

SYDNEY NORTH PLANNING PANEL

Panel Reference	PPSSNH-22
DA Number	DA/315/2019
LGA	Hornsby Shire Council
Proposed Development	Demolition of existing structures and construction of seniors housing incorporating a 92 bed residential care facility, 162 independent living units, and ancillary works and facilities including office, café, earthworks and landscaping
Street Address	284 Castle Hill Road Castle Hill, 411-415 and 417-419 Old Northern Road Castle Hill
Applicant	Anglican Community Services
Owners	Anglican Retirement Villages and Anglican Community Services
Date of DA Lodgement	29 April 2019
Number of Submissions	2
Recommendation	Refusal
Regional Development Criteria (Schedule 4A of the EP&A Act)	Development that has a capital investment value of more than \$30 million.
List of All Relevant s4.15(1)(a) Matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 44 - Koala Habitat • State Environmental Planning Policy No.55 - Remediation of Land • State Environmental Planning Policy No.65 - Design Quality of Residential Apartment Development • State Environmental Planning Policy No. 20 - Hawkesbury-Nepean River • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Biodiversity Conservation Act 2016 • Roads Act 1993 • Hornsby Local Environmental Plan 2013 • Hornsby Development Control Plan 2013

List all documents submitted with this report for the panel's consideration	Attachment 1 Locality Plan Attachment 2 Development Site Lot Area Plan Attachment 3 Architectural Plans, including Site Analysis Attachment 4 Landscape Plans Attachment 5 Civil Plans Attachment 6 Clause 4.6 Submissions on Building Heights Attachment 7 Anglicare Castle Hill Campus Village Plans and Registered Dealings
Report prepared by	Deborah Dickerson, Principal Planner Levy Planning
Responsible Officer	Caroline Maeshian, Team Coordinator
Report date	11 December 2019

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 summarised, in the Executive Summary of the assessment report? **Yes**

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 (S7.22)? **No**

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

Conditions

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

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

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

- The application involves demolition of existing structures and construction of seniors housing incorporating a 92 bed residential care facility, 162 independent living units, and ancillary works and facilities including office, café, earthworks and landscaping.
- The proposed development is defined as “*Seniors Housing*” and is permitted under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. The application is subject to a deemed refusal appeal in the Land and Environment Court.
- The proposal does not comply with the 8 metre height of buildings development standard in Clause 40(4)(a) and the 2 storey building height control in Clause 40(4)(b) of *SEPP Seniors*. The applicant has made a submission in accordance with Clause 4.6 ‘*Exceptions to development standards*’ of the *Hornsby Local Environmental Plan 2013* to vary the *SEPP Seniors* controls for *heights in zones where residential flat buildings are not permitted*. The Clause 4.6 variation requestsbare not in the public interest because the bulk and scale of the development is incompatible with the existing low density residential character of Kilvinton Village. The development is incompatible with the desired future character of the village, informed by its R2 Low Density Residential zoning.
- The consent authority is unable to be satisfied about a number of matters required as a precondition to the granting of development consent as summarised in the table below:

EPI Clause	Matters to be satisfied as a precondition to the granting of consent.
Cl.26 SEPP Seniors	Access to Services – Written evidence that residents will have access that complies with Clause 26(2) has not been provided
Cl.30 SEPP Seniors	Site Analysis – The applicant has not undertaken a site analysis as required by this Clause
Cl.32 SEPP Seniors	SEPP Principles – The proposed development does not demonstrate adequate regard has been given to the principles in Division 2
Cl.55 SEPP Seniors	Fire Sprinkler Plan - The application does not include a fire sprinkler plan for the RACF
Cl.86(3) ISEPP	Railway Corridor – The concurrence of the railway authority is not provided
Cl.101 (2) ISEPP	Work on Classified Road – The RMS has raised concerns with work to Old Northern Road and therefore the safety, efficiency and ongoing operation of the classified road will be adversely affected
Cl.7 SEPP 55	Contamination – Previous reports indicate contaminated fill occurred on part of the site and this has not been addressed
Cl.6.3 HLEP 2013	Flooding – The site is a flood control lot. This has not been addressed.
Owners consent	Works are proposed on the adjacent land owned by St Pauls Church (retaining walls to facilitate road works) and owners consent has not been provided.

- While the renewal and continued use of the site for seniors housing has planning merit, the scale of the application is excessive for the *R2 Low Density Residential* zone and is not in keeping with the existing or desired future character of the locality. Concerns are also raised regarding excessive site excavation, biodiversity impacts, tree loss, inadequate information and unresolved impacts.
- Two submissions have been received in respect of the application.
- It is recommended the application be refused.

RECOMMENDATION

THAT Development Application No. DA/315/2019 for demolition of existing structures and construction of seniors housing incorporating a 92 bed residential care facility, 162 independent living units, and ancillary works and facilities including office, café, earthworks and landscaping at Lot 1 DP 177433284, Lot 3 DP 1047222, Lot 100 DP 1101146, Lot 10 DP 135926, Lot 1 DP 654242, Lot 1 DP 654242 and Lot 2005 DP 1088072, No. 284 Castle Hill Road Castle Hill and Nos. 411-415 and 417-419 Old Northern Road Castle Hill be refused for the reasons detailed in Schedule 1 of this report.

BACKGROUND

- Anglicare Castle Hill extends over an area of 43.672 hectares and comprises a number of retirement villages across a large campus. Anglicare Castle Hill is bounded by Castle Hill Road, Old Northern Road and David Road at Castle Hill, encompassing 13 separate land titles and five different addresses including the following:
 - No. 284 Castle Hill Road** (Lot 1 DP 177433, Lot B DP 410898, Lot 1 DP 654242, Lot 2 DP 309991, Lot D DP 369584, Lot 10 DP 135926, Lot 2005 DP 1088072, Lot 72 DP 1067989, Lot 73 DP 1067989),
 - No. 296 Castle Hill Road** (Lot E DP 369584),
 - Nos. 300-302 Castle Hill Road** (Lot C DP 369584),
 - No. 304 Castle Hill Road** (Lot A DP 410898), and
 - Nos. 146-200 David Road** (Lot 74 DP 1067989).
- Part of the site has been used as a retirement village since 1959. The campus supports a range of independent living units plus a range of residential aged care facilities for residents needing low and high care services. The residents in the independent living units at Anglicare Castle Hill are supported by a 24 hour medical clinic, therapy centre, chapel, library, hairdressers, bowling green, kiosks, community halls, hydrotherapy pool, café, leisure centres, gymnasium, workshops and village bus.
- There have been numerous development applications approved at Anglicare Castle Hill, with some of the more recent consents relevant to this application noted below:
 - a) On 24 January 2011, Council approved DA/1339/2010 for the demolition of Philip Lodge on the corner of Old Northern Road and Castle Hill Road. The building had an overall length of approximately 110metres and average depth of 15m, with a height of 5 storeys with a roof height of RL186m.

- b) On 26 July 2012, the Joint Regional Planning Panel (Sydney West Region) approved DA/58/2012 for the development of Lober Square, comprising 115 independent living units (ILUs), a health care centre, community building, café, bowling green and alterations to an existing heritage building. Some of the ILUs were 3 to 4 storeys in height and did not require a Clause 4.6 height variation due to the then Special Uses zoning of the site. Council previously supported the creation of an urban character around Lober Square to reflect its role as a village core servicing the retirement village campus.
- c) On 18 July 2013, Council approved DA/359/2013 for the demolition of a number of buildings and trees to the west of Western Road (on this DA site). This included the removal of locally native Blue Gum High Forest trees that were required to be replaced on the site by way of compensatory planting in accordance with Council's Green Offsets Code.
- On 10 January 2014, most of the retirement village site was rezoned from *Special Uses A (Community Purposes)* under the *Hornsby Local Environmental Plan 1994 (Hornsby LEP 1994)* to *R2 Low Density Residential* under the *Hornsby Local Environmental Plan 2013*.
- There are no *SEPP Seniors* consents at 411-415 & 417– 419 Old Northern Road, Castle Hill. Rather, in December 2010, Council approved DA/701/2010 for the erection of a 2-3 storey affordable rental housing development comprising 15 units at 413-415 Old Northern Road. This development did not proceed.
- On 21 May 2018, a Pre-DA meeting PL/32/2018 was held regarding the redevelopment of the south-western corner of the existing Anglicare Castle Hill retirement village at Castle Hill. The works involved the construction of a number of large 3 to 5 storey buildings. Council advised that as the site is zoned *R2 Low Density Residential*, a development of this scale requires the submission of a Planning Proposal.
- On 29 April 2019, Development Application No. DA/315/2019 was submitted by Anglicare Community Services (ACS) for a seniors housing redevelopment at 284 Castle Hill Road and 411-415 and 417-419 Old Northern Road, Castle Hill (the subject application).
- On 7 August 2019, Council requested the applicant address concerns relating to compliance with *SEPP Seniors*, site analysis, amenity and streetscape, bulk and scale, earthworks, privacy, solar access, flooding, BCA compliance and fire safety, details of proximity to the railway corridor, concurrence from the Railway Authority, contamination, tree preservation, impacts on Blue Gum, waste management, and RMS concerns regarding roadworks on Old Northern Road. No response was provided.
- On 11 September 2019, the Sydney North Planning Panel was briefed in relation to DA/315/2019.
- On 29 October 2019, the applicant lodged a deemed refusal appeal in the Land and Environment Court. The purpose of this report is to enable the Panel to consider the proposal the subject of Court Proceedings No.339336 of 2019.

SITE

The Anglicare Castle Hill campus is bounded by Castle Hill Road, Old Northern Road and David Road at Castle Hill, extending over an area of 43.672 hectares as described in the background to this report. The retirement village campus is divided into a number of distinct and identifiable areas. These distinct

areas are recognised in dealings registered pursuant to the Retirement Villages Act, a copy of which is included at Attachment 7 and are also reflected within the Anglicare Castle Hill Village Directory.

DA/315/2019 applies to part of the Anglicare Castle Hill campus, extending over three distinct village areas including all of Kilvinton Village, part of Flinders Village and part of Mowll Village, as illustrated at Figure 1 below. In addition, it is proposed to extend the retirement village to include two additional lots not previously approved for Seniors Housing at Nos.411-415 and 417-419 Old Northern Road, Castle Hill, adjoining the northern boundary of Kilvinton Village.

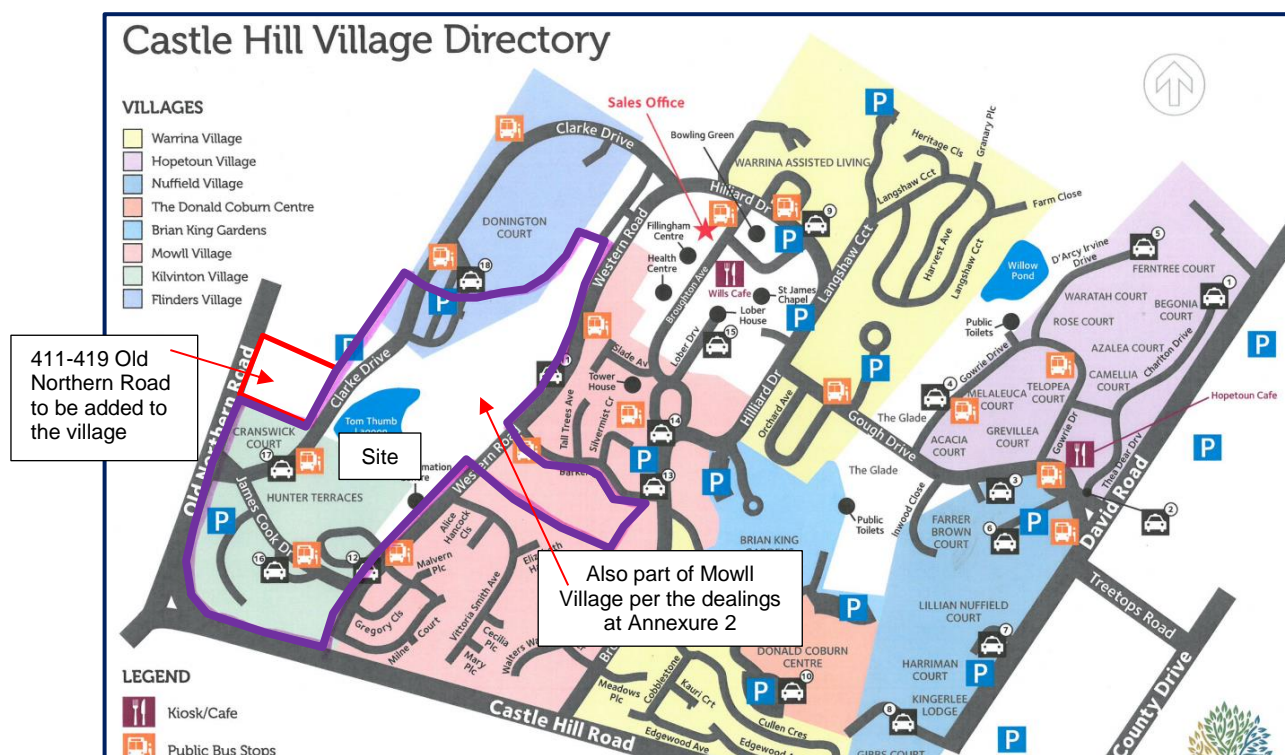


Figure 1: Author's annotation of Village Plan obtained from the Anglicare website

The development extends over 5 lots within No. 284 Castle Hill Road and the two additional lots at Nos 411-415 and 417-419 Old Northern Road Castle Hill as summarised below and illustrated at Attachment 2.

Plan Ref	Address	Lot	Total Lot Area	DA works area
A	284 Castle Hill Road	Lot 1 DP 177433	70,999m ²	38,162m ²
B	417-419 Old Northern Road	Lot 3 DP 1047222	1,409m ²	1,409m ²
C	411-415 Old Northern Road	Lot 100 DP 1101146	2,052m ²	2,052m ²
D	284 Castle Hill Road	Lot 10 DP 135926	3,199m ²	3,199m ²
E	284 Castle Hill Road	Lot 1 DP 654242	20,907m ²	20,907m ²
F	284 Castle Hill Road	Lot B DP 410898	9,106m ²	4,005m ²
G	284 Castle Hill Road	Lot 2005 DP 1088072	171,390m ²	8,425m ²
		Total	27.9062ha	7.8159ha

- The 7.8159 hectare works area is an irregular shape with a frontage of 175m to Castle Hill Road (south) and 215m to Old Northern Road (west). The intersection of Castle Hill Road and Old Northern Road is at the crest of a ridge, with land falling down from the road towards the north and east over the subject site with an average gradient of 10%. Earthworks have previously occurred including a substantial excavated batter in the south western corner.
- Two-way vehicle access is via a driveway from Old Northern Road at Lot 10 DP 135926 in the south west of the site. Additional vehicle access is available via the loop road that traverses the campus and links to David Road in the east and Castle Hill Road in the south.
- The development area incorporates:
 - i. Kilvinton Village that comprises 62 single storey villas and vacant land to the south previously occupied by Phillip Lodge demolished pursuant to DA/1339/2010,
 - ii. Part of Mowll Village comprising single storey attached villas and a two storey apartment building to the east of Western Road and vacant land to the west of Western Road, where villas and trees were previously demolished pursuant to DA/359/2013
 - iii. Part of Flinders Village comprising part of the Donington Court carpark,
 - iv. Nos. 411-415 Old Northern Road, that is currently used as a carpark, and
 - v. Nos. 417-419 Old Northern Road that currently accommodates a dwelling house.
- To the north of Kilvinton Village is a dam (Tom Thumb Lagoon) and cleared areas of open space set amongst remnant stands of indigenous trees and introduced species. The locally indigenous remnant trees form part of Blue Gum High Forest.
- The development area is bisected by a local stormwater drainage system flowing in a south to north direction, incorporating a dam (Tom Thumb Lagoon). There is an existing stormwater drainage easement from Castle Hill Road to Tom Thumb Lagoon that benefits the RMS. The site is a flood control lot.
- The property at No. 284 Old Northern Road is listed as heritage item of local significance, described as: *“Mowll Village group including “Lober House”, “Tower House”, “Gate House” entry gates, dairy, stables and grounds”*. The Gatehouse building is within the Mowll Village redevelopment area.
- The north-west metro railway is beneath the site adjacent to the southern boundary. Cherrybrook Railway station is 1.4km to the east via Castle Hill Road and the Castle Hill Railway station is 1km to the south-west via Old Northern Road. A Hillsbus service traverses the loop road extending through the village, including through part of the proposed works area in the south-western corner of the property.
- The adjacent land uses are predominately low rise residential development within a landscaped setting. To the east are one to two storey villas, to the north is the two storey residential aged care facility known as Donington Court and single storey villas.

- Adjacent to the north of the site is St Pauls Anglican Church which shares a common 72m side (southern) boundary and 195m rear (eastern) boundary with the site. To the west of the site along Old Northern Road are elevated 2 storey townhouses and 1-2 storey commercial developments. To the south of the site along Castle Hill Road are low density dwelling houses set back behind a landscaped setback to the main road.
- To the north-east of the redevelopment area, within the Anglicare Castle Hill campus, is the Lober Square redevelopment. On 26 July 2012, the Joint Regional Planning Panel (Sydney West Region) approved DA/58/2012 for the development of Lober Square, comprising 115 independent living units (ILUs), a health care centre, community building, café, bowling green, alterations to an existing heritage building. The Lober Square development had a reported site area of 38,820m² and a total GFA of 19,542m² resulting in an FSR of 0.5:1. Some of the ILUs are 3 to 4 storeys in height and did not require a Clause 4.6 height variation due to the then Special Uses zoning of the site.

PROPOSAL

Development Application No. DA/315/2019 seeks consent for the demolition of existing structures, earthworks, tree and vegetation removal and the construction of a seniors housing development in 4 stages, which is proposed to contain the following:

- (a) A 4 storey residential aged care facility (Building B14/B18) containing 92 beds (as per the plans) is constructed over five levels as follows:
 - Basement – carparking, storage and mechanical plant.
 - Ground Floor – porte cochere, entry/ reception area, community rooms, chapel, wellness centre, consult rooms, café offices, kitchen, laundry, courtyards.
 - Level 1 - 35 x 1 bed suites, lounge and dining rooms, western green roof, eastern terraces, loading dock with bin store and workshop.
 - Level 2 – 35 x 1 bed suites, lounge and dining rooms, southern green roof over loading bay.
 - Level 3 – 11 x 2 bed suites, lounge and dining rooms, northern roof terrace.

The residential aged care facility (RACF) contains on site services including consulting rooms and a wellness centre that would be available to the residents of the development and the wider village campus. There are 31 staff managing the RACF, with a maximum of 14 staff arriving for change over. Therefore a maximum of 45 RACF staff are on site at any one time.

- (b) A total of 8 Independent Living Unit buildings (Buildings B8, B9A, B9B, B10, B13, B15, B16 and B17) ranging in height from 3 to 4 storeys containing 148 self-contained dwellings (2 x 1-bed, 90 x 2 bed and 56 x 3 bed), with basement carparking.
- (c) 14 single storey detached and semi-detached villa style self-contained dwellings (Buildings B21A, B21B, B22, B23, B24, B25, B26 and B27) with attached garages within Mowll Village.
- (d) A 2-storey administration building (Building B19) within the Donington Court carpark and a single storey café adjacent to Tom Thumb Lagoon.
- (e) A community and café building (Building B12) is a single storey stand alone building.

- (f) A total of 291 car parking spaces across the development comprised of:
- i. 84 car parking spaces in the RACF basement, with 60 spaces allocated to staff and 24 spaces for residents and visitors;
 - ii. 182 residential car parking spaces in the basement beneath the ILU buildings, with 19 spaces allocated to visitors;
 - iii. 14 residential car parking spaces for the villas in attached single garages, with tandem parking available in the private driveways;
 - iv. Modification to the Flinders Village/ Donington Court carpark involving reconfiguration of access driveways and the removal of 14 spaces approved per DA/314/2014 and replacement with 9 new spaces plus 11 new spaces to the east of the adjacent access road. Resulting in a net additional 6 parking spaces; and
 - v. 5 x 90 degree parking spaces adjacent to Clarke Drive, as depicted on Landscape Plan DA-L-300.
- (g) Earthworks involving a total cut volume of 108,300m² (inclusive of basement cut volume 72,000m²). The bulk earthworks in the south western corner involves lowering the existing ground level at the former Kilvinton Village in the order of 2 metres.
- (h) The following works are also proposed:
- i. Relocation of the Old Northern Road driveway to the north and road widening works to create a right hand turning lane (north bound);
 - ii. Relocation of an RMS drainage easement;
 - iii. Relocation of an internal link road between Clarke Drive and Western Road further to the north;
 - iv. Widening internal roads including parts of Western Road and Barker Drive;
 - v. Removal of trees and vegetation. 142 trees are to be removed of which approximately 60 of these trees are species known to occur locally in the Hornsby Local Government Area and 37 are characteristic of Blue Gum High Forest community, and
 - vi. Landscaping across the site.

ASSESSMENT

The development application has been assessed having regard to *the Greater Sydney Region Plan*, *'A Metropolis of Three Cities'*, *the 'North District Plan'* and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan – A Metropolis of Three Cities and North District Plan

A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions to the year 2056. The population of Greater Sydney is expected to grow by 3.2 million people by 2056. The Plan sets a strategy for accommodating Sydney's future population growth and demographic change, while improving liveability.

The Plan identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the District planning process to define objectives and set goals for job creation, housing supply and choice in each District. The *North District Plan* is a 20 year plan to manage growth in the context of economic, social and environmental matters to achieve the 40 year vision for Greater Sydney.

Council has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Northern Beaches, Ryde, and Willoughby LGAs to form the North District. The *North District Plan* will be reviewed and the Government will set housing targets and monitor supply to ensure planning controls are in place to stimulate housing development. The *Metropolis of Three Cities* sets a District 20 year strategic housing target of 92,000 dwellings over the next 20 years.

The proposed development would be consistent with 'A *Metropolis of Three Cities*', by providing additional dwellings that contribute to housing choice in the locality. The use of the site for seniors housing close to existing amenities and services would enable the aging population to remain in the local community and age in place.

2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider "*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*".

2.1 Hornsby Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned R2 Low Density Residential under *Hornsby Local Environmental Plan 2013 (HLEP)*. The objectives of the zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*

Seniors housing is prohibited under the *HLEP* in the R2 Low Density Residential zone. Notwithstanding, the subject site meets the criteria specified in Clause 4 of *SEPP Seniors* where land is zoned for urban purposes and where residential development is permitted. The provisions of *SEPP Seniors* prevail to the extent of any inconsistency with the *HLEP*.

2.1.2 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m from existing ground to the highest point of the building. This is inconsistent with the building height development standards prescribed in Clause 40 of *SEPP Seniors*. Pursuant to

Clause 5 of *SEPP Seniors*, the provisions of *SEPP Seniors* prevail to the extent of any inconsistency with the *HLEP*.

2.1.3 Exceptions to Development Standards

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

The applicant has made a submission in accordance with Clause 4.6 '*Exceptions to development standards*' of the *Hornsby Local Environmental Plan 2013* to vary Clause 40 of *SEPP Seniors heights in zones where residential flat buildings are not permitted*. In addition, the Clause 4.6 submission includes a request to vary the 8.5m building height control within the *HLEP*. The variation to the 8.5m building height control in the *HLEP* is unnecessary because the provisions of *SEPP Seniors* prevail to the extent of any inconsistency. The Clause 4.6 variation request to the two *SEPP Seniors* height controls are discussed in the following:

(a) What is the Extent of the Variation?

- i. **SEPP Seniors Clause 40(4)(a) - 8m ceiling height** - The application seeks to vary the 8m *SEPP Seniors* building height control measured from existing ground to the ceiling by 3m or 37.5%, as described in the following table extracted from the applicant's submission:

Table 1 Summary of Variations to 8m SEPP Seniors Height Control		
Building	Location of the Variation	Nature of Variation
B9A (Apartment)	North-east corner of ceiling to Apartment L2-02 (localised)	Minor breach
B13 (Apartment)	Level 3	2.5m to 3.0m ^{Note 1}
B15 (Apartment)	South-west corner of ceiling to Apartment L2-03	Minor breach
B16 (Apartment)	North-east corner of ceiling to Apartment L2-08	Minor breach
Note 1: Height variations as measured by DFP Planning from DA209		

- ii. **SEPP Seniors Clause 40(4)(b) - 2 storey adjacent to a boundary** – The application seeks to vary the *SEPP Seniors* control that limits the height of a building adjacent to a boundary of the site to not more than 2 storeys by 2 storeys or 100%. The *SEPP* requires that:

(b) *a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and*

The Clause 4.6 submission advises that the departures from the 2 storey height control are as follows:

Building 8 (Apartment) = 3 storeys;
 Building 9A (Apartment) = 3 storeys;
 Building 9B (Apartment) = 3 storeys;

Building 10 (Apartment) = 3 storeys;
 Building 13 (Apartment) = 4 storeys;
 Building 15 (Apartment) = 3 storeys;
 Building 16 (Apartment) = 3 storeys;
 Building 17 (Apartment) = 3 storeys;
 Building 18 (RCF) = part 3 storeys and part 4 storeys

(b) The Applicant's Clause 4.6 Submission

The applicant has made a submission to support the variation to the development standards pursuant to Clause 4.6 of the *HLEP*. See copy at Attachment 6. The submission conflates the Clause 4.6 variation request to three different building height controls and advises that the proposed variations are supported for the following reasons:

Strict compliance is considered to be unreasonable and unnecessary and have sufficient environmental planning grounds to support a variation for the following reasons:

- *The proposed seniors housing development is consistent with the objectives of the height of buildings development standard, the objectives of the R2 zone and the aims of SEPP Seniors;*
- *The site is its own entity and is self-contained, with limited relationship with the surrounding urban context. The proposed building heights are in keeping with the scale, height and character of the Anglicare Castle Hill village and the surrounding development external development to the site;*
- *The scale, form and character of development is consistent with the scale, form and character of development across the Anglicare Castle Hill site;*
- *Some of the departures are minor and localised due to changes in the land level (e.g. dips in the topography) and it is unreasonable to change the building form to account for irregular changes in topography;*
- *Some departures arise due to the slope of the land and the need to maintain a consistent floor plate. These departures typically occur at the 'end' of a building and are minor in extent and have negligible visual or amenity impact;*
- *There are no adverse overshadowing impacts on any adjoining development;*
- *There are no adverse privacy impacts on adjoining development;*
- *The proposed seniors housing development will read as one and two storey development when viewed from Castle Hill and Old Northern Roads;*
- *Wide setbacks have been maintained to Castle Hill and Old Northern Roads enabling the retention of the existing mature trees along these frontages;*
- *Building 13 (four-storey residential apartment building) has been located centrally within the site and is not adjacent to any external site boundaries or internal boundaries with Castle Hill village;*

- *The additional height does not result in a departure to the 0.5:1 or 1:1 Floor Space Ratio controls under SEPP Seniors; and*
- *Improved site planning outcomes by consolidating the new development in the southern portion of the site enabling the protection of mature trees north of Tom Thumb Lagoon and the creation of an expansive green central spine.*

The matters required to be considered pursuant to Clause 4.6 are discussed in the following:

(c) Clause 4.6(3)(a) – Unreasonable and Unnecessary Test

In demonstrating that compliance with a development standard is unreasonable or unnecessary, a Clause 4.6 variation request would ordinarily refer to the ‘five part test’ in *Wehbe v Pittwater Council* [2007]. The Clause 4.6 variation request advises that the request relies upon the first ‘way’ expressed by Chief Justice Preston in *Wehbe* as follows:

- “1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*”**

The objectives of the building height controls are discussed in the following:

i. Compliance with the objective of the 8m Ceiling Height Control

SEPP Seniors does not prescribe an objective for the 8m ceiling height control. The applicant's Clause 4.6 variation request suggests the underlying objective is to respond to the aims of Clause 2 in *SEPP Seniors* that includes to *set out design principles that should be followed to achieve built form that responds to the characteristics of its site and form*. However, because this control only applies to residential zoned land where residential flat buildings are not permitted, the underlying objective is also to promote a built form that is compatible with the character of a low rise residential environment. The Clause 4.6 variation request reviews the proposed development against the design principles established by Clause 33 (Neighbourhood amenity and streetscape) of *SEPP Seniors*.

Comment: The applicant's conclusion that the objectives of the 8 metre building height control are achieved is not agreed as:

- **Streetscape** - While the development and building heights viewed from Old Northern Road and Castle Hill Road would be obscured, the appearance of the development from the internal ring-road and adjoining buildings is not consistent with the existing low rise suburban character around Kilvinton Village. The concentration of development in the south-western corner has resulted in an urban character at Kilvinton Village. This urban character has resulted from the 3-4 storey elements, long building facades and limited landscaped setbacks between the buildings and the private road network.

The Clause 4.6 variation request relies on streetscapes elsewhere within the Anglicare campus that are separated from Kilvinton Village to argue for a variation to the height control. In particular,

- The 4 storey urban character around Lober Square. However, this character was approved under the site's previous Special Uses zone and supported by Council to reflect its role as a village core servicing the retirement village campus. This is within a different distinct and identifiable area.
- The 3 storey buildings at Nutfield Village, however this is some distance from Kilvinton Village in the east of the campus within a different distinct and identifiable area.

- iii. The site is zoned R2 Low Density Residential. The extension of an urban character to the existing low rise suburban character around Kilvinton Village is not supported by the current R2 Low Density Residential planning controls.
- **Respond to the Characteristics of the Site** -The development does not use building form and siting that relates to the land. Rather, the development involves extensive earthworks that lowers Kilvinton Village to limit the numerical non-compliance with the building height controls. Lowering the entire village to limit the numerical non-compliance with the 8 metre ceiling height control does not promote a built form that responds to the characteristics of the site and is compatible with a suburban character. Furthermore, the extent of the technical non-compliance is not the test and a detailed assessment of the facts indicates that the development does not comply with the underlying objective of the standard.
- **Minimise Amenity Impacts** -The modified ground levels and non-compliant building heights will result in additional amenity impacts on existing and future residents, as discussed later in this report.

ii. Compliance with the objective of the 2 storey building height control

SEPP Seniors does not prescribe the objectives of the control that limits the height of a building adjacent to a boundary of the site to not more than 2 storeys. Per Clause 3 of the policy, in calculating the number of storeys in a development for the purposes of this Policy, a car park that does not extend above ground level by more than 1 metre is not to be counted as a storey.

While Clause 3(3) clarifies that notes in the SEPP do not form part of the policy, there is a notation beneath this control advising that the purpose of control is *to avoid an abrupt change in the scale of development in the streetscape*. However, as noted at (i) above, because this control only applies to residential zoned land where residential flat buildings are not permitted, the underlying objective is also to promote a built form that is compatible with a low rise residential environment at the site's boundaries.

Comment: The Clause 4.6 variation request does not specifically address the underlying objectives of the 2 storey control, but rather conflates the two *SEPP Seniors* height controls and refers to Clause 33 (Neighbourhood amenity and streetscape). The appearance of the development from the internal ring-road and adjoining buildings is not consistent with the existing low rise suburban character around Kilvinton Village. The objective of the development standard is not achieved for similar reasons previously discussed at (i) above.

(d) Clause 4.6(3)(b) – Sufficient Environmental Planning Grounds

The Clause 4.6 submission contends that the variation to the three building height controls has sufficient environmental planning grounds for the following reasons:

- *The existing Anglicare Castle Hill village is a large stand-alone development that has minimal relationship with the surrounding urban context and low density residential precincts.*
- *The proposed building heights achieve an acceptable and comfortable scale relationship with adjoining development.*
- *The proposed building heights are consistent with the existing residential character of Anglicare Castle Hill and provide an appropriate transition to the site boundaries.*

- *There are improved site planning outcomes by reducing building footprints and increasing building heights to minimise site coverage and maximise landscaped area and communal open space.*
- *Wide landscape setbacks to Old Northern Road and Castle Hill Road, along with the existing brick fence screen the built form of the proposed residential buildings.*
- *Building 13 is located centrally within the site and is not adjacent to any external or internal site boundaries*

Comment: The applicant has argued that the additional height is acceptable because it does not result in a departure to the 0.5:1 or 1:1 Floor Space Ratio controls under *SEPP Seniors* and that improved site planning outcomes are achieved by consolidating the new development in the southern portion of the site.

This argument is not supported as the applicant has calculated the FSR over an expansive and irregular development site that does not relate to the allotment.

Clause 50(b) of *SEPP Seniors* provides development standards that can not be used as grounds to refuse consent. In relation to density and scale it provides that:

density and scale: *if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,*

SEPP Seniors defines floor space ratio (FSR) as follows:

floor space ratio *in relation to a building, means the ratio of the gross floor area of the building (exclusive of the area of any carport or garage) to the area of the allotment on which the building is or is proposed to be erected.*

The calculation of FSR in *SEPP Seniors* refers to the term “*allotment*” which is undefined by *SEPP Seniors*. The NSW Court of Appeal in *Issa v Burwood Council [2005] NSWCA 38*, considered the meaning of the term “*allotment*” and determined that it may refer to the ordinary meaning “**being a distinct, or identifiable area of land**”. The precise identification of an “*allotment*” therefore depends on the facts and circumstances of each case.

Anglicare Castle Hill is divided into a number of distinct and identifiable areas. These distinct villages are recognised in registered village plan areas under the Retirement Villages Act and are also reflected within the Anglicare Castle Hill Village Directory.

The distinct area of Kilvinton Village, enlarged to include the two additional lots adjacent to Old Northern Road and part of Building 15, has an allotment area of 38,590m². The RACF and ILU buildings located within this area total 30,336m² of GFA. This equates to a deemed to comply FSR of 1:1 for the RACF (9,734m²GFA/ 9,734m²site) and an FSR of 0.72:1 for the ILUs on the balance of the site (20,602m²GFA/ 28,856m² site). As a consequence, the gross floor area of the ILUs exceeds the deemed to comply FSR control of 0.5:1 by 6,174m² of GFA or 43%.

The Planning principle: relationship of density and residential character is discussed in *Salanitro-Chafei v Ashfield Council [2005] NSWLEC 366*. This principle discusses that the aim of a 0.5:1 FSR control is control bulk where a suburban open character is sought.

The existing development on the site and on adjacent sites predominately comprises low-rise buildings 1 to 2 storeys in height within a landscaped setting with canopy trees. The subject property is zoned R2 Low Density Residential where a suburban open character is sought.

The bulk of the development is determined not only by its height but also the length of the facades and the clustering of the buildings. The 8 ILU buildings are 3 to 4 storeys in height and with some long facades. Furthermore, the interface of the buildings with the internal ring road fails to accommodate canopy trees along the streetscape which is a desirable characteristic of the precinct. The clustering of 8 large ILU building with a 4 storey RACF within the south-western corner promotes an urban character within Kilvinton Village which is reflected in the non-compliant FSR.

The scale of the ILUs is accordingly incompatible with the existing low density residential character of Kilvinton Village. It is also incompatible with the desired future character of the village, informed by its R2 Low Density Residential zoning.

(e) Clause 4.6(4)(a)(i) – Adequate Written Request

While a written request has been received (see Attachment 6), concerns are raised regarding the matters required to be demonstrated by Clause 4(3) as discussed above.

(f) Clause 4.6(4)(a)(ii) – The Public Interest

The development is not in the public interest because it is inconsistent with the objectives of the development standard/s as previously discussed, and the objectives of the R2 Low Density Residential Zone (the R2 zone) that state:

- *To provide for the housing needs of the community **within a low density residential environment***
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

As previously discussed, the redevelopment achieves an urban rather than a suburban character at Kilvinton Village which is inconsistent with the zone's objective of providing housing within a low density residential environment.

(g) Clause 4.6(4)(b) – The Secretary's Concurrence

The consent authority must take into account the Secretary's considerations when assuming concurrence, that includes at subclause 5:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The exceedance of the maximum height development controls for the site does not raise any matters of State or Regional Planning Significance.

Maintaining the development standard would facilitate a suburban rather than urban character at Kilvinton Village which is consistent with the objectives of the zoning. If the zoning is not given weight,

the integrity of the planning process provided by the legislation would be undermined which is contrary to the public interest.

Based on this assessment, the Clause 4.6 variation request should not be supported as this scheme does not demonstrate that compliance with the development standards are unreasonable or unnecessary and that sufficient environmental planning grounds apply.

2.1.4 Heritage Conservation

The property is listed as a heritage item (*“Mowll Village group including “Lober House”, “Tower House”, “Gate House” entry gates, dairy, stables and grounds”*) of Local significance Schedule 5 (Environmental heritage) of the *HLEP*.

The new villas in Mowll Village and the adjacent road widening works at Barker Drive are in proximity to the *“Gate house”* at Broughton Avenue. There are no works proposed to the *“Gate House”* and no concerns are raised in relation to heritage.

2.1.5 Earthworks

Clause 6.2 of the *HLEP* states that consent is required for proposed earthworks on site. Before granting consent for earthworks, the consent authority must assess the impacts of the works on adjoining properties, environmental functions, heritage items, and features of the surrounding land.

Extensive site excavation is proposed. The applicant has advised that the earthworks strategy involves lowering and reshaping the land to keep most of the building height within the 8m building height control under *SEPP Seniors*. There is concern that the proposal does not appropriately relate to the site's land form and as a result will detrimentally impact on existing and future residents and detract from the character of the area.

(i) The Residential Aged Care Facility (RACF)

The RACF building is substantial with a footprint of 3300m², a building length of 115m and depth of some 25-40m, with a total GFA of 9734m². The existing ground level of the RACF footprint ranges from RL173.19m to RL169m (4.2m) from south to north and a topographic change from RL173m to RL168m (5m) from west to east. Therefore, the RACF has been located on a sloping part of the site that can be problematic as RACFs typically require continuous floor levels to facilitate access for operational reasons.

The proposed landform modification aims to create a relatively flat site by the installation of shoring walls to the north, west and south of the footprint. The west facing RACF bedrooms are setback 2-3 metres from a 5 metre tall shoring wall. This does not maintain appropriate residential character by using building form and siting that relates to the site's land form.

(ii) New driveway and roadworks within Old Northern Road

The proposed driveway and associated road works at Old Northern Road requires earthworks including the erection of retaining walls along the northern and western site boundaries. The road works requires the erection of a retaining wall along the street frontage of the neighbouring St Paul's Church land. The impact of the earthworks on the existing trees on the adjacent Church land has not been addressed. Furthermore, owner's consent has not been provided for works on the adjacent property.

(iii) **The ILU buildings in Kilvinton Village**

Kilvinton Village is being excavated in the order of 2+metres. As a consequence, there are a number of environmental and amenity impacts occurring at the interface with the existing fixed levels, including:

- Further excavation is proposed at the bottom of an existing embankment in the south of the site. The enlargement of the embankment may impact on the tree protection zone (TPZ) of the trees at the top of the batter, particularly in the vicinity of Building 9A;
- There are a number of subterranean units adjacent to the enlarged embankment and the existing fixed internal road levels;
- Excavation for Building 8 removes the eastern boundary landscape screen adjacent to Milne Court.

(iv) **Environmental Functions**

The total cut volume of 108,300m³ is estimated to equate to 5,500 truck and dog trailers accessing the site to remove the fill. For Council to adequately access the amenity impacts to the surrounding streets and properties a detailed construction management plan is required.

An assessment of the quality of the fill or soil to be excavated and the destination of any excavated material is discussed further under *SEPP 55*.

2.1.6 Flood planning

Clause 6.3 of the *HLEP* states that development consent must not be granted to development of land at or below the flood planning level unless the consent authority is satisfied that the development will not significantly adversely affect flood behaviour, incorporates appropriate measures to manage risk, and will not significantly adversely affect the environment.

The subject site is a “*flood control lot*” and therefore involves *other land at or below the flood planning level* per Clause 6.3(2) of the *HLEP*. The application does not identify or address the flood control provisions. Inadequate information is provided to enable the consent authority to be satisfied that the development complies with Clause 6.3 of the *HLEP*.

2.2 State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors) is the overriding planning instrument for the development of housing for aged and disabled people in NSW and provides for hostels, residential aged care facilities and self-contained dwellings

Seniors housing is prohibited under the *HLEP* in the R2 Low Density Residential zone. Notwithstanding, the subject site meets the criteria specified in Clause 4 of *SEPP Seniors* where land is zoned for urban purposes and where residential development is permitted. The provisions of *SEPP Seniors* prevail to the extent of any inconsistency with the *HLEP*.

Therefore, *SEPP Seniors* applies to the subject site and seniors housing, including ancillary uses which are permitted with consent. The assessment of the proposal in accordance with the relevant requirements of *SEPP Seniors* is provided as follows:

Part 2 Site Related Requirements

2.2.1 Clause 26 – Location and Access to Facilities

Clause 26 Location and Access to Facilities requires that a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2).

The Statement of Environmental Effects (SEE) advises that: *The proposed development is contained within an existing Seniors Housing development and the site has previously been assessed and determined as being compliant with these provisions. The existing ancillary community support facilities at Anglicare Castle Hill include medical clinics, community and recreation facilities, health centre, café, and retail tenancies. The site is serviced by regular and frequent bus services. There a number of bus stops within the site, along Clarke Drive and Western Road. The proposed gradients within the site are targeted to be 1:20 and access within the site to ensure compliant gradients. As detailed in Section 6.3.1 of this SEE the bus services satisfy the bus frequency and access to facilities requirements of Clause 26.*

While it is acknowledged that the site benefits from an existing bus route through the site, two of the subject lots (411-415 & 417-419 Old Northern Road) have never been approved for aged housing or assessed under *SEPP Seniors*. Written evidence should be provided clearly documenting compliant pedestrian paths to the relocated public bus stops, particularly from the two new lots incorporated into the seniors site. As such, the consent authority must not consent to the development pursuant to Clause 26.

2.2.2 Clause 28 – Water and Sewer

The subject site is serviced by reticulated water and sewerage.

2.2.3 Clause 29 – Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply

This clause applies to a development application to which Clause 24 (Site Compatibility Certificate) does not apply. A consent authority, in determining a development application to which this clause applies, must take into consideration the criteria referred to in Clause 25 (5) (b) (i), (iii) and (v), as copied below:

- (b) *is of the opinion that the proposed development is compatible with the surrounding land uses having regard to (at least) the following criteria:*
 - (i) *the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,*
 - (ii)...

- (iii) *the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,*
- (iv)...
- (v) *without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development,*

All of the above matters are considered within this report.

2.2.4 Clause 31 – Design of Infill Self Care Housing

This clause applies “*in-fill self-care housing*” which is defined as seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care. Council has requested that the applicant confirm that the independent living units are “serviced self care housing” rather than “in-fill self care housing.” If the development is “serviced self-care housing” then the provisions of Clause 31 do not apply.

Part 3 Design Requirements

2.2.5 Clause 30 – Site Analysis

Clause 30 of the *SEPP Seniors* requires that a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with this clause and has explained how the design of the proposed development has regard to the site analysis.

The application has failed to undertake a detailed site analysis in accordance with the requirements of Clause 30 of *SEPP Seniors*. A copy of the Site Analysis lodged is provided at Attachment 3. The applicant has failed to explain how the design has regard to the site analysis. As such, the consent authority must not consent to the development pursuant to Clause 30.

2.2.6 Clause 33 – Neighbourhood Amenity and Streetscape

The provisions of Clause 33 are discussed in the table below. The character of the proposal should be considered in the context of both the internal character and external character. In this regard the character or streetscape along Old Northern Road, Castle Hill Road and the internal private road network should be considered.

Clause 33 Required Consideration	Comment
(a) recognise the desirable elements of the location’s current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area,	The existing character in and around Kilvinton Village is a low rise built form in a landscaped setting with large canopy trees . The proposed redevelopment at Kilvinton Village does not recognise this desirable element of the location’s current character.

Clause 33 Required Consideration	Comment
	<p>While there are other 3 to 4 storey buildings in the Castle Hill campus, these buildings are located in other distinct areas separated from the development site. The R2 Low Density Residential zoning introduced via the <i>HLEP 2013</i> did not envisage a transition from the existing low density character to a significantly bulkier built form. The promotion of a higher density residential character at Kilvinton Village would require the land to be rezoned.</p> <p>Another desirable element of the site's current character is the landscaped ring road with buildings subservient to the tree canopy. The application detracts from this character by proposing to remove a number of large street trees. In addition, some of the new buildings adjacent to the ring road have a limited setback or propose a significant level change/ excavation that will impact on the ability to provide a landscaped streetscape.</p>
(b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and	No heritage issues raised.
(c) maintain reasonable neighbourhood amenity and appropriate residential character by: (i) providing building setbacks to reduce bulk and overshadowing, and	Not provided. Numerous bulky buildings proposed.
(ii) using building form and siting that relates to the site's land form, and	Not provided. See discussion at 2.1.5 Earthworks
(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and	Not provided. See discussion at 2.1.3 Clause 4.6
(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and	No building walls proposed on the boundary.
(d) be designed so that the front building of the development is set back in sympathy	No concerns raised regarding the setback of the Residential Aged Care Facility (RACF) from Old

Clause 33 Required Consideration	Comment
with, but not necessarily the same as, the existing building line,	Northern Road taking into account the limited height of the building in relation to the public road.
(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and	Planting along the relocated ring road is not in sympathy with the canopied landscape corridor established along Western Road. The planting between the RACF and Old Northern Road is not in sympathy with the existing canopy tree character along the frontage.
(f) retain, wherever reasonable, major existing trees, and	Not provided. Many large existing trees to be removed.
(g) be designed so that no building is constructed in a riparian zone.	Building 12 (café) is constructed within 10 m of the dam spillway and drainage channel that functions as a riparian zone. The scheme proposes to remove a number of trees along the drainage channel

2.2.7 Clause 34 – Visual and Acoustic Privacy

Clause 34 of *SEPP Seniors* requires consideration of the following:

34 Visual and acoustic privacy

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

- appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and*
- ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.*

Internal Privacy - A poor level of internal privacy is provided to the following units:

- Building B13 – below ground units adjacent to elevated communal walkways to east and west.
- Building B15 - below ground units adjacent to Western Road and footpath.
- Building B16 –GF04 (overlooking from Milne Court and walkway), GF06 (overlooking from B8 & walkway).
- Buildings B9A,B9B,B8 – rear ground floor units adjacent to the rear elevated pathway on embankment.
- Building B9A (nth elevation) – the north facing units at Unit 9A are in close proximity (c.8m) to the RACF siting room windows. NB: incorrect RACF and B9A floor plans are depicted/ compared on the architectural plans.

External Privacy - ILU Building 8 is in close proximity to the adjacent villas to the east. *SEPP 65* Apartment Design Guide recommends a setback of 6m from habitable rooms to a boundary plus 3m for an interface area. The proposed scheme does not comply with this best practice guideline indicating that building B8 is too close to the boundary. The ability to landscape the interface is limited as this setback area includes Milne Court. It is recommended that B8 be modified to provide a fully landscaped setback between the building and Milne Court by applying the 9m setback to the site boundary indicated on the plans which should provide adequate width to plant screening trees at least 3metres from the RFB adjacent to Milne Court. Furthermore, the ground floor unit at B8 in the SE corner is subterranean (RL170.8) with adjacent road at RL173m+ resulting in direct overlooking and poor amenity.

2.2.8 Clause 35 – Solar Access

Clause 35 of SEPP Seniors requires consideration of the following:

35 Solar access and design for climate

The proposed development should:

- (a) *ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and*
- (b) *involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.*

The SEPPs Design Principles, including the provisions of Clause 35 apply to both the RACF and the ILU buildings. The application has not addressed the adequacy of solar access to the bedroom windows of the RACF as required by Clause 35. Many of the RACF's frail residents will spend a large proportion of the day in their bedrooms therefore the level of amenity to these habitable rooms is important. The poor level of amenity and sunlight access to the west facing Level 1 bedrooms (that are up to 5m below ground) is contrary to the Design Principle for adequate solar access required by Clause 35.

2.2.9 Clause 36 – Stormwater

Stormwater from the development would be collected and gravity drained to the existing internal drainage system. This includes the relation of the RMS stormwater drainage easement from Castle Hill Road to Tom Thumb Lagoon. No significant concerns raised in relation to the stormwater drainage system. However, as previously discussed, additional information is required in relation to flood events and overland flow paths.

2.2.10 Clause 37 – Crime Prevention

The application is assessed as satisfactory in this regard.

2.2.11 Clause 38 – Accessibility

Plans are required showing the accessible paths to and through the development.

2.2.12 Clause 39 – Waste Management

A number of concerns have been raised by the Council's Waste Management team, that include the following:

- Concerns raised with waste generation calculations and need for additional bins/ bin storage;
- The application allocates 1100L garbage and 1100L recycling bins for the apartments. This is not acceptable because the lids on 660L and 1100L bins are too heavy for the elderly. Smaller bins should be provided for residents to use and waste decanted into larger bins if required.
- It is proposed to transport the large 1100L ILU apartment bins to the RACF bin storage room for collection using an electric motorized ride-on tug. Assessment of the bin carting route is required.
- The RACF waste storage room does not have sufficient space to place all of the ILU apartment bins along with all the RACF bins for collection.
- Inadequate information provided about the waste collection vehicle travel paths on site.

Part 4 Development Standards to be Complied With

2.2.13 Clause 40 – Minimum Sizes and Building Height

Clause 40 of *SEPP Seniors* includes development standards that apply to the current application. At Clause 40(4) this includes height controls that apply to residential zones where residential flat buildings are not permitted, as is the case with the site.

Clause 40 Development Standard	Comment
(2) Site size The size of the site must be at least 1,000 square metres.	Complies
(3) Site frontage The site frontage must be at least 20 metres wide measured at the building line.	Complies
(4)(a) the height of all buildings in the proposed development must be 8 metres or less <i>[measured from existing ground to the ceiling]</i>	Does not comply. Clause 4.6 objection submitted. See discussion at 2.1.3
(4)(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height,	As above
(4)(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.	NA does not apply to a social housing provider

2.2.14 Clause 41 - Standards for hostels and self-contained dwellings

Given that the Anglican Retirement Village is a social housing provided, some of the provisions within Schedule 3 of the SEPP are not applicable to units above the ground floor in a self contained dwelling, these are clauses 2, 7, 8, 9, 10, 11, 12, 13 and 15–20.

The access report submitted with the application discusses the compliance of the development in relation to the above controls. The assessment advises that the development can comply with the detailed design controls. In relation to Clause 2 that relates to wheelchair access to and through the site the report advises that: *“Access has been provided to all dwellings by pathway from adjoining street. Access has been provided to the common areas. Details to be verified at CC stage of works.”* It is requested that a plan be provided demonstrating this accessible pathway to enable the impact of any level changes and/or retaining walls to be assessed.

Part 7 Development standards that cannot be used as grounds to refuse consent

2.2.15 Clause 48 – Residential Care Facilities

Clause 48 RACF Deemed to Comply Standards	Comment
(a) building height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),	See discussion on non-compliant building height at 2.1.3 of this report
(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,	Complies
(c) landscaped area: if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,	Complies
(d) parking for residents and visitors: if at least the following is provided— (i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and (iii) 1 parking space suitable for an ambulance.	Complies

2.2.16 Clause 50 – Self Contained Dwellings

Clause 50 Self Contained Unit Deemed to Comply Standards	Comment
(a) building height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),	See discussion on non-compliant building height at 2.1.3 of this report.
(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,	Does not comply. See discussion at 2.1.3.
(c) landscaped area: if (i) in the case of a development application made by a social housing provider - a minimum 35 square metres of landscaped area per dwelling is provided, or	Complies. For Kilvinton Village.

Clause 50 Self Contained Unit Deemed to Comply Standards	Comment
(ii) in any other case - a minimum of 30% of the area of the site is to be landscaped,	<p>162 dwellings x 35m² + <u>92 RACF beds x 25m² =</u> 7920m² landscaped area is required -v- 12,700m²+ provided</p> <p>Although not required, the landscaped area also complies with the 30% minimum landscaped area at 50(c)(ii).</p>
(d) Deep soil zones: if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the deep soil zone). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres.	<p>Complies.</p> <p>For 38,590m² Kilvinton Village.</p> <p>Deep Soil required = 5,788m² - v- 12,700m² provided</p> <p>Behind front setback required =3,820m² -v- 6,200m² provided.</p> <p>NB: Calculations differ to applicants, see discussion below.</p>
(e) solar access: if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	Does not comply. See discussion below
(f) private open space for in-fill self-care housing: if— (i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and (ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area,	The private open space areas comply with <i>SEPP 65</i> and the <i>ADG</i> .
(h) parking: if at least the following is provided (ii) 1 car space for each 5 dwellings.. a social housing provider.	Complies

a) Landscaped Area and Deep Soil Zone

The applicant reports the total landscaped area and deep soil zone is as follows:

Landscaped Area	26,063m ²
Deep Soil Zone	42,687m ²

It is unclear how this is calculated as ordinarily deep soil would be less than landscaped area, furthermore this is calculated over an irregular development site that includes 3 villages.

It is estimated that the site coverage and landscaped areas in the south-western corner at the enlarged Kilvinton Village is as follows:

Building Footprint	= 16,620
Private roads and driveways	= 3,550
Total Built Upon Area	= 20,170 (52% of village)
Deep Soil (front setback)	= 6,500
Other Deep Soil	= 6,200
Hard paved	= 4,070
Lagoon	= 1,650
Total Landscaped Area	= 18,420 (48% of village)
Total Village Area	= 38,590m²

The total landscape area and deep soil area within Kilvinton Village complies with the applicable deemed to comply provisions in Clause 50 of *SEPP Seniors*.

b) Solar Access

The applicant has advised that 83% (118 apartments) of the apartments receive 2 or more hours of sunlight to private open space and living rooms between 9am and 3pm at the winter solstice that complies with the SEPP No. 65 Apartment Design Guide. The plan provided does not adequately demonstrate the quantity of sunlight access penetrating the living room windows and private open space areas of the units.

2.2.17 Clause 55 – RACF required to have fire sprinklers

A consent authority must not grant consent to carry out development for the purpose of a residential care facility for seniors unless the proposed development includes a fire sprinkler system. The Court has determined that this requires details of the fire sprinkler system to be submitted with the application as it is a jurisdictional pre-condition to the grant of consent and that it cannot be satisfied by the inclusion of a condition. (Refer to *Zhiva Living Dural Pty Ltd v Hornsby Shire Council [2019] NSWLEC 1222*). The application does not include a sprinkler plan as required.

2.3 Biodiversity Conservation Act 2016

Section 7.1 of the EP&A Act advises that this Act has effect subject to the provisions of Part 7 of the *Biodiversity Conservation Act 2016* that relate to the operation of this Act in connection with the terrestrial and aquatic environment. The *Biodiversity Conservation Act* contains additional requirements with respect to assessments, consents and approvals under this Act. The Council's Natural Resources Team does not support the application for the reasons described below:

“Vegetation on the site has been mapped as Blue Gum High Forest (BGHF), which is listed as a Critically Endangered Ecological Community under the NSW Biodiversity Conservation Act 2016, and Critically Endangered under the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999. The site also has a centrally located dam capturing stormwater and scattered trees surrounding.

The proposal involves the demolition of existing buildings and removal of vegetation to allow for the construction of a residential care facility and other dwellings.

The Flora and Fauna Assessment prepared by Ecoplaning (12 February 2019, D07664715) notes that BGHF is found on the site with a limited native understorey and groundcover. The assessment states that only 4 trees of the BGHF community are to be removed while a further 56 trees that are exotic or non-locally native are also to be removed. No threatened flora or fauna species were observed on the site while the site provides potential habitat for several threatened fauna species. The assessment concluded that 0.01 ha of BGHF would be impacted by the proposal.

The Arboricultural Impact Assessment prepared by Stuart Pittendrigh (February 2019, D07664723) surveyed 445 trees of which 273 trees are within the development footprint, 142 trees are to be removed. The stormwater drainage plans prepared by Bonacci (Drawing C030, Rev P6, D07664729) indicate that the majority of stormwater works occur outside of the footprint of vegetation. Siteworks and Stormwater Drainage Plan – Sheet 4 indicates replacement of existing pipes within previous pipe footprint; Sheets 5 & 6 show a new drainage line from building 23 to the dam. The soil and water management plan (Drawing C008, D07664729) indicates the location of stockpiles, some of which are located within the TPZ of retained trees and would need to be moved beyond the extent of TPZ's.

The Landscape Legend, notes and schedule sheet prepared by AECOM (13/2/19, Rev C, D07664731) provides a schedule of plants to be used in the landscape works on the site in accordance with Landscape Plan Sheets 1-3. Tree Retention Plan Sheets 1 & 2 identify trees to be removed. The Tree Retention Plans, Sheets 1 & 2, prepared by AECOM (13/2/19, Rev C, D07664731) identify trees to be removed with respect to the development footprint. There are numerous trees which are proposed to be removed that are worthy of retention.

*The Arboricultural Impact Assessment surveyed 445 trees on the site of which 145 trees are characteristic of the BGHF community. 142 trees are to be removed of which approximately 60 of these trees are species known to occur locally in the Hornsby Local Government Area and 37 are characteristic of BGHF community including Rough-barked Apple (*Angophora floribunda*), White Stringybark (*Eucalyptus globoidea*), Sydney Blue Gum (*E. saligna*), Grey Ironbark (*E. paniculata*), Forest Red Gum (*E. tereticornis*), Grey Gum (*E. punctata*), Lillypilly (*Acmena smithii*) and Sweet Pittosporum (*Pittosporum undulatum*). The removal of 37 BGHF trees equates to approximately 25% of the local population.*

The extent and assessment of impacts has not been adequately addressed in the Flora and Fauna Assessment and the Arboricultural Impact Assessment. The proposal has not considered the relevant sections of Hornsby Development Control Plan 2013 including 1B.6.1 Tree Preservation and 1C.1.1 Biodiversity. Consideration must be given to the retention of trees and vegetation locating structures and infrastructure outside of any tree protection zones. The location of structures should also not result in further fragmentation of patches of trees with emphasis on BGHF species. The proposal also needs to provide an offset strategy in accordance with Council's Green Offsets Code

for impacts because of the development. The offset strategy also needs to demonstrate compliance with previous offset requirements from DA/359/2013.

2.4 State Environmental Planning Policy Infrastructure 2007 (SEPP Infrastructure)

2.4.1 Development Adjacent to Railway Corridors

The applicant's Survey Plan indicates an easement over the site that runs parallel with Castle Hill Road in the vicinity of the North-West metro rail corridor. Council research indicates that this easement is acquisition plan DP1180950 for railway purposes with prescribed upper and lower strata. The development includes excavation and building work in the vicinity of the north-west metro railway corridor. Therefore, the provisions of Clause 86 and 87 of *SEPP Infrastructure* apply, as reproduced in the following:

Clause 86 Excavation in, above, below or adjacent to rail corridors

- (1) This clause applies to development (other than development to which clause 88 applies) that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land:*
 - (a) within, below or above a rail corridor, or*
 - (b) within 25m (measured horizontally) of a rail corridor, or*
 - (b1) within 25m (measured horizontally) of the ground directly below a rail corridor, or*
 - (c) within 25m (measured horizontally) of the ground directly above an underground rail corridor.*
- (2) Before determining a development application for development to which this clause applies, the consent authority must:*
 - (a) within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and*
 - (b) take into consideration:*
 - (i) any response to the notice that is received within 21 days after the notice is given, and*
 - (ii) any guidelines issued by the Secretary for the purposes of this clause and published in the Gazette.*
- (3) Subject to subclause (5), the consent authority must not grant consent to development to which this clause applies without the concurrence of the rail authority for the rail corridor to which the development application relates.*
- (4) In deciding whether to provide concurrence, the rail authority must take into account:*
 - (a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:*
 - (i) the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
 - (ii) the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*

- (b) *what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.*

Clause 87 Impact of rail noise or vibration on non-rail development

- (1) *This clause applies to development for any of the following purposes that is on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration:*
 - (a) *residential accommodation,*
 - (b) *a place of public worship,*
 - (c) *a hospital,*
 - (d) *an educational establishment or centre-based child care facility.*
- (2) *Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.*
- (3) *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
 - (a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,*
 - (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

Comment: The railway corridor and the related *SEPP Infrastructure* controls have not been addressed by the application. The application has not identified that concurrence is required from the railway authority. This was raised by Council to the applicant and no response was provided nor was a concurrence cheque for the railway authority received. An Acoustic report submitted with the application addresses road noise, with background noise/loggers recorded in November 2018. The northwest rail line opened in May 2019 after the noise logger recordings.

2.4.2 Development Adjacent to Classified Roads

The site adjoins Old Northern Road and Castle Hill Road, both of which are classified roads. Works are proposed within the Old Northern Road corridor including road widening, earthworks, a turning lane, and relocation of services. *SEPP Infrastructure* includes the following provisions in relation to development with frontage to a classified road:

Clause 101 Development with frontage to classified road

- (1) *The objectives of this clause are:*
 - (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
 - (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) *the 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 designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Clause 102 Impact of road noise or vibration on non-road development

- (1) *This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of RMS) and that the consent authority considers is likely to be adversely affected by road noise or vibration—*
 - (a) *residential accommodation,*
 - (b) *a place of public worship,*
 - (c) *a hospital,*
 - (d) *an educational establishment or centre-based child care facility.*
- (2) *Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.*
- (3) *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded*
 - (a) *in any bedroom in the residential accommodation 35 dB(A) at any time between 10 pm and 7 am,*
 - (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway) 40 dB(A) at any time.*
- (4) *In this clause, **freeway**, **tollway** and **transitway** have the same meanings as they have in the Roads Act 1993.*

Comment: The RMS have raised concerns regarding the impact of the development on the safety, efficiency and ongoing operation of the classified road, which is required to be considered by Clause 101 of *SEPP Infrastructure*. The Acoustic report submitted addresses road noise and the provisions of Clause 102 of *SEPP Infrastructure*.

2.5 State Environmental Planning Policy 55 Remediation of Land

State Environmental Planning Policy No.55 – Remediation of Land provides for a statewide planning approach to the remediation of contaminated land. The development involves extensive earthworks. A geotechnical assessment was submitted with the application, but not a contamination assessment. The Geotechnical Report by Douglas Partners advised as follows:

“It is recommended that all existing filling that is required to support new pavements/slabs be reconditioned by excavating and replacing it in a controlled manner. A typical earthworks methodology is as follows: Excavate the existing filling and assess for re-use suitability; Proof-roll the subgrade surface using a roller of adequate size and rectify any unsuitable zones as directed by a geotechnical engineer; Place new filling in 250 mm thick layers and compact to achieve a dry density ratio of between 98% and 102% relative to Standard compaction; Ensure the moisture content is within 2% of the Standard optimum moisture content (SOMC) if the material exhibits clay-like properties; Test all filling in accordance with Australian Standard AS 3798 – 2007 Guidelines on earthworks for commercial and residential developments.”

A change of use is proposed on the two new lots proposed to be included in the Seniors site at Old Northern Road. It is noted that a previous development application for affordable housing at 411-415 Old Northern Road found asbestos contaminated fill on the property. The affordable housing consent did not commence and there is no record of the site being remediated. The provision of an environmental investigation report as per Clause 7 of *SEPP 55* is a jurisdictional pre-condition to the grant of consent and that it cannot be satisfied by the inclusion of a condition. This is required to be addressed.

2.6 Sydney Regional Environmental Plan No.20 Hawkesbury Nepean (SREP 20)

Clause 4 of *SREP 20* requires the general planning considerations set out in clause 5, and the specific planning policies and related recommended strategies set out in clause 6 to be taken into consideration by a consent authority determining an application. There are no concerns raised regarding the policies in clause 6 that relate to water quality. However, concerns are raised regarding consistency of the development with Clause 6(6) of *SREP 20* that relates to flora and fauna, as copied below:

6(6) Flora and fauna

Policy: Manage flora and fauna communities so that the diversity of species and genetics within the catchment is conserved and enhanced.

Strategies, generally:

- (a) *Conserve and, where appropriate, enhance flora and fauna communities, particularly threatened species, populations and ecological communities, aquatic habitats, wetland flora, rare flora and fauna, riverine flora, flora with heritage value, habitats for indigenous and migratory species of fauna, and existing or potential fauna corridors.*

- (b) *Locate structures where possible in areas which are already cleared or disturbed instead of clearing or disturbing further land.*
- (c) *Minimise adverse environmental impacts, protect existing habitat and, where appropriate, restore habitat values by the use of management practices.*
- (d) *Consider the impact on ecological processes, such as waste assimilation and nutrient cycling.*
- (e) *Consider the range of flora and fauna inhabiting the site of the development concerned and the surrounding land, including threatened species and migratory species, and the impact of the proposal on the survival of threatened species, populations and ecological communities, both in the short and longer terms.*
- (f) *Consider the need to provide and manage buffers, adequate fire radiation zones and building setbacks from significant flora and fauna habitat areas.*
- (g) *Consider the need to control access to flora and fauna habitat areas.*
- (h) *Consider the need to maintain corridors for fish passage, and protect spawning grounds and gravel beds.*

Comment: The development is not consistent with Clause 6(6) of *SREP 20* to conserve and enhance flora and fauna communities and to locate structures where possible in areas which are already cleared or disturbed. See previous discussion at Section 2.3 of this report.

2.7 State Environmental Planning Policy Vegetation 2017

The proposed development does not retain major existing trees that will have a detrimental impact on residential character. There are numerous trees which are proposed to be removed that are located outside of the development footprint or are worthy of retention. Many other trees that are proposed to be removed within the development footprint, the impact upon which is unacceptable. See previous discussion at Section 2.3 of this report.

2.8 State Environmental Planning Policy 44 Koala Habitat Protection

The provisions of *SEPP 44* generally apply to land which has been identified in an EPI as being either potential Koala habitat or core Koala habitat or, pursuant to Clause 6, where the site has an area of more than 1 hectare. While the site has an area in excess of 1 hectare, the land is not identified within any EPI or plan of management as a potential or core Koala habitat.

2.9 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2008

Under the *Environmental Planning and Assessment Regulation 2000*, the independent living units within the proposed development are defined as *BASIX* affected buildings and accordingly, the provisions of the *SEPP* apply. A *BASIX* Assessment has been undertaken. Subject to conditions the proposal would be consistent with the objectives of the Policy.

2.10 State Environmental Planning Policy 65 - Design Quality of Residential Flat Development

The Policy provides for design principles to improve the design quality of residential flat development and for consistency in planning controls across the State. An assessment of the proposal against the design quality principles of *SEPP 65* has been completed by Jackson Teece Architects. The design

principles of *SEPP 65* and the submitted design verification statement are addressed in the following table.

Principle	Compliance
1. Context	No
<p>Comment: The current built fabric surrounding the site is low scale and includes residential and commercial uses to the west and south sides and the existing Anglicare Castle Hill site to the west and north. The R2 Zoning anticipates the continuation of a low scale.</p> <p>The proposal achieves an urban rather than suburban character at Kilvinton Village which is inconsistent with the objectives of the R2 Low Density Residential Zone. This is reflected in the exceedance of the ceiling and storey height control and substantial excavation and the exceedance of FSR control within this village.</p> <p>The site is not within a precinct planned for 3 and 4 storey residential flat buildings.</p>	
2. Built Form and Scale	No
<p>Comment: Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>The proposal achieves an urban rather than suburban low density character at Kilvinton Village which is inconsistent with the objectives of the R2 Low Density Residential Zone. See previous discussion above regarding scale, bulk and height at Section 2.1.3 of this report.</p>	
3. Density	No
<p>Comment: The design quality principle requires densities appropriate to the site and the context. The proposed density at Kilvinton Village exceeds the deemed to comply control of 0.5:1 for ILUs in <i>SEPP Seniors</i>. See previous discussion at Section 2.1.3 of this report.</p> <p>While strategically the site may be suitable for more intensive development, this should be pursued through a planning proposal. If the existing zoning is not given weight, the integrity of the planning process provided by the legislation would be undermined which is contrary to the public interest.</p>	
4. Sustainability	Yes
<p>Comment: The applicant has submitted a <i>BASIX</i> Certificate for the proposed development. In achieving the required <i>BASIX</i> targets for sustainable water use, thermal comfort and energy efficiency, the proposed development would achieve efficient use of natural resources, energy and water throughout its full life cycle, including demolition and construction.</p>	
5. Landscape	No
<p>Comment: Concerns are raised in relation to the loss of a number of large indigenous trees on the site. As previously discussed at 2.3.1 of this report, 142 trees are to be removed of which approximately 60 of these trees are species known to occur locally in the Hornsby Local Government Area and 37</p>	

Principle	Compliance
are characteristic of Blue Gum High Forest community. This is inconsistent with Clause 6 of <i>SREP 20</i> that requires development to conserve and, where appropriate, enhance flora and fauna communities, and to locate structures where possible in areas which are already cleared or disturbed instead of clearing or disturbing further land.	
6. Amenity	No
<p>Comment: The proposed units are generally designed with appropriate room dimensions and layout to maximise amenity for future residents. However, there are a number of units with compromised privacy as a consequence of the land excavation and internal conflicts. Further information is also required to demonstrate compliance with 2 hours of sunlight access to 70% of units per the <i>ADG</i>. Storage areas have been provided within each unit and in the basement levels. The proposal would provide convenient and safe access via a central lift connecting the basement and all other levels.</p>	
7. Safety and Security	Yes
<p>Comment:</p> <p>The design orientates the balconies and windows of individual apartments towards the street, rear and side boundaries, providing passive surveillance of the public domain and communal open space areas. The proposal includes an assessment of the development against crime prevention controls in the Statement of Environmental Effects (SEE). The SEE has regard to <i>Crime Prevention Through Environmental Design Principles (CPTED)</i> and includes details of surveillance, access control, territorial reinforcement and space management such as artificial lighting in public places; attractive landscaping whilst maintaining clear sight lines; security coded door lock or swipe card entry; physical or symbolic barriers to attract, channel or restrict the movement of people; security controlled access to basement car park; intercom access for pedestrians; and security cameras located at the entrance of the building.</p>	
8. Social Dimensions and Social Interaction	Yes
<p>Comment: The development includes larger apartments to respond to the expectations of the mid to luxury market, with sizes ranging from:</p> <p style="padding-left: 40px;">65 to 75m² for 1-bed units (2 units or 1.4% of mix)</p> <p style="padding-left: 40px;">90 to 115m² for 2-bed units (90 units or 60.8% of mix)</p> <p style="padding-left: 40px;">105 to 155m² for 3-bed units (56 units or 37.8% of mix)</p> <p>The applicant advises that Anglicare's research indicates there is little demand in this area of smaller, one-bed apartments with most future residents down sizing from houses and seeking at least two to three bedrooms. The provisions of <i>SEPP Seniors</i> require some of the units to comply with accessible/disabled access provisions. All units are designed to be capable of adaptation in accordance with the requirements of AS4299. There are a range of housing options catering for a diversity of household budgets available within the broader campus.</p>	

Principle	Compliance
9. Aesthetics	Yes
Comment: The architectural treatment of the buildings incorporates indentations and projections in the exterior walls with balcony projections to articulate the facades. The roof is low pitched to minimise building height. The articulation of the building, composition of building elements, textures, materials and colours would achieve a built form generally consistent with the design principles contained within the ADG.	

2.11 State Environmental Planning Policy No. 65 – Apartment Design Guide

SEPP 65 requires consideration of the *Apartment Design Guide*, NSW Department of Planning and Environment 2015. The Guide includes development controls and best practice benchmarks for achieving the design principles of *SEPP 65*. The following table sets out the proposal's compliance with the Guide:

Apartment Design Guide			
Control	Proposal	Requirement	Compliance
Deep Soil Zone Proposed:	30%+	7%	Yes
Communal Open Space (includes roof top area)	30%+	25-30%	Yes
Building Separation	Most buildings generally separated by 12metres	Habitable rooms 12m – up to 4 storey Non-habitable rooms: 6m – up to 4 storey	Mostly. See previous discussion under privacy regarding specific units with some privacy conflicts,
Unit Sizes	Studio – NA 1 br – 65m ² 2 br – 90m ² 3 br – 105m ²	Studio – 35m ² 1 br – 50m ² 2 br – 70m ² 3 br – 90m ² (+5m ² for extra bathroom)	Yes
Minimum Balcony Depth	2m	2m	Yes

Apartment Design Guide			
Control	Proposal	Requirement	Compliance
Minimum Ceiling Height	2.7m	2.7m	Yes
Total Storage Area	See Dwg DA-603. Storage designed to comply with the ADG requirements	1 bed - 6m ³ (Min) 2 bed - 8m ³ (Min) 3 bed - 10m ³ (Min) 50% accessible from the apartments	Yes
Solar Access (living rooms and private open space areas)	2 hours for 83% of units	2 hours for 70% of units	Mostly, however detailed plans are required to demonstrate compliance.
Dual Aspect and Cross Ventilation	75%	60%	Yes
Adaptable Housing	100%	10%	Yes

As detailed in the above table, the development generally complies with the prescriptive measures within the *Apartment Design Guide (ADG)*.

2.12 Hornsby Development Control Plan 2013

The *Hornsby Development Control Plan 2013 (HDCP)* applies to all land within Hornsby Shire and came into effect on 11 October 2013. As discussed in Section 2.1 of this report, Seniors Housing is prohibited within the R2 Low Density Residential zone pursuant to *HLEP* and therefore the built form controls within Part 2 of the *HDCP* are not applicable. However, the relevant general provisions within Part 1 of the DCP are applicable to the development. This includes provisions relating to stormwater management, waste management, tree and vegetation protection, biodiversity and earthworks. These matters are considered throughout this report.

2.13 Section 7.11 Contributions Plans

Hornsby Shire Council Section 94 Contributions Plan 2014 - 2024 applies to development that involves additional residential dwellings. However, as the application is made by a social housing provider, a contribution is unable to be levied in accordance with the Ministerial Directions.

ENVIRONMENTAL IMPACTS

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

2.14 Natural Environment

2.14.1 Tree and Vegetation Preservation

The proposed development does not retain major existing trees and would have a detrimental impact on residential character.

As previously discussed, the Arboricultural Impact Assessment surveyed 445 trees on the site of which 145 trees are characteristic of the Blue gum High Forest (BGHF) community. A total of 142 trees are to be removed of which approximately 60 of these trees are species known to occur locally in the Hornsby Local Government Area and 37 are characteristic of BGHF community. The removal of 37 BGHF trees equates to approximately 25% of the local population.

The Flora and Fauna report submitted is inadequate as the extent of tree removal reported is inconsistent with the Arborist report and the application plans. In addition, it does not address the consistency of the scheme with existing biodiversity offset conditions from DA/359/2013.

2.14.2 Stormwater Management

Stormwater from the development would be collected and gravity drained to the existing internal drainage system. This includes the relation of the RMS stormwater drainage easement from Castle Hill Road to Tom Thumb Lagoon. No significant concerns are raised in relation to the stormwater drainage system. However, as previously discussed, additional information is required in relation to flood events.

2.15 Built Environment

2.15.1 Built Form

As previously discussed, the proposed built form is inconsistent with the R2 Low Density Residential Zone and is not supported.

2.15.2 Traffic

A traffic and parking assessment has been submitted with the proposal. The RMS have raised concerns that the development will impact on the safety and efficiency of Old Northern Road.

2.16 Social Impacts

The residential development would improve housing choice and facilities in the locality for the aging population. This is consistent with Council's Housing Strategy which identifies the need to provide a mix of housing options to meet future demographic needs in Hornsby Shire.

2.17 Economic Impacts

The proposal would have a positive impact on the local economy in conjunction with other residential development in the locality by generating an increase in demand for local services.

3. SITE SUITABILITY

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

3.1 Flooding

Part of the land the subject of the development is identified as being below the 1:100 year flood level. The application has not addressed the relevant applicable provisions within the *HLEP*.

3.2 Railway Corridor

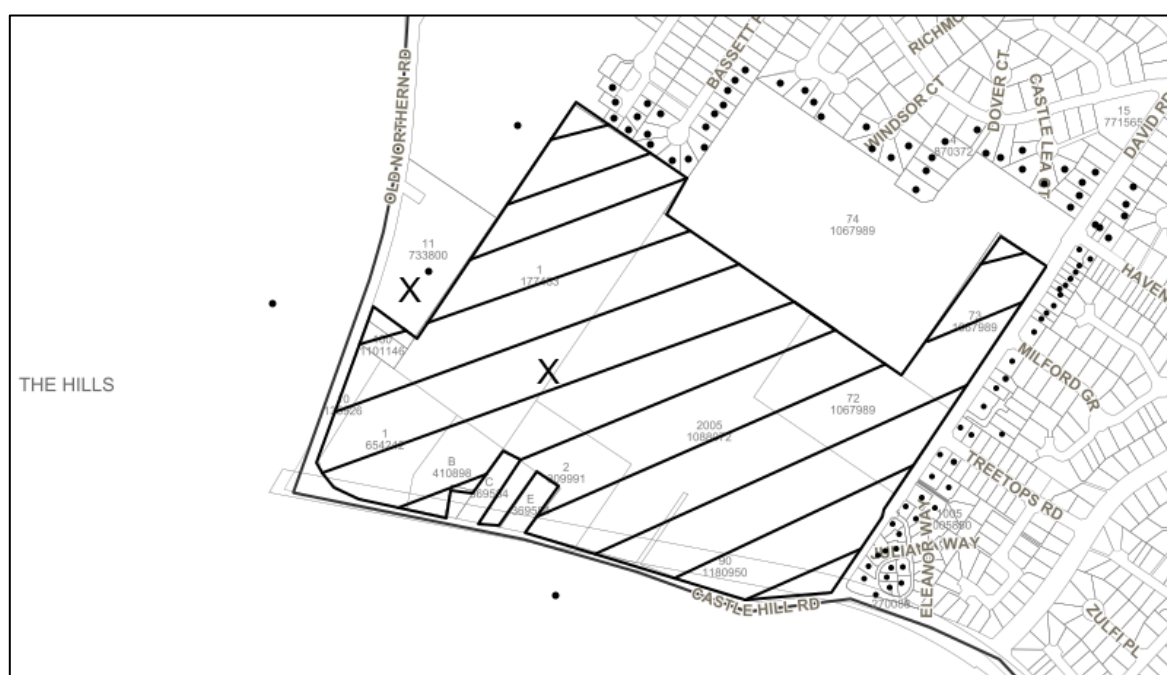
Part of the land is traversed by the north-west railway corridor. The application has not addressed the suitability of the proposed excavation and building works in the vicinity of the corridor nor the impact of rail noise and vibration on the development.

4. PUBLIC PARTICIPATION



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

4.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 14 May 2019 and 29 May 2019 in accordance with the Notification and Exhibition requirements of the *HDCP*. During the notification period, Council received 2 submissions objecting to the development. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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Two submissions objected to the development, generally on the grounds that:

4.1.1 Inconsistent with Pre-DA advice

The proposal is inconsistent with Hornsby Council's Pre-DA Advice and requires a rezoning of the land to permit seniors housing development of the type and scale proposed.

Comment: While the development application offers a reduced height in comparison to the Pre-DA plans, the scale of the proposal requires a planning proposal as it is inconsistent with the R2 Low Density Residential zone.

4.1.2 *Not a low density character*

The proposal is more akin with a medium/high density residential development.

Comment: This is discussed at 2.1.3 of this report.

4.1.3 Object to new driveway to Old Northern Road

Concerns were raised in relation to the location and design of the new driveway. The submission argued that long term access arrangements to Old Northern Road from the precinct needs to be strategically reviewed. Issues raised included:

- Safety of right turn movements out of the village to Old Northern Road at new intersection.
- A number of existing vehicles use the existing Clarke Drive intersection to undertake a U turn with right in and left out. The new intersection doesn't allow for u-turns.
- discrepancies in baseline traffic data at Clarke Drive as compared to October 2011 Lober Square report.
- The retaining wall along the Church frontage has not been discussed with the Church.
- The guard rails proposed will inhibit any potential future southern egress to Old Northern Road from the Church.
- There should be an overall strategy for access for the 3 large sites (Anglicare/SPCH/Stockland) that could involve a signalised intersection.

Comment: The RMS have raised concerns regarding the new driveway design as discussed at 4.2.2 of this report. Owners consent has not been provided for the construction of a retaining wall on the Church's property, which is a precondition to the granting of consent.

4.1.4 Impacts on Existing and Future Access to the Church

The siting of the new driveway to Old Northern Road restricts a future southern egress for the church to Old Northern Road due to the proximity of the new driveway to the common boundary. The existing internal access to the St Paul's Church from Clarke Drive should be retained.

Comment: The site analysis submitted has not identified this arrangement nor discussed how the proposed scheme responds to this existing situation. The Church have an existing driveway to Old Northern Road in the north of their site.

4.1.5 Improved internal and external pedestrian connections required

The proposal should include a pedestrian footpath along the northern side of the new access driveway to Old Northern Road. The pedestrian pathway along Old Northern Road to the bus stop in front of St Paul's church should be provided as part the development works.

Comment: The proposal includes a pedestrian footpath along the southern side of the new access driveway. Any additional footpaths required as a consent condition would need to relate to the development, such as being required to comply with Clause 26 of *SEPP Seniors*.

4.1.6 Acoustic impacts on approved Church auditorium

St Pauls Church has an approval for a new 800 seat hall in the southern part of the church site immediately adjacent to the proposed new driveway entry. If the matter proceeds, the Church has requested that applicant be required to provide an acoustic wall along the common side boundary, designed in consultation with St Paul's Church.

Comment: The acoustic impact from the proposed driveway is not expected to generate such significant noise to warrant a consent condition for an acoustic wall.

4.1.7 Stormwater

There is no hydraulic or catchment analysis report provided with the application to consider the downstream implications of the proposed development. The overland flow in major storm events is not detailed. Concerns were raised that there be no increase in water flow through the church property. It was requested that the existing open drainage channel between the church culvert and Clarke Drive is extended and finished in a similar manner to that approved for the Church.

Comment: Agreed that the application has not adequately addressed the flooding implications of the development.

4.1.8 Visitor Carparking for Existing Residents at Western Road

When a visitor parks in a resident's driveway at Western Road, the pedestrian footpath becomes completely blocked. The roadway in this section of Western Road is quite narrow and is unsuitable for visitor parking. The solution has been to ask visitors to park in the unpaved area on the western side of Western Road, opposite No 17 Western Road. It appears that the proposed development will result in the complete removal of this facility. It is unclear where visitors to existing villas adjacent to the development area are to park.

Comment: The Council requested that the applicant provide some advice on this matter and a response was not provided. An open at-grade carparking area is provided at Flinders Village and the landscape plan submitted shows 5 at-grade spaces adjacent to Clarke Drive. The amount of carparking provided as part of this development is well in excess of the minimums in *SEPP Seniors* and these rates in Part 7 of *SEPP Seniors* are development standards that cannot be used as grounds to refuse consent.

4.2 Public Agencies

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

4.2.1 Roads and Maritime Services

The application was referred to the Roads and Maritime Services (RMS) for concurrence in accordance with Section 138 of the *Roads Act 1993*. The RMS does not support the proposed development as detailed in the following:

Roads and Maritime has reviewed the submitted application and does not support the proposed development in the current form and provides the following comments to Council:

- 1. The proposed access on Old Northern Road should be restricted to Left in/Left Out and Right in (i.e. no right turn out of the site) on road safety and network efficiency grounds. The access should be modified to reflect the above access arrangement requirement.*
- 2. The plans should show the full extent of the proposed works on Old Northern Road including the full length of the proposed central median (extent should be provided from intersection of Castle Hill Road to Old Castle Hill Road). The plans should show how the proposed works will marry with the existing lane arrangement and pedestrian refuge on Old Northern Road.*
- 3. Additional information is required regarding impact of the proposed access arrangement and central median on Old Northern Road to the property north of the site and their access. This should be reflected on the plans.*
- 4. Swept path of the largest vehicle accessing the site on Old Northern Road for all turning movements should be provided.*
- 5. A strip of land has previously been dedicated as Public Road by private subdivision (DP 1047222), along the Old Northern Road frontage of the subject property, as shown by yellow colour on the attached Aerial - "X". Roads and Maritime has also previously acquired an easement for drainage over the subject property as shown by the brown colour on the attached Aerial - "X", defined by DP 654242 and noted on title (Dealing Q736772).*

In principle, the Roads and Maritime would raise no objections on Property grounds to the submitted application provided:-

- Any new building or structures, together with any improvements integral to the future use of the site, are erected clear of the identified easement and Old Northern Road boundary (unlimited in height or depth);*
- Access to the RMS easement is not to be denied; and*
- The integrity of the RMS easement is not to be compromised.*

In this regard, the proposal does not comply with the above as the proposed guard fence and retaining wall is located within the road reserve along Old Northern Road. Additionally, the proposed development will compromise the integrity of the Roads and Maritime easement. However, Roads and Maritime would be prepared to further consider the subject proposal upon receipt of amended development plans that show the proposed guard fence, retaining wall and any new proposed developments are located wholly within the freehold property and erected clear of the identified easement.

The application is to be modified showing the abovementioned amendments/requirements are met and submitted to Roads and Maritime for review prior to the determination of the application.

4.2.2 RailCorp

The application was referred to the Sydney Trains for advice as the north-west rail corridor traverses the site. The development was not lodged as a concurrence application and the requisite cheque and information for the railway authority was not provided. To date, Sydney Trains have not responded to Council's correspondence on this matter.

5. THE PUBLIC INTEREST

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

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

The exceedance of the maximum height development controls and the exceedance of the deemed to comply FSR control for the ILUs would facilitate an urban character at Kilvinton Village which is inconsistent with the objectives of the R2 Low Density Residential zoning. If the zoning is not given weight, the integrity of the planning process provided by the legislation would be undermined which is contrary to the public interest.

CONCLUSION

While the renewal and continued use of the site for Seniors Housing has planning merit, the scale of the application is excessive for the *R2 Low Density Residential zone* and is not in keeping with the existing or desired future character of the locality.

In August 2019, Council provided the applicant with a detailed preliminary assessment of the concerns with the proposal, to provide an opportunity for additional information and amended plans. To date the applicant has not provided a response. On 29 October 2019, the applicant lodged a deemed refusal appeal in the Land and Environment Court. The purpose of this report is to enable the Panel to consider the proposal the subject of Court proceedings.

It is recommended that the proposal be refused in accordance with Schedule 1.

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

Attachments:

1. Locality Plan
2. Development Site Lot Area Plan
3. Architectural Plans, including Site Analysis
4. Landscape Plans
5. Civil Plans
6. Clause 4.6 Variation Request
7. Anglicare Castle Hill Campus Village Plans and Registered Dealings

SCHEDULE 1

1. The application has failed to demonstrate that there would no impact on the safe and effective operation of existing rail infrastructure and has not received concurrence from the Sydney Trains.
2. The application has failed to address the impact of rail noise or vibration on non-rail development.
3. The development proposal has failed to demonstrate compliance with the requirements of the NSW Roads and Maritime Service (RMS) and the RMS has not issued concurrence for the proposed development.
4. The scale of the independent living units is inconsistent with the existing and desired future character of Kilvinton Village. In this regard, the total Floor Space Ratio (FSR) exceeds the 0.5:1 FSR control applicable to the independent living units within Kilvinton Village allotment area.
5. The Clause 4.6 variation request to the 8 metre building height control under Clause 40(4)(a) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors)* should be refused as the proposed development:
 - a. Fails to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, nor that there are sufficient environmental planning grounds to justify contravening the development standard; and
 - b. Does not adequately address the matters required to be demonstrated by subclause (3) of Clause 4.6 of the *HLEP*, and
 - c. Would not be in the public interest, in that it is inconsistent with the objectives of the 8 metre building height control and the objectives for development within the R2 Low Density Residential zone within which the development is proposed to be carried out.
6. The Clause 4.6 variation request to the height control under Clause 40(4)(b) of *SEPP Seniors*, that limits buildings to 2 storeys adjacent to a boundary should be refused as the proposed development:
 - a. Fails to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, nor that there are sufficient environmental planning grounds to justify contravening the development standard;
 - b. Does not adequately address the matters required to be demonstrated by subclause (3) of Clause 4.6 of the *HLEP*, and
 - c. Would not be in the public interest, in that it is inconsistent with the objectives of the 2 storey height control and the objectives for development within the R2 Low Density Residential zone within which the development is proposed to be carried out.

7. The proposal has failed to satisfactorily consider the acoustic and visual privacy of future residents and adjoining properties as required by Clause 34 of *SEPP Seniors*. The site planning has not adequately considered the privacy of neighbours in the vicinity and residents to be accommodated on site.
8. The proposal has not satisfactorily demonstrated the proposed independent living units would receive sufficient solar access to the living room and private open space areas as required by Clause 50(e) of *SEPP Seniors*.
9. Written evidence and information required as a pre-condition to the granting of consent pursuant to *SEPP Seniors* has not been provided with respect to Clause 26 Access to Services, Clause 30 Site Analysis, Clause 31 Design of infill self-care housing and Clause 55 Fire Sprinklers.
10. The proposal fails in an assessment against the design quality principles of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)* and the *Apartment Design Guide (ADG)*, in particular:
 - a) The proposal fails to satisfy Principle 1 Context and Neighbourhood Character, Principle 2 Built Form and Scale, Principle 3 Density, Principle 5 Landscape and Principle 6 Amenity. The proposal would result in a development that is uncharacteristic and incompatible with the local context and is of a height and density that is not compatible with the density of adjoining properties.
11. The development does not appropriately relate to the existing landform and the extent of cut is excessive and would detrimentally impact on existing and future residents and detract from the character of the area.
12. The development is likely to have an unacceptable impact on the Endangered Ecological Community located on the subject site.
13. The development does not retain major existing trees and that removal of these trees would have a detrimental impact on residential character.
14. An environmental site assessment has not been submitted to demonstrate that the land is suitable for the proposed use as required by Clause 7 of *State Environmental Planning Policy No. 55 Remediation of Land*.
15. Sufficient information has not been provided to demonstrate that the development satisfies the flood planning provisions under Clause 6.3 of the *Hornsby Local Environmental Plan 2013*.
16. The proposed arrangements for waste collection and management are unacceptable and inconsistent with the requirements of *Hornsby Development Control Plan 2013*.
17. Works are proposed on the adjacent land owned by St Paul's Church (retaining walls to facilitate road works) and owners consent has not been provided.
18. The approval of the proposed development is not in the public interest having regard to the nature of submissions received objecting to the proposed development and having regard to the matters listed above.