to result in detrimental wind tunnelling around the site. The DCP requires wind tunnelling reports only for the high density development area of Bondi Junction, not for medium density development.

Issue: *Local infrastructure (sewage, stormwater, roads, schools etc) unable to cope with increased densities.*

Response: The objectors have noted that the area has too much development which impacts on existing infrastructure. The area, and site, is identified for medium density development located close to bus routes to Bondi Junction bus/rail interchange to achieve the housing targets set by the State Government. A medium density zoning anticipates greater density, number of residents and the capability of the existing infrastructure to accommodate this.

Conditions are included on the consent in relation to stormwater disposal from the site and consultation with Sydney Water in relation to sewerage disposal.

This is not a matter which warrants refusal of this application.

Issue: *No staff parking.*

Response: The Housing SEPP does not require staff parking for seniors housing. Waverley DCP 2012 sets a minimum parking rate of nil for commercial/retail parking and as such no parking for the shops is required. This is to encourage the staff and patrons of the shop to utilise public transport or walk to the site given that it will be servicing the local area. Notwithstanding, the proposal provides six visitor spaces and two car share spaces that could be used by staff and visitors.

Issue: *The five buses routes that the documentation refers to are disputed.*

Response: The submitted documentation makes reference to five bus stops surrounding the site which residents dispute are accessible or regular. Notwithstanding, the Housing SEPP has specific requirements regarding the accessibility of the site to services, as previously discussed in this report, and only one bus service is necessary for the site to be considered suitable for seniors housing. The proposal complies with these requirements as previously discussed.

Issue: *The development is bigger than the previous approved development consents for the site.*

Response: This issue has previously been discussed in this report under the written objection to vary the FSR development standard. As discussed, the proposal is generally similar in scale to the approved development consents already approved for these sites.

Issue: *Shadow diagrams do not show the entire day.*

Response: Shadow diagrams are required to be between 9am and 3pm on the winter solstice (ie, the worst case scenario for overshadowing).

Issue: *The number of apartments is not enough given the housing shortage. The apartments are too large for retirees.*

Response: It is not for the consent authority to make judgements or assumptions about the size of apartments that seniors would prefer, particularly in the absence of planning controls that restrict the size of independent living units. The proposal increases the density of dwellings on the site in accordance with the zone objectives. The ADG sets **minimum** apartment sizes with which the proposal complies, as previously discussed in this report.

Issue: *Loss of natural light.*

Response: Solar access and overshadowing have been previously discussed. There are no controls relating to natural light however, the proposal incorporates sufficient separation distances from adjoining properties to allow light and ventilation.

Issue: *Inadequate notification.*

Response: Complaints were received that the apartments in the adjoining RFB to the east, No. 2 Oceanview Avenue, were not notified. Council's records indicate that notification letters were sent to owners/occupiers of this building and several objections were received.

Issue: *Car chargers are a potential fire hazard.*

Response: Car chargers are a requirement under the provisions of the DCP to encourage sustainable vehicles. Council is in receipt of no evidence or policies restricting EV charging within basements at the present time.

Issue: Inaccuracies in documentation.

Response: The information submitted with the application is considered comprehensive and appropriate to the development in order to allow assessment of the application. It should be noted that the Council Assessment Planners carry out their own assessment.

The objectors are relying upon information in photomontages and artist's impressions which do not form part of the approved plans. These are for information purposes only and are not intended to replace architectural plans and details.

Objectors have raised that the slope of the land is not shown on the plans and have concerns that the building is to be raised to meet the level of Old South Head Road. In actual fact, the proposed plans show that the land is to be predominantly excavated, rather than raised.

Issue: High fences will cause increased overshadowing at the rear. Photomontages and artist's impressions show high fences.

Response: The overshadowing impacts have been previously discussed. The fences are depicted as high in photomontages given that the ground level, pool and communal spaces are excavated into the site. This means that the fences appear higher on the side of the development when in actual fact, the ground level will be lowered.

It should be noted that photomontages and artist's impressions do not form part of the approved plans. These are not relied upon for accurate assessment.

Issue: Trees will cause overshadowing.

Response: The provision of trees is encouraged within the Waverley LGA regardless of potential overshadowing.

Issue: Impacts upon neighbouring trees/hedges etc.

Response: This is a civil matter between the property owners. Notwithstanding all standard construction conditions are included in the consent conditions.

Issue: Boundary walls have not been discussed with neighbouring properties.

Response: This is a civil matter. All standard engineering conditions are included in the consent conditions.

Issue: *The internal details of proposed structures on the landscape plans do not match the architectural plans.*

Response: The landscape plans show the landscaping only. Everything else (including the internal layout of the rear toilets and location of structures) is indicative only. The architectural plans must be referred to for any internal works of structures (ie, location of toilets, doors etc).

Issue: *The rear toilets are not shown on the overshadowing diagrams.*

Response: The toilets are a single storey structure along the rear boundary of the site with a height of approximately 2.7m. The survey plan indicates that the property to the rear has a dense hedge along the rear boundary to a height of approximately RL 69.82. Given the toilets will have a height of approximately RL70.2, the hedge will act as a screen to this structure and any overshadowing impact would fall within the shadow already cast by the hedge. Notwithstanding, the toilets are a single storey structure that would not result in unreasonable overshadowing impacts, regardless of the existence of the hedge, particularly given it is only 1m higher than a standard fence and shadows would be contained to the afternoon only.

Issue: *Land level at the rear is to be raised.*

Response: The majority of the land within the rear setback is to be excavated lower than existing, not raised. The land level remains generally the same at the rear dogleg part of the site which adjoins properties on Wilfield Avenue.

Issue: *Seniors do not ride motorbikes or bicycles and therefore there is too much parking for these which should be converted to more vehicular parking.*

Response: Objectors raise the issue of insufficient parking provided on site as well as the potential for increased traffic and that the bicycle and motorcycle spaces should be converted to more vehicle parking spaces. Parking and traffic are discussed throughout this report and the proposal is considered acceptable in this regard, particularly given the zoning of the land for medium density development. A medium density zoning anticipates greater density, number of residents and the capability of the existing infrastructure to accommodate this.

The proposed development complies with the minimum car parking rate specified by the Housing SEPP, which is a non-discretionary development standard. As the proposed development meets the minimum car parking spaces required by the Housing SEPP, the provision of more parking would only encourage greater car ownership for residents which would, in turn, have a greater impact upon traffic within the area.

It is not for the consent authority to make judgements or assumptions about whether seniors ride bicycles or motorbikes. The controls require a certain amount to be provided with which the proposal complies.

Issue: *The apartments will not be affordable.*

Response: The proposal is for seniors housing, not affordable housing.

Issue: *Engineering details have not been provided (ie, structural, stormwater, piling).*

Response: Appropriate conditions are included on the consent in relation to geotechnical, structural and stormwater engineering. All engineering works are to be in accordance with relevant specialist reports.

Issue: *Odours from the shop use and kitchens.*

Response: The site contains a shop in that part zoned E1. It is a reasonable expectation that a food and drink premises would be appropriate within a business (E1) zone and as such, ventilation for this potential future use is included to ensure no unreasonable impacts upon surrounding properties. Given the small scale of the shop, there is unlikely to be adverse effects.

Issue: *Disputing the accuracy of the uses of surrounding shops in the contamination report.*

Response: The contamination report contains details of potentially contaminating uses, including dry cleaners and motor garages or service stations, within 100m of the site (ie, not the subject site itself) via groundwater migration. The objector states that they cannot recall the service station use from 1950-1978 and that the dry cleaners were only an agent for a dry cleaner. Regardless, the report concludes that the **potential** contaminating uses '*are all located down-slope of the site which suggests that any contamination in the groundwater will not impact the site*'. Contamination is discussed previously in this report.

2.5. Public Interest

The proposal is considered to have no detrimental effect on the public interest, subject to appropriate conditions being imposed.

3. REFERRALS

The following internal and external referral comments were sought:

3.1. AUSGRID

As discussed previously in this report, the application was referred to AUSGRID for comment under section 2.48 of SEPP (Transport and Infrastructure) 2021. Comments were received that raised no objection to the development subject to advice contained in Appendix A.

3.2. Transport for NSW

As discussed previously, the application was referred to Transport for NSW for consideration under clause 2.119 of SEPP (Transport and Infrastructure) 2021 and section 138 of the *Roads Act 1993*. Transport for NSW provided concurrence for the proposal subject to conditions provided in Appendix A.

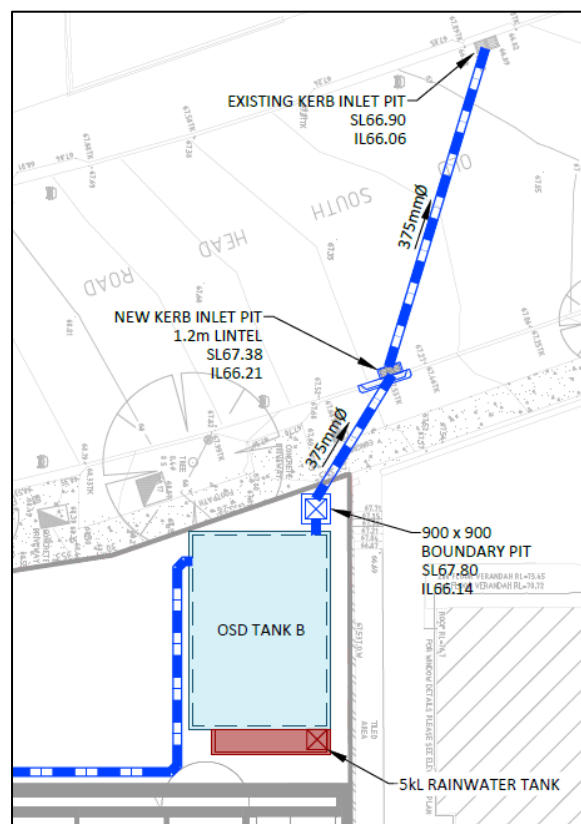
3.3. Traffic and Development

Conditions were provided which are included in Appendix A.

3.4. Stormwater

The following comments (summarised) were provided by Council's Stormwater Engineers:

- There is a Sydney Water owned sewer pipe traversing the rear of the property. Plans must also be presented to a Sydney Water for their approval.
- There is no Council owned pipe that traverses the property.
- There is no Council drainage infrastructure within the road reserve.
- It is being proposed that the stormwater outlet of the site be connected to a newly constructed kerb inlet pit within the road reserve in front of 683 Old South Head Road. The pit is then connected to an existing kerb inlet pit located across Old South Head Road, north of the site's northern boundary within the road reserve in front of 42 Old South Head Road.



- It is shown on mapping that the pit they are proposing for stormwater disposal is owned by Woollahra Council.

- The property does not appear to be burdened/benefited by an easement to drain water.
- The property is not on land identified as a coastal inundation impacts site.
- The property is not on land identified as a biodiversity habitat corridor impacts site.
- The property is not on land identified as a geotechnical hazard impacts site.
- The BASIX Certificate requires the installation of a 10 kL rainwater reuse system, connected to at least 300 m² of roof area.
- The property is not on land identified as flood affected under the Council endorsed Waverley LGA Flood Study 2021.

Approval has not been gained from Woollahra Council for connection to their stormwater infrastructure. The applicant has been informed that consent from Woollahra Council is required and have noted that this can form part of the detailed design for the stormwater drainage system prior to the issue of a Construction Certificate. Appropriate conditions have been provided by Council's Stormwater Engineers which are included in the consent conditions.

It should be noted that even if Woollahra Council were not to grant consent to connection to their infrastructure, there are options for stormwater disposal and connection to Waverley Council's infrastructure further to the north of the site. Conditions to this effect are also included in the consent conditions.

Furthermore, it is a requirement as per Section 10.1 of Waverley Council's Water Management Technical Manual that all below-ground structures must be tanked to restrict any subsoil drainage or seepage water from entering the structure to reduce the additional burden on the public infrastructure. A drained basement is not permitted. A condition to this effect is also included in the consent conditions.

3.5. Strategic Planning

The following comments were provided by Strategic Planning Officers in relation to the offers to enter into planning agreements:

Instead of submitting one Letter of Offer for the amount of \$4,145,139.20, the applicant has submitted two Letters of Offer totalling \$5,783,230. They have explained that this has been done to reflect their intent to replace two previous approvals for the site (DA-374/2020 and DA-455/2021) with this new DA-22/2024.

When considering a 1,395.2sqm GFA exceedance and the benchmark rates outlined in the PA Policy 2014 (Amendment 4), a PA of \$4,319,539.20 would typically apply. However, a previous DA for this site proposed the dedication of 4 affordable housing units (or the equivalent monetary amount being valued at \$5,530,020). Acting in good faith with the previous approval, the applicant is offering a total PA amount of \$5,783,230 that reflects the same public benefit as the previous DA – in the form of the same \$5.53m affordable housing contribution – as well as an approximately additional \$253,000 for the PA associated with an FSR exceedance. The Strategic Town Planning team accept the greater amount for the following reasons:

- *The higher figure has been reached by combining the contribution proposed by two previously approved buildings on the development site which have a somewhat similar building envelope as the works under DA-22/2024. Specifically, DA-374/2020 included a monetary contribution of \$253,210, and DA-455/2021 included the dedication of 4 x units for the purposes of affordable housing (valued at \$5,530,020) within the development site. As DA-22/2024 replaces both DA-374/2020 and DA-455/2021 but proposes a greater envelope, it is considered reasonable to accept a contribution that equates to the value of the contributions associated with DAs that were previously approved as the community are expecting them and the developer has demonstrated that it is feasible for them to provide the higher amount.*
- *A Planning Agreement is not compulsory or mandated, but rather voluntary and offered by the developer by choice. The minimum contribution amount is calculated by estimating what 50% of the profit generated by the FSR exceedance is, however, if a developer chooses to offer more to Council that is their choice and may be feasible in the context of the particular development.*
- *Accepting a higher amount is not inconsistent with the Waverley PA Policy 2014 (Amendment 4) or any NSW State Government legislation or practice notes. The PA Policy and NSW Practice Note outlines that a guiding principle of PA is “producing outcomes that meet the general values and expectations of the public and protect the overall public interest”. In this instance, the higher amount is more reflective of the expectation established for the community under DA-455/2021.*

Further to the above, Strategic Planning Officers provided the following comment against clause 6.17 of Waverley LEP 2012 in relation to an affordable housing contribution that is applicable to the proposed development:

*This referral relates to the assessment of the proposal against Clause 6.17 of the WLEP and the Waverley Affordable Housing Contribution Scheme 2023. The Clause and Scheme require development for the purposes of a new RFB, multi-dwelling, shop top housing or **independent living unit** to provide a contribution towards affordable housing in one of the two follows ways:*

1. *Monetary contribution calculated by working out what 1% of the total proposed gross floor area is, and multiplying that result with the suburb sqm rate published on Council’s website.*
2. *In-kind contribution involving the dedication of unit/s within the development to Council for free for Council to use as affordable housing. The units must equate to 1% of the total proposed gross floor area of the development, and each unit dedicated must be at least 50sqm in area. For example, if 1% of the total proposed gross floor area is 40sqm, then 50sqm or more must be dedicated.*

At the time of this referral the total proposed residential gross floor area of the development is 5,997 sqm.

1% of 5,997 sqm is 59.97 sqm.

*The proposal is in the Vacluse suburb, so the \$25,000 /sqm rate from [Council’s website](#) is applicable. The monetary contribution payable is therefore 59.97 sqm x \$25,000 = **\$1,499,250**.*

The recommended conditions are included in Appendix A.

3.6. Tree Management

No issues were raised subject to conditions which are contained in Appendix A.

3.7. Public Domain

No issues were raised subject to conditions which are contained in Appendix A.

3.8. Environmental Health

Environmental Health Officers assessed the contamination reports provided with the application and provided comments as detailed in section 2.1.1 of this report. No issues were raised with the proposed development subject to conditions which are contained in Appendix A.

3.9. Sustainable Development

No issues were raised subject to conditions which are contained in Appendix A.

3.10. Urban Design

Comments were received from Urban Design which were overall generally supportive of the proposed development subject to the following recommendations:

- *Incorporate elements of the existing corner shop and awning into the corner retail space at the corner of Old South Head Road and Oceanview Avenue.*
- *Provide a 3D height plane image.*
- *Increase side setbacks in basement levels.*
- *Provide a detailed plan of management addressing noise impacts from the pool.*
- *Provide a deep soil zone and trees to the eastern rectangular portion of the site.*

The integration of the shop top housing with the entire development is considered to be a better planning outcome than retaining the existing corner shop which has little relevance to the subject development or the character area to the south of the site. The height plane, basement setbacks, deep soil zones and trees have been previously discussed in this report and are considered to comply with the Housing SEPP and are appropriate. A swimming pool, associated with a residential use (ie, not commercial) is an appropriate ancillary element that is not anticipated to have unreasonable amenity impacts upon surrounding properties, particularly as a swimming pool is often associated with residential uses.

3.11. Waste and Recycling

Conditions were provided which are included in Appendix A.

4. CONCLUSION

The application has been assessed against the relevant matters for consideration under section 4.15(1) of the Act. It is recommended for approval subject to conditions of consent.

5. RECOMMENDATION TO SYDNEY EAST CITY PLANNING PANEL

That the development application be APPROVED by the Sydney East City Planning Panel (SECPP) subject to the conditions in Appendix A.

Report prepared by:	Application reviewed and agreed by:	Application reviewed and agreed by:
		
Kylie Lucas	Ben Magistrale	Angela Rossi
Senior Development Assessment Planner	Manager, Development Assessment	Executive Manager, Development Assessment
Date: 15 October 2023	Date: 16 October 2023	Date: 23 October 2024

OFFICE USE ONLY

Planning Portal Data		
Clause 4.6 register entry required (For the purposes of reporting to the planning portal, if the % approved is different to the % proposed in the original submission, please state what the variation initially proposed was – Planning Portal Requirement)	32% variation to FSR (Section 87 of Housing SEPP)	
	X	No unreasonable impacts on the amenity of adjoining properties or streetscape
	X	Sufficient environmental planning grounds
Clause 4.6 register entry required (For the purposes of reporting to the planning portal, if the % approved is different to the % proposed in the original submission, please state what the variation initially proposed was – Planning Portal Requirement)	186% variation to FSR (Section 108(2)(c) of the Housing SEPP)	
	X	No unreasonable impacts on the amenity of adjoining properties or streetscape
	X	Sufficient environmental planning grounds
Clause 4.6 register entry required (For the purposes of reporting to the planning portal, if the % approved is different to the % proposed in the original submission, please state what the variation initially proposed was – Planning Portal Requirement)	21% variation to height (Section 84(3)(c) of the Housing SEPP)	
	X	Variation limited to the lift/plant/parapet only

	<table> <tr> <td>X</td><td>No unreasonable impacts on the amenity of adjoining properties or streetscape</td></tr> <tr> <td>X</td><td>Sufficient environmental planning grounds</td></tr> <tr> <td>X</td><td>Consistent with the objectives of the standard</td></tr> </table>	X	No unreasonable impacts on the amenity of adjoining properties or streetscape	X	Sufficient environmental planning grounds	X	Consistent with the objectives of the standard		
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X	Sufficient environmental planning grounds								
X	Consistent with the objectives of the standard								
Clause 4.6 register entry required (For the purposes of reporting to the planning portal, if the % approved is different to the % proposed in the original submission, please state what the variation initially proposed was – Planning Portal Requirement)	46% variation to height (Section 108(2)(a) of the Housing SEPP) <table> <tr> <td>X</td><td>Variation limited to the lift/plant/parapet only</td></tr> <tr> <td>X</td><td>No unreasonable impacts on the amenity of adjoining properties or streetscape</td></tr> <tr> <td>X</td><td>Sufficient environmental planning grounds</td></tr> <tr> <td>X</td><td>Consistent with the objectives of the standard</td></tr> </table>	X	Variation limited to the lift/plant/parapet only	X	No unreasonable impacts on the amenity of adjoining properties or streetscape	X	Sufficient environmental planning grounds	X	Consistent with the objectives of the standard
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Clause 4.6 register entry required (For the purposes of reporting to the planning portal, if the % approved is different to the % proposed in the original submission, please state what the variation initially proposed was – Planning Portal Requirement)	21% variation to height (Section 108(2)(b) of the Housing SEPP) <table> <tr> <td>X</td><td>Variation limited to the lift/plant/parapet only</td></tr> <tr> <td>X</td><td>No unreasonable impacts on the amenity of adjoining properties or streetscape</td></tr> <tr> <td>X</td><td>Sufficient environmental planning grounds</td></tr> <tr> <td>X</td><td>Consistent with the objectives of the standard</td></tr> </table>	X	Variation limited to the lift/plant/parapet only	X	No unreasonable impacts on the amenity of adjoining properties or streetscape	X	Sufficient environmental planning grounds	X	Consistent with the objectives of the standard
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X	Consistent with the objectives of the standard								
Clause 4.6 register entry required (For the purposes of reporting to the planning portal, if the % approved is different to the % proposed in the original submission, please state what the variation initially proposed was – Planning Portal Requirement)	16.6% variation to height (Clause 4.3 of WLEP 2012) <table> <tr> <td>X</td><td>Variation limited to the lift/plant/parapet only</td></tr> <tr> <td>X</td><td>No unreasonable impacts on the amenity of adjoining properties or streetscape</td></tr> <tr> <td>X</td><td>Sufficient environmental planning grounds</td></tr> <tr> <td>X</td><td>Consistent with the objectives of the standard</td></tr> </table>	X	Variation limited to the lift/plant/parapet only	X	No unreasonable impacts on the amenity of adjoining properties or streetscape	X	Sufficient environmental planning grounds	X	Consistent with the objectives of the standard
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X	No unreasonable impacts on the amenity of adjoining properties or streetscape								
X	Sufficient environmental planning grounds								
X	Consistent with the objectives of the standard								
Determining Authority (Concurrence Authority for Clause 4.6 variation)	Sydney Planning Panel								
Were the requirements of the Sustainable Buildings SEPP (effective 1 October 2023) met?	Yes								

Have any dwellings been approved for affordable Rental Housing under this approval/consent? <small>*This is a planning portal reporting requirement</small>	No
Secondary Dwelling <small>*This is a planning portal reporting requirement</small>	No
Boarding House <small>*This is a planning portal reporting requirement</small>	No
Group Home <small>*This is a planning portal reporting requirement</small>	No
Is the development subject to the Special Infrastructure Contribution (SIC)?	No
Is the development located within an Urban Release area?	No
Waverley Council Data	
Trial Period database entry required	No
VPA submitted – follow up actions required	Yes
Refer to compliance for investigation	No
Commercial/liquor operational conditions	No
Was there a 'Conflict of Interest' declared	No