

SUPPLEMENTARY REPORT 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, 156 Independent Living Units, and ancillary works and facilities including office, café, earthworks and landscaping
Street Address	284 Castle Hill Road Castle Hill and 411-415 and 417-419 Old Northern Road Castle Hill
Applicant	Anglican Community Services C/ DFP Planning
Owner	Anglican Community Services
Date of DA Lodgement	29 April 2019 (Amended 22 September 2020)
Number of Submissions	One submission concerning the amended plans
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	Attachment 1 Locality Plan Attachment 2: Site Plans

report for the panel's consideration	Attachment 3 Staging Plan Attachment 4 Floor Plans Attachment 5 Elevation Attachment 6: Landscape Plan and Sections Attachment 7: Civil Plan Attachment 8: Clause 4.6 Submissions on Building Heights Attachment 9: Perspective Views
Report prepared by	Deborah Dickerson, Principal Planner Levy Planning
Responsible Officer	Caroline Maeshian, Senior Town Planner
Report date	25 November 2020

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**

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

The application involves demolition of existing structures and construction of Seniors Housing incorporating a 3 to 4 storey Residential Care Facility (RACF) with 92 beds, 144 apartments within 8 x 3 storey buildings, 12 single storey villas, and ancillary works and facilities including office, café, earthworks and landscaping. The proposed works extend over three distinct village areas within the Anglicare Castle Hill campus including all of Kilvinton Village, and part of Flinders Village and Mowll Village.

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 lodged with the Court in October 2019 (and subsequently amended as set out below).

The application was reported to The Sydney North Planning Panel on 11 December 2019 for determination with a recommendation for refusal on a number of grounds including building bulk and character in addition to a number of technical matters. The Panel deferred the matter in response to a request from the applicant to enable them to submit an amended application.

An amended application was lodged in September 2020, with key modifications comprising:

- Site replanning to include a landscaped streetscape. This involved removal of a 4 storey apartment building from Kilvinton Village and the replacement of 2 proposed single storey villas to the north of the village with a 3 storey building (B15).
- A reduction in the footprint of the RACF, replanning of the bedrooms adjacent to the embankment and an improved landscape setback.
- Replanning of the ILU units and interface adjacent to the southern embankment to improve residential amenity.
- A reduction in tree removal including relocation of the café (B12).

The proposal does not comply with the 8 metre building height 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 of the HLEP. While the development’s character and height is now supported in principle, there are technical concerns with the Clause 4.6 submission that are required to be resolved prior to a consent.

The RMS does not support the roadworks at Old Northern Road and the relocation of the RMS drainage easement from Castle Hill Road. Section 138(2) of the Roads Act relevantly provides that ‘*A consent may not be given with respect to a classified road except with the concurrence of RMS.*’ All the matters raised by the RMS are unable to be readily resolved with consent conditions. The application is recommended for refusal.

RECOMMENDATION

THAT Development Application No. DA/315/2019 (as amended) for Demolition of Existing Structures and Construction of Seniors Housing incorporating a 92 Bed Residential Care Facility, 156 Independent Living Units, and ancillary works and facilities including office, café, earthworks and landscaping at 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, Lot 100 DP 1101146, Lot 3 DP 1047222, No. 284 Castle Hill Road Castle Hill, Nos. 411-415 and Nos. 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:

- 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.
- 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.
- 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 site by way of compensatory planting in accordance with Councils Green Offsets Code.
- On 10 January 2014, most of the retirement village site was rezoned from *Special Uses A (Community Purposes)* under the Hornsby LEP 1994 to *R2 Low Density Residential* under the Hornsby LEP 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 at Kilvinton Village incorporating 195 units plus a 220 bed RACF with a teaching facility. 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, proximity to the railway corridor and absence of any discussion regarding the need for 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.

On 29 October 2019, the applicant lodged a deemed refusal appeal in the Land and Environment Court, known as Court Proceedings No.339336 of 2019.

On 11 December 2019, the Sydney North Planning Panel considered the application and resolved to defer its decision until the applicant submitted amended plans.

On 30 March 2020, Council and the applicant participated in a Pre-34 meeting.

On 24 June 2020, Council and the applicant participated in a Section 34 Conference before Commissioner O'Neill.

On 22 September 2020, the applicant was granted leave of the Court to rely on amended plans and documentation.

DA/315/2019 (as amended) was notified by Council for 14 days ending on 22 October 2020. During this period one submission was received a neighbouring property owner and referral comments on the amended plans were received from Transport for NSW (RMS) and Sydney Metro.

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 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 Mowl 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.

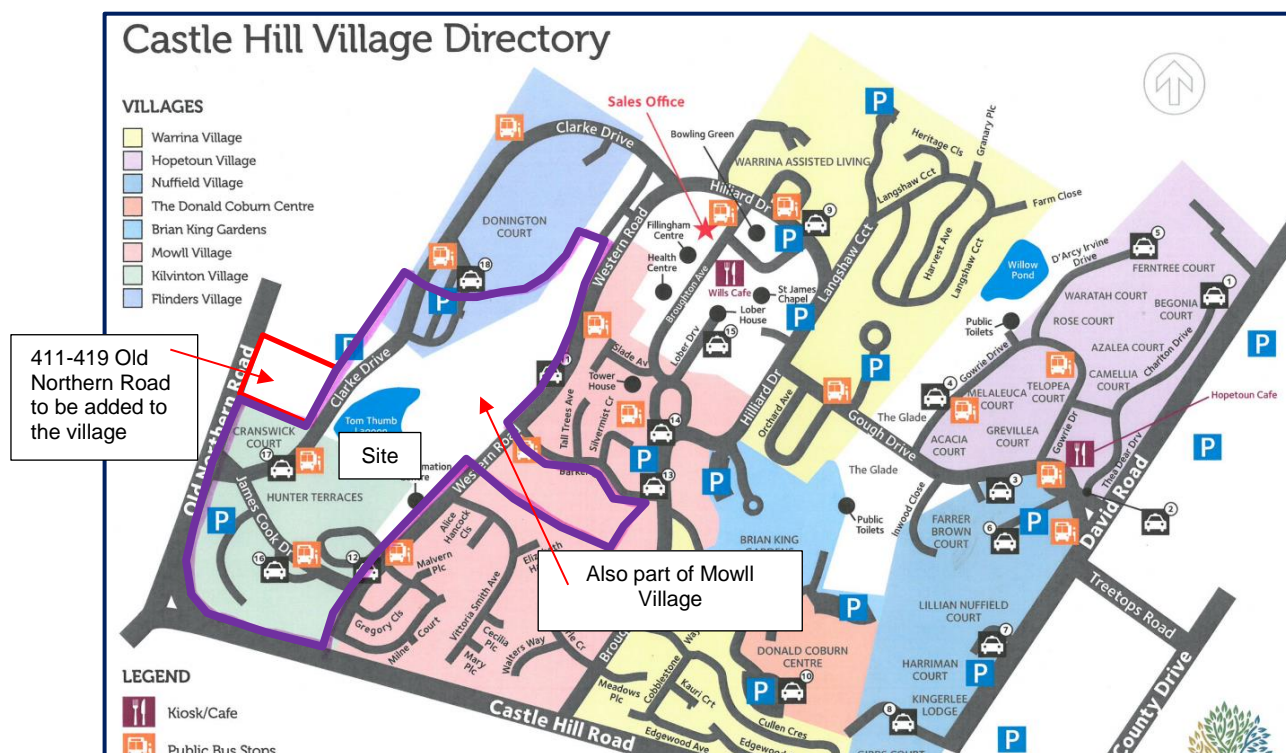


Figure 1: Author's annotation of Village Plan obtained from the Anglicare website

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:

- 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,
- 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
- Part of Flinders Village comprising part of the Donington Court carpark, and the adjacent land to the south including the northern part of Tom Thumb Lagoon,
- No. 411-415 Old Northern Road, that is currently used as a carpark, and
- No.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 towards Tom Thumb Lagoon that benefits the RMS. The existing easement does not reach the lagoon and terminates within Kilvinton Village. The site is a flood control lot.

The property at 284 Old Northern Road is listed as heritage item I255 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 Donington Court RACF 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 315/2019 (as modified) seeks consent for the demolition of existing structures, earthworks, tree and vegetation removal and the construction of a seniors housing development in 7 stages, which is proposed to contain the following:

(a) A 4 storey residential care facility (RACF) containing 92 beds 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 - 36 x 1bed suites, lounge and dining rooms, western courtyard, eastern terraces, loading dock with bin store and workshop
- Level 2 – 36 x 1bed suites, lounge and dining rooms, southern green roof over loading bay
- Level 3 – 10 x 2bed suites, lounge and dining rooms, northern roof terrace,

The 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) 8 Independent Living Unit (ILU) buildings 3 storeys in height containing 144 self-contained dwellings (3 x 1-bed, 87 x 2 bed and 54 x 3 bedroom), with basement carparking.

(c) A total of 204 car parking spaces across the development comprised of:

- 52 car parking spaces in the RACF basement, including 10 spaces allocated for visitors; and
- 35 residential car parking spaces in the basement beneath B10 and B13 (35 units), plus 8 spaces allocated to visitors; and
- 53 residential car parking spaces in the basement beneath B8, B9A and B9B (53 units), plus 11 spaces allocated to visitors; and
- 12 car parking spaces in the basement beneath B15 (12 units) with nil allocated to visitors, plus 3 visitor spaces at grade adjacent to Western Road, and
- 12 residential car parking spaces for the villas in attached single garages, with 12 additional tandem parking available in the private driveways
- 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.

(d) Earthworks involving a total cut volume of 128,852m² that reduces to 114,406m² with backfilling/reuse. 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.

(e) 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. 116 trees are to be removed, of which 27 trees are Blue Gum High Forest species. Two trees to be removed are categorised as Retention Value A, being Tree 293 a 22m tall Angophora at Villa 22B and Tree 163 a 9m tall Golden Ash at Building 18.
- vi. Landscaping across the site

The amended plans and documentation submitted in September 2020 incorporated the following key changes in comparison to the Deemed Refusal Plans lodged with the Court in October 2019:

Site Planning

- Deletion of a 4 storey apartment building to the south of Tom Thumb Lagoon, and the replacement of 2 single storey villas with a 3 storey building (B15) to the north of Kilvinton Village. This has allowed for the redesign of buildings to the south of the lagoon and increased setbacks of B10, B13, B16 and B17 from Clarke Drive and the incorporation of a streetscape with canopy trees.
- Reduction in the footprint of the residential care facility (B18), increased setbacks and redesign of the landscaped interface to Old Northern Road and the new northern driveway to improve the landscaped setting and amenity for elderly residents.
- Increased setback of B17 from James Cook Drive to provide streetscape landscaping and increased building separation from the residential care facility (B18).
- Increased building separation between B18 and 9A to improve residential amenity.
- Deletion of a basement ramp to the east of B8. This has allowed for an improved landscape setting to Milne Court and replanning of the south-eastern units in B8 units to improve amenity.
- Relocation of buildings and structures to minimise tree loss and/or improve landscaping including, relocation of the café (B12), reorientation of the administration building (B19), relocation of OSD tanks, rationalisation of paths and retaining walls adjacent to the embankment.
- Revised landscape species to incorporate more native and Blue Gum High forest species.

Apartment Design and Community Rooms

- Unit layouts reviewed to improve solar access and privacy
- Relocation of some private open space areas in B8, B9A and B9B where they were adjacent to the embankment to increase solar access and outlook
- Replace 2 apartments with 2 community rooms, to achieve a total of 3 community rooms within B8, B13 and B17.

Civil Works

- Remove the proposed right hand turn movement from the property to Old Northern Road
- Locate all roadworks on site or within the road reserve, not on the adjacent Church land.
- Include additional weirs at Tom Thumb Lagoon to address flooding.

A comparison of the October 2019 Site Plan and the September 2020 Site Plan is provided below.

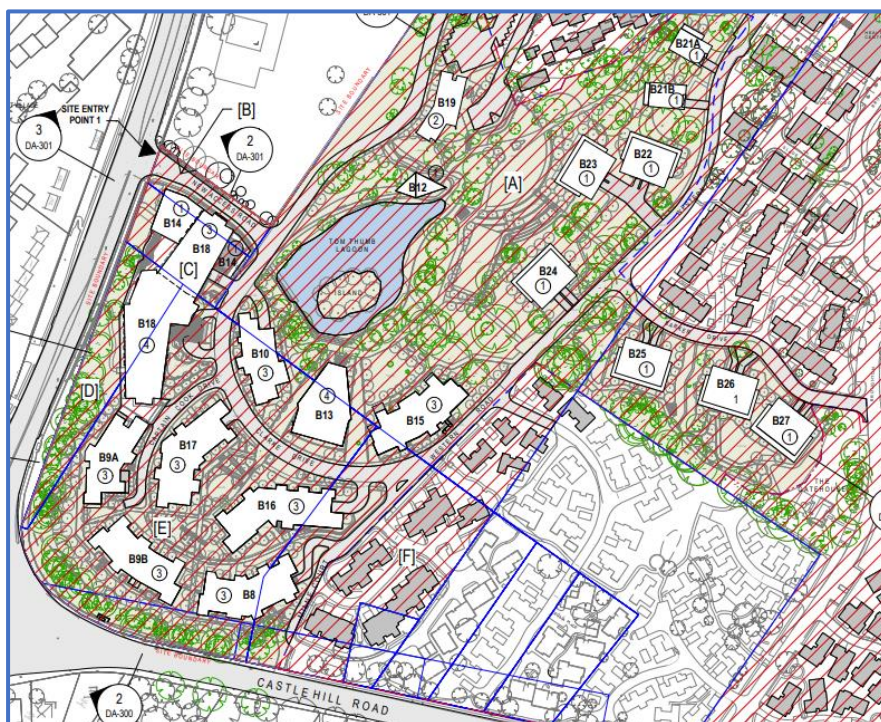


Figure 1: Site Plan – Deemed Refusal Plans lodged with the Court in October 2019

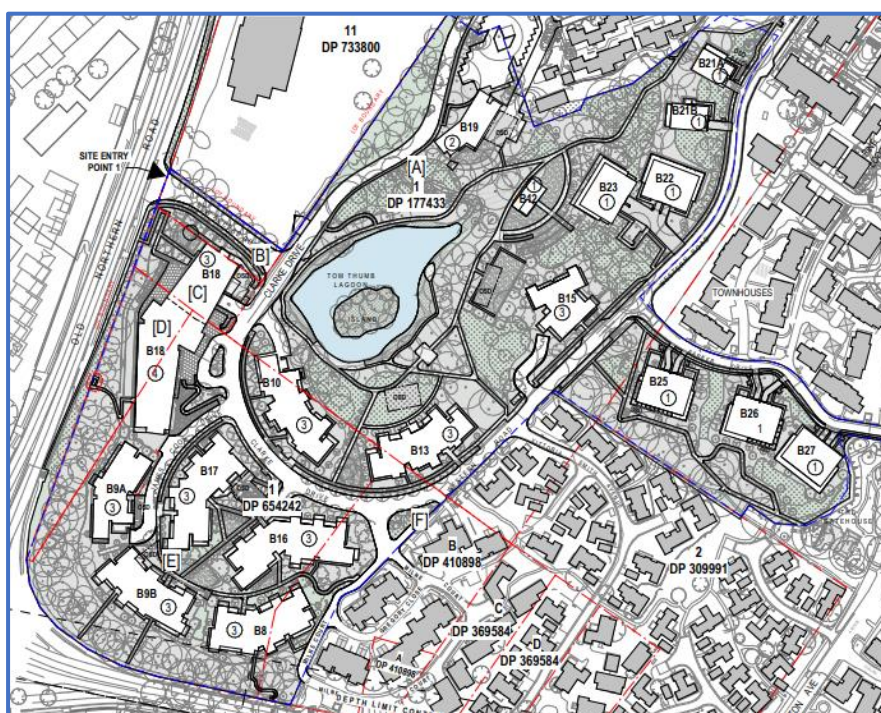


Figure 2: Modified Site Plan of September 2020

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

The *Greater Sydney Region Plan - A Metropolis of Three Cities* has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also 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 subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the *North District Plan* which includes priorities and actions for Northern District for the next 20 years. The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

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(4)(a) and (b) of *SEPP Seniors* heights in zones where residential flat buildings are not permitted, **that requires the following:**

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

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

Note— Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

*(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*

Note— The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

2.1.3.1 What is the Extent of the Variation?

- A. 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 up to 0.43m, as illustrated in the following diagram extracted from the applicant's Clause 4.6 submission [Section 3.1 pg4]:

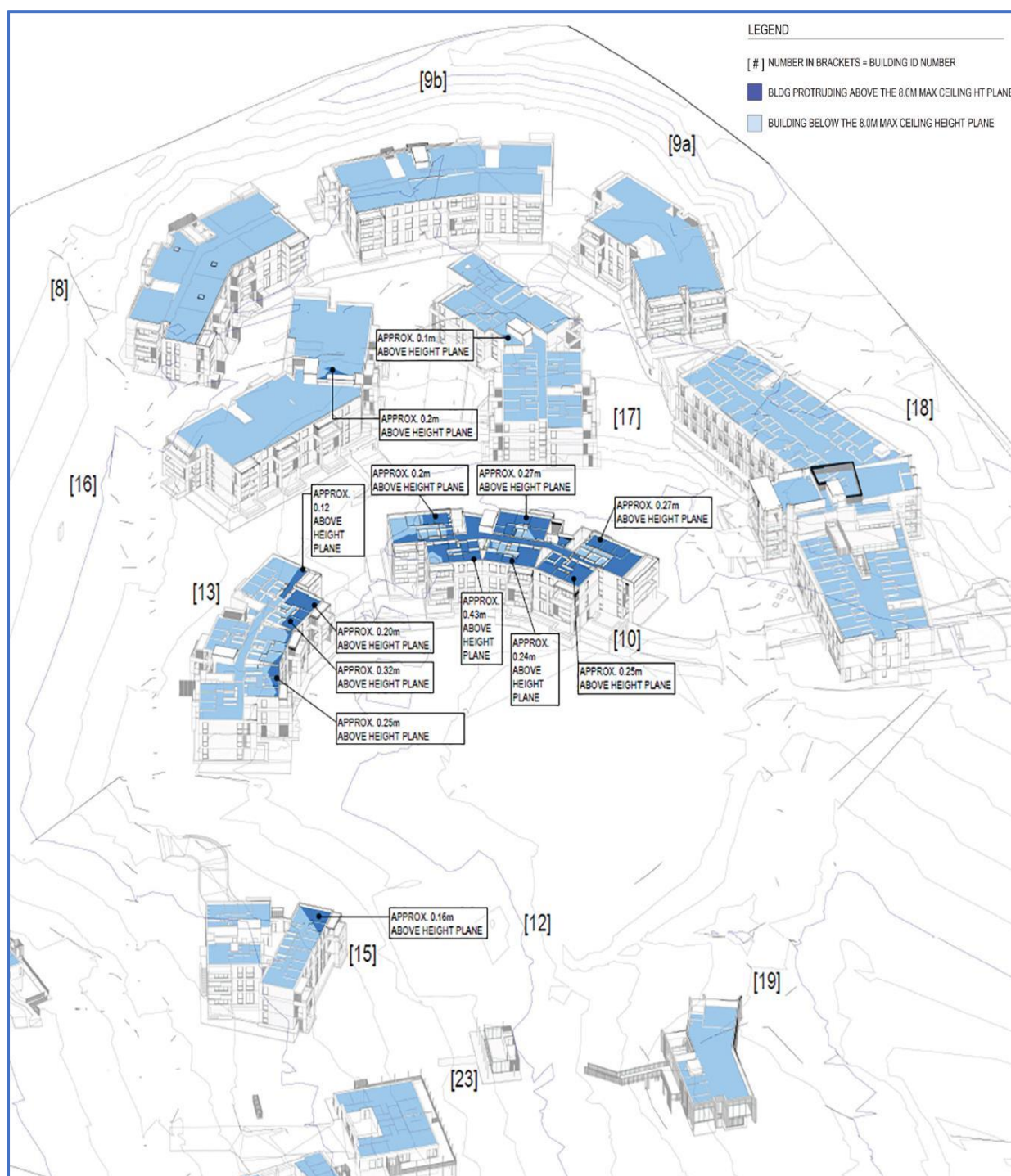


Figure 3: Extract from Applicant's Clause 4.6 Submission – exceedance of 8m ceiling height

- B. **SEPP Seniors Clause 40(4)(b) - 2 storey adjacent to a boundary** –The application includes 8 x 3 storey serviced self care apartment buildings and a 3 to 4 storey Residential Aged Care facility, as illustrated in the following diagram extracted from the applicant's Clause 4.6 submission [Section 3.2 pg7]:

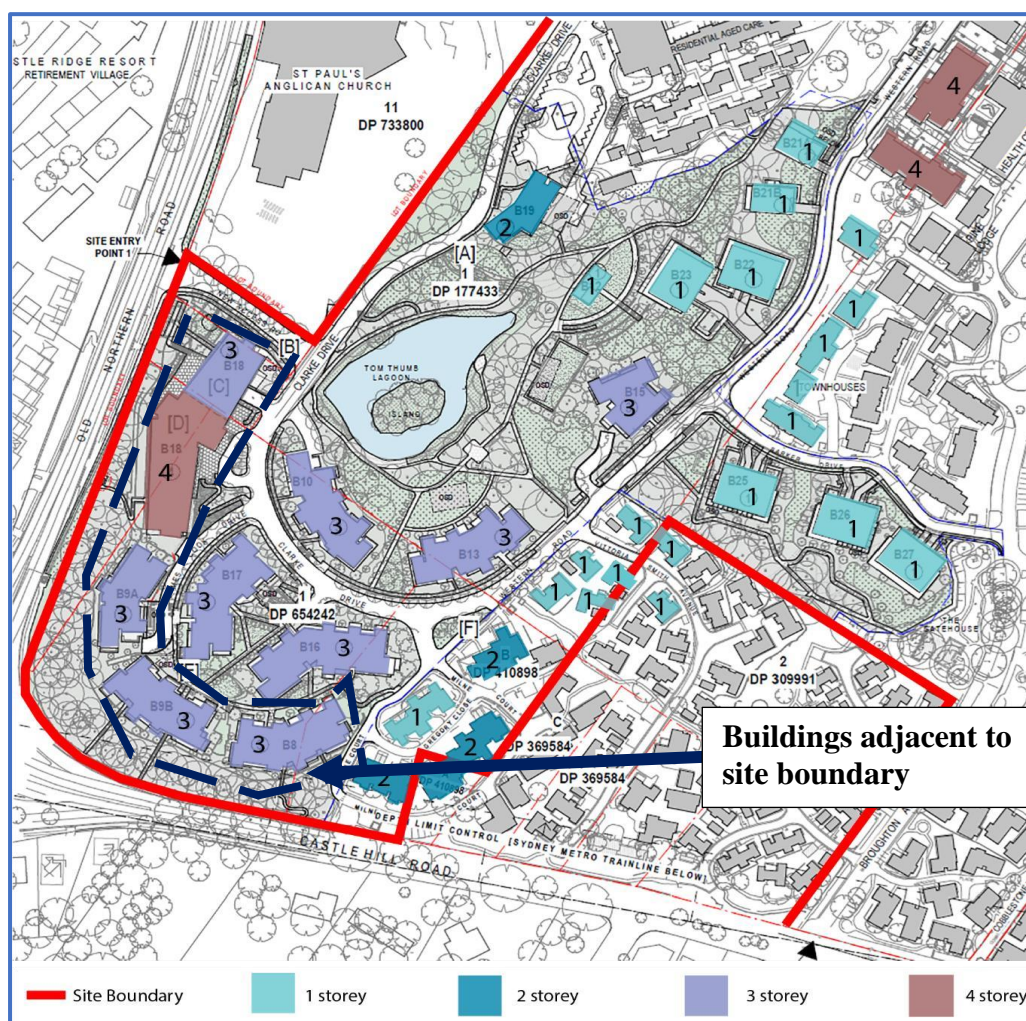


Figure 3: Extract from Applicant's Clause 4.6 Submission – Number of Storeys above ground

The buildings adjacent to a boundary of the site and therefore subject to the 2 storey development standard at Clause 40(4)(b) comprises the buildings adjacent to Old Northern Road, Castle Hill Road and St Paul's Church, being:

Building 8 (Apartment) = 3 storeys;

Building 9A (Apartment) = 3 storeys;

Building 9B (Apartment) = 3 storeys;

Building 18 (RCF) = part 3 storeys and part 4 storeys

2.1.3.2 Clause 4.6 Requirements

Prior to the issuance of development consent, Clause 4.6 of the HLEP requires that the applicant submit a written request to vary the 8 metre and 2 storey maximum height controls in SEPP Seniors, and that the determining authority be satisfied of the following:

1. *The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and*

2. *The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and*
3. *The proposed development will be in the public interest because it is consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)); and*
4. *The proposed development will be in the public interest because it is consistent with the objectives of the R2 Low Density Residential Zone (cl 4.6(4)(a)(ii)).*

The applicant's written submission to support the variation to the development standards is at Appendix 8.

The satisfaction of the four key tests noted above are discussed in the following for each development standard.

2.1.3.3 The Clause 4.6 Assessment – 8 metre height control

Unreasonable or unnecessary - cl 4.6(3)(a) and cl 4.6(4)(a)(i)

The Clause 4.6 written request at Appendix 8 refers to 3 reasons why compliance with the 8m ceiling height control is unreasonable or unnecessary:

- Wehbe - Complies with Wehbe Test 1, as the objectives of the control are achieved notwithstanding non-compliance with the standard. (5.1.3)
- Better Design - Results in improved outcomes for Building B10 (5.1.1),
- Topography – The departures are small due to localised topographical dips and compliance would not achieve a better design at B13, B15, B16 & B17 (5.1.2).

Wehbe Test 1 – Objectives of the 8m standard are achieved

Clause 40 of *SEPP Seniors* does not contain specific objectives in relation to the 8 metre building height development standard. The Clause 4.6 submission appropriately references Land and Environment Court judgements 'De Stoop' and 'Nanevski' for guidance on the underlying objectives of the 8 metre building height development standard.

At Para 53 of 'De Stoop' the underlying objective of the 8 metre height standard is *"to limit development in areas not zoned for residential flat buildings to 3 storeys in order to ameliorate the potential for amenity impacts on adjoining residential properties and to be in character with residential zones where residential flat development is not permitted."*

In 'Nanevski', the objective of the standard in terms of amenity impacts on adjoining residential properties is expanded [at para53] with reference to Clause 31 of *SEPP Seniors*.

Applicant's Response to 'De Stoop and Nanevski' (extract 5.1.3 of Submission)

In 'De Stoop' (para 55) it was found that one of the underlying objectives or purposes of the standard was to limit development in areas not zoned for residential flat buildings to 3 storeys to ameliorate impacts.

Implicit in this underlying objective is that a 3 storey built form is contemplated and this works in concert with the 2 storey height control for a building adjacent to a boundary of the site which is to avoid an abrupt change in the scale of development in the streetscape. That is, the objectives of these 2 controls

is to achieve a 2 storey scale in the streetscape and boundary of a site but enable 3 storey scale (with the 8m ceiling height control) elsewhere on the site.

All of the buildings that depart from the 8m height control are 3 storeys achieving a scale consistent with the underlying objective. The extent of departures range from 0.1m to 0.43m.

- *For Buildings B15, B16 and B17 the variations are very small and localised.*
- *For B13, the variation is essentially one edge of the building.*
- *Building B10 a departure over the greatest footprint is to manage an overland flow / flooding constraint (discussed above).*

In all cases the extent and nature of the departures are small and do not constitute an additional storey. Based on a floor to floor height of 3.1m, the height variation represents 3% to 14% of a level (storey). The 3 storey intent of the control is still achieved.

To remove or reduce the extent of the departure would require either the ground level to be further excavated or the ceiling heights reduced from the ADG compliant 2.7m. Neither of these solutions are considered to be consistent with the aims of SEPP Seniors to promote good design.

In relation to the underlying objectives and the matters raised in 'De Stoop' and Nanevski the following observations are made for each building.

Extract DFP Clause 4.6 written submission at 5.1.3 Underlying Objectives	
Underlying objective	Comment
Character in residential zones where 3 storeys not permitted	<p>The variations are minor in extent and nature ranging from 0.1m to 0.43m and do not constitute an additional storey. Compliance would not alter the character of the development in the context of the surrounding complaint buildings.</p> <p>Buildings 13 and 15 adjoin existing residential development, however the height is compliant at the eastern façade of these buildings where they interface with the adjoining residential development. Compliance with the western side of the buildings, which is not visible from the villas opposite, will not alter the character outcome.</p> <p>In terms of the wider context, the proposed development is not readily visible from Old Northern Road or Castle Hill Road and the retention of trees along the boundaries with these roads and significant landscaped area between buildings will ensure that the appearance and character of the site when viewed from the external roads will retain the existing character of the immediate area despite the minor height variations.</p>
To minimise impacts on the privacy and amenity of existing neighbouring dwellings	<p>The existing neighbouring dwellings on the opposite side of Old Northern Road are too far removed from the site to have any privacy or amenity impacts.</p> <p>The existing neighbouring dwellings within the site are the villas on the eastern side of Western Road. The additional height of B13 (0.12m to 0.32m) and B15 (0.16m) is located on the western side of the buildings and not visible from the existing villas. The eastern façades of the buildings facing the villas comply with the 8m building height control. There are no adverse privacy or amenity impacts arising from the height departure of B13 or B15.</p>

Extract DFP Clause 4.6 written submission at 5.1.3 Underlying Objectives

Underlying objective	Comment
To minimize overshadowing of existing dwellings and private open space;	<p>The existing neighbouring dwellings on the opposite side of Old Northern Road are too far removed to be affected by overshadowing.</p> <p>The existing neighbouring dwellings on the opposite side of Western Road are similarly too far removed to be impacted by shadows from B13 or B15. In addition, the location of the height variation in Buildings B13 and B15 is on the western side of the buildings which do not cast a shadow over the existing villas. The eastern sides of B13 and B15 are compliant in height and do not cause a shadow impact between 9am and 3pm at the winter solstice to the villas opposite.</p>
To retain neighbours' views and outlooks;	<p>The neighbours potentially affected are the existing villas on the opposite side of Western Road. Building B13 is the building that is most relevant for this amenity impact and as noted above, the departure is located on the western side of the building. The eastern side of the building which is visible from the villas is compliant in terms of height. The building separation of at least 18m and the avenue of street trees will provide a landscaped outlook from the villas.</p> <p>In terms of views or outlooks from the other proposed buildings, the height departures are between 0.1m to less than 0.43m (B10) and do not constitute an additional level. Buildings B10 and B13 have the larger height departures and even at 2 storeys they would obstruct potential views/outlook. The proposed 3 storey built form is therefore no different to a 2 storey building in terms of outlook from other proposed buildings. However, the private open space of adjoining proposed buildings is located to direct views across the proposed open space.</p>
To reduce the apparent bulk of development and its impact on neighbouring properties	<p>The very minor (0.1m, 0.16m and 0.2m) height departures in B16, B17 and B15 (respectively) and their very localised nature do not increase their apparent bulk and the variations would not be readily noticeable.</p> <p>Buildings B10 and B13 have height departures of 0.2m to 0.43m which does not constitute an additional level. A compliant building height would not be noticeably different in terms of visible bulk.</p> <p>The curved façade of these buildings to Clarke Drive also ensures that the extent of the facades is reduced as one travels along the road.</p>
Provide adequate building separation.	<p>Building B16 and B17 have very minor (0.2 and 0.1m) height departures in very small locations. The building separation between the location of the height departures is about 40m.</p> <p>Buildings B10 and B13 are separated by 18.6 to 30m which is far in excess of the 12m ADG requirement.</p> <p>Buildings B10 and B13 are separated from B16 and B17 on the opposite side of Clarke Drive by some 23m to 27m, also far greater than the 12m separation required by the ADG.</p> <p>Building 15 is about 65m from Building B13.</p> <p>Building separation is generous and allows for generous landscaped areas to assist with the setting of the development and ameliorate potential impacts. The landscape setting also ensures that the treed character of the Anglicare Village is retained and augmented as part of this development which will integrate this development with the landscaped area of the remainder of the village.</p>

Comment: It is agreed that varying the height control at B10 achieves a better design outcome and that the departures in B13, B15, B16 & B17 are small and insisting on compliance is unreasonable and would not achieve a better design outcome. The Clause 4.6 written request as copied above adequately demonstrates that compliance with the 8m ceiling height control is unreasonable as the objectives of the control are achieved notwithstanding non-compliance with the standard in accordance with Way 1 in Wehbe.

Sufficient Environmental Planning Grounds - cl 4.6(3)(b) and cl 4.6(4)(a)(i)

The Clause 4.6 written request relies on 4 reasons as justification of sufficient environmental planning grounds to contravene the 8m height control [at Section 5.2 pg. 18 at Appendix 8], as copied below:

Topography

As detailed in Section 4.1.2 of this variation request, the height departures from the 8m building height control as they relate to Buildings B13, B15, B16 and B17 are small in height and footprint and arise due to localised dips and rises in the topography of the land.

Design Objectives

Also detailed in Section 4.1.2, the building height variation for Building B10 is to achieve better design outcomes including the relationship with the ground level of Clarke Drive and related residential amenity considerations.

Visual Impact

The departures will not be readily apparent as they do not result in those parts of the building being taller than any of the adjoining buildings. The small departures do not in themselves give rise to any adverse visual impacts, providing sufficient environmental planning grounds for those variations.

Solar

The minor variations to the 8m building height control for Buildings B10, B13, B15, B16 and B17 are small in height and their location in the building footprints is such that they do not increase shadow impact to other buildings and therefore does not give rise to an adverse environmental impact.

Comments: The above statement does not adequately address the requirements of cl 4.6(3)(b) to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that there are sufficient environmental planning grounds to justify contravening the development standard, with the exception of Building 10, as discussed below:

Topography -The building height departure is not a consequence of localised topographical variations as the building envelopes are being entirely excavated in an effort to locate the 3 storey apartment buildings beneath the 8m ceiling height control. The buildings all have a floor to floor height of 3.1 metres. Therefore, topographical variations is not a sufficient environmental planning ground to justify the height departure. The reliance of the Clause 4.6 written submission on topographical dips to demonstrate sufficient environmental planning grounds is unnecessary. The Court has recently clarified there is nothing in Clause 4.6(3)(b) that requires the environmental planning grounds relied upon by an applicant to be unique to the site: *Hansimikali v Bayside Council [2019] NSWLEC 1353* (at para [47]).

Design Objectives (B10) - The variation to the 8 metre height control at Building 10 promotes good design and amenity outcomes, while maintaining the 3 storey built form envisaged by *SEPP Seniors*. The promotion of good design and amenity is consistent with Objective 1.3(g) of The Act. The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard for Building 10.

Visual Impact and Solar Access - The Clause 4.6 submission at Section 4.0 [pg10] advises that in 'Micaul' and 'Initial Action', the Chief Judge clarified that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. However, this argument is not specifically used or referenced in the discussion at Section 5.2 copied above. Furthermore, the amenity impacts discussed above are limited to visual and solar impacts, whereas broader amenity impacts are discussed elsewhere in the Clause 4.6 submission in relation to the zone objectives.

The applicant bears the onus of demonstrating that the matters in clause 4.6(3)(b) have been adequately addressed in the written statement to enable the consent authority to form the requisite opinion of satisfaction. At this stage the Clause 4.6 written statement has not demonstrated sufficient environmental planning grounds for the variation of the 8 metre ceiling height control for the proposal.

Objectives of the Standard in Question - - cl 4.6(4)(a)(ii)

The consent authority must directly form the opinion that the proposed development will be in the public interest because it is consistent with the objectives of the development standard.

Clause 40 of *SEPP Seniors* does not contain specific objectives in relation to the 8m building height development standard. The Land and Environment Court judgements *De Stoop v Ku-ring-gai Council* [2010] NSWLEC 1019 and *Nanevski Developments Pty Limited v Rockdale City Council* [2010] NSWLEC 1369 provide guidance on the underlying objectives of the 8 metre height control as follows:

De Stoop

55. The experts agree that the object of the standard is not stated however they agree the underlying objective or purpose of the standard is to limit development in areas not zoned for residential flat buildings to three storeys in order to ameliorate the potential for amenity impacts on adjoining residential properties and to be in character with residential zones where residential flat development is not permitted.

Nanevski

Within the Nanevski decision, the Judgement [at Para 56] accepted the underlying objectives to the 8 metre height control identified by the applicant [at para 53], as copied below:

53. There are no objectives relating to the 8 metre height development standard in the SEPP, 2004. Mr Burrell looked at the guidelines under cl 31 of the SEPP which relate to infill self care housing. These are not the stated objectives but nonetheless they provide guidance and he sets out what he considers to be the underlying objectives of the standard. That is: to minimise impacts on the privacy and amenity of existing neighbouring dwellings; and to minimise overshadowing of existing dwellings and private open space; to retain neighbour's views and outlooks; to reduce the apparent bulk of development and its impact on neighbouring properties; and provide adequate building separation.

As previously discussed in the report under cl 4.6(3)(a), the Clause 4.6 written request demonstrates that the development is consistent with each of the underlying objectives of the 8 metre building height development standard as identified in De Stoop and Nanevski. All the buildings that exceed the 8 metre height control (Buildings B10, B13, B15, B16 & B17) are limited to 3 storeys in height, substantially setback from the site boundaries, and the variations are so minor in extent that they do not result in amenity impacts on existing neighbouring dwellings.

Therefore, the consent authority can be satisfied that the proposed development is in the public interest because it is consistent with the objectives of the 8 metre ceiling height control.

Objectives of the R2 Zone - cl 4.6(4)(a)(ii)

While the applicant has identified how they consider the development complies with the Objectives of the R2 Low Density zone [at Section 5.3.2 of Appendix 8], this is not relied upon in this assessment in satisfaction of cl 4.6(4)(a)(ii) that requires the consent authority to directly form the opinion that the proposed development will be in the public interest because it is consistent with the objectives of the zone.

The Objectives of the Zone R2 Low Density Residential in the *HLEP* are:

1 Objectives of zone

- *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.*

and discussed in the following:

To provide for the housing needs of the community within a low density residential environment

While the renewal and provision of seniors housing on the campus is appropriate, the assessment is focused on whether the proposal is consistent with the objective of providing this housing within a low density residential environment.

SEPP Seniors includes deemed to comply Floor Space Ratio (FSR) controls of 0.5:1 for Independent Living Units and 1:1 for Residential Aged Care Facilities and Hostels. The *SEPP* does not adopt the same definition of Gross Floor Area or FSR as the Standard instrument. The Planning principle 'relationship of density and residential character' as discussed in *Salanitro-Chafei v Ashfield Council [2005] NSWLEC 366* discusses that the aim of a 0.5:1 FSR control in Seniors Housing is to control bulk where a suburban open character is sought. *SEPP Seniors* defines 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 applicant and Council do not agree what is the "allotment" referred to within *SEPP Seniors*.

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. The applicant has calculated the FSR of the development as 0.432:1 over a site area of 25.7 hectares that includes every lot the proposed work touches. This is an irregular boundary extending

over part of the 44 hectare Anglicare campus. This approach to calculating the deemed to comply FSR control in SEPP Seniors is not agreed for the following reasons:

- The term allotment is undefined within *SEPP Seniors* and only used in relation the definition of floor space ratio.
- 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”, rather than a lot within a conveyancing sense such as a lot in a registered plan of subdivision.
- The Anglicare Castle Hill campus 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 proposed RACF and 7 apartment buildings (9A, 9B, 8, 16, 17, 10, 13) are located within the south-western corner of the Anglicare Campus within the distinct area of Kilvinton Village, extending over an area of 38,590m², as illustrated at Figure 4 below. This allotment is well-defined by existing built and natural features comprising Old Northern Road, Castle Hill Road, Western Road, the northern boundary to the Church and the east-west native vegetation corridor. This is an allotment for the purposes of the SEPP Seniors deemed to comply FSR control where the purpose is to control bulk where a suburban open character is sought.

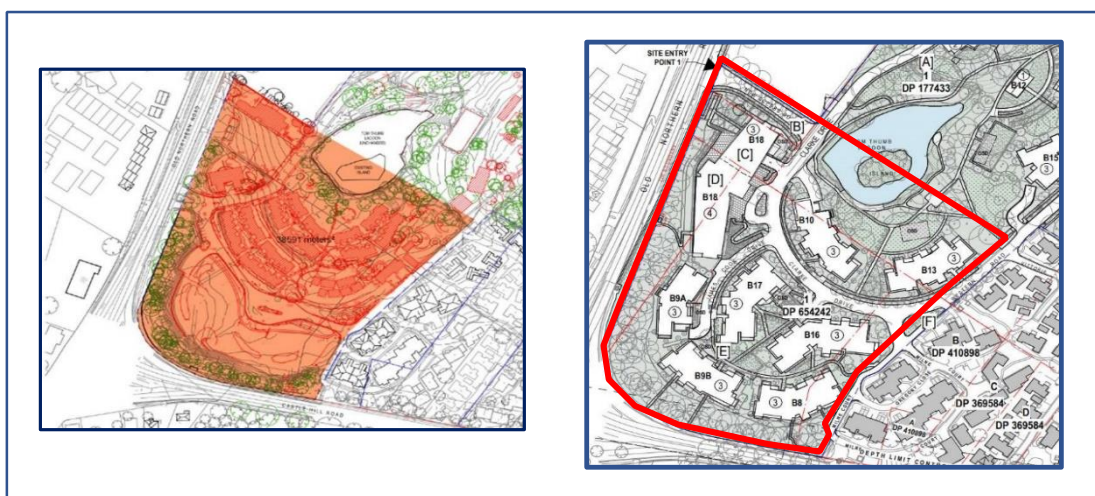


Figure 4: FSR allotment area

The approach of identifying an allotment area for the *SEPP Seniors* FSR calculation using existing built and natural features was adopted by Anglicare and accepted by the Panel for other recent intensive developments, such as the 3.8 hectare Lober Square precinct approved via DA/58/2012. As illustrated in the DA/58/2012 plans below, the Lober square 3.8 hectare allotment was predominately defined by the surrounding ring-road.

The amended plans of September 2020 propose a gross floor area of 26,754m² within the 38,590m² Kilvinton Village allotment. This equates to a deemed to comply FSR of 1:1 for the RACF (8,560m²GFA/ 8,560m²site) and an FSR of 0.606:1 for the 7 apartment buildings (18,194m²GFA/ 30.030m² site).

This Clause 4.6 assessment requires the development to be consistent with the zone objective of providing for housing within a low density residential environment. The Planning principle in Project Developments identifies that the most important contributor to character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping.

- The building bulk visible from Old Northern Road and Castle Hill Road is limited and mitigated by the topographical features of the land and landscaping in the front setbacks;
- The height of the apartment buildings is limited to 3 storeys, consistent with the maximum heights envisaged by SEPP Seniors for low density residential zones. While the RACF is partly 4 storeys, the building complies with the 8m ceiling height control and the relationship of the building to the site boundaries is appropriately managed.
- Adequate setbacks are provided to Old Northern Road, Castle Hill and the internal road network to allow for canopy trees that is consistent with a low density residential environment. This is consistent with the HDCP objective of encouraging high quality development that contributes to the existing or desired future character of the area, with particular emphasis on the integration of buildings with a landscaped setting.

- The carparking associated with the RACF and ILUs is provided within a basement that minimises the visual bulk and maximises the landscape setting. This is significant because SEPP Seniors permits garages at ground level to be excluded from the deemed to comply FSR calculation. The additional GFA of 3,165m² for the ILUS in the Kilvington Village allotment equates to 117 disabled carparking spaces (at 3.2x5.5m per space plus aisle). Given that there are 132 ILUs in the allotment, the total visual bulk above ground is comparable to what is achievable with a compliant FSR of 0.5:1 with above ground parking. Furthermore, the additional floor space does not result in an increase in development intensity as the apartments are mostly large units in excess of the minimums prescribed in the ADG with an average of 137m² of GFA per unit.
- Other villages impacted by the proposal, including Mowll Village and Finders Village, remain consistent with the R2 Zone objective to “provide for housing within a low density residential environment” taking into account the building height, setbacks and extensive landscape setting of the proposed buildings within.

To enable other land uses that provide facilities or services to meet the day to day needs of residents

The provision of facilities on-site that are ancillary and subsumed by the Seniors housing development, such as the café and administration building, is consistent with the zone objective to provide facilities and services to meet the day to day needs of residents.

2.1.3.4 The Clause 4.6 Assessment – 2 Storey height control

Unreasonable or unnecessary - cl 4.6(3)(a) and cl 4.6(4)(a)(i)

The Clause 4.6 written request at Appendix 8 refers to 3 reasons why compliance with the 2 storey height control is unreasonable or unnecessary:

- Wehbe Way 1- the objectives of the 2 storey control are achieved notwithstanding non-compliance with the standard. (6.1)
- Micaul – the design avoids adverse impacts to adjacent residents and will therefore not cause environmental harm (6.1)
- Wehbe Way 5- compliance with the development standard is unreasonable or unnecessary not because the standard is inappropriate to the zoning, but rather because the zoning of the particular land is found to be unreasonable or inappropriate. The current R2 zone is not representative of the form of buildings that have evolved on this site over 60 years. (6.1)

Wehbe Way 1 – Objectives of the 2 storey standard are achieved

The 2 storey height control applies to a building that is adjacent to the boundary of the site. Clause 40(4)(b) of SEPP Seniors contains a notation that explains that the purpose of the 2 storey height control “is to avoid an abrupt change in the scale of development in the streetscape.” The Clause 4.6 submission has adequately demonstrated that compliance with the 2 storey height control is unreasonable and unnecessary as the objectives of the control are achieved for the reasons described in the Clause 4.6 submission in accordance with Way 1 in Wehbe.

Wehbe Way 5 – Inappropriate Zoning of the Land

The applicant advised that:

“The Urban Design Report set out how the character of the site has evolved over many years (this is also summarised in Section 6.2 below). Whilst past developments within the Anglicare village were approved prior to the R2 zoning being applied to the land, they indicate that the current R2 zone (typically characterised by detached housing typologies) is not representative of the form of buildings that have evolved on this site over 60 years. As per ‘way 5’ in Wehbe, the 8 metre and 2 storey development standards (which applies to the R2 zone where residential flat buildings are not permitted) are unreasonable and unnecessary and particularly when the 3 and 4 storey scale buildings are not uncharacteristic of other buildings within the overall village. Further the 3 and 4 storey scale buildings do not give rise to any adverse environmental impacts as demonstrated in the following sections.”

Comment: The applicants arguments provided above under Way 5 in Wehbe are not supported for the following reasons:

- The existing buildings at Kilvinton Village comply with the 8 metre and 2 storey development standards applicable to Seniors Housing within the R2 zone;
- The existing residential density of the village and adjacent villages is low;
- The SEPP anticipates 3 storey buildings setback from the boundary within a landscaped setting in R2 zones;
- The R2 zone promotes the retention of an extensive landscape setting which is a distinctive characteristic of the site;
- Part of the site adjacent to Old Northern Road that includes the RACF has not been previously approved for Seniors Housing;
- As discussed within Wehbe at Para 51, “the dispensing power under SEPP 1 also is not a general planning power to be used as an alternative to the plan making power under Part 3 of the Act to change existing planning provisions.”

Sufficient Environmental Planning Grounds - CL 4.6(3)(B) AND CL 4.6(4)(A)(I)

The Clause 4.6 written request relies on 5 reasons as justification of sufficient environmental planning grounds to contravene the 2 storey height control for the buildings adjacent to Old Northern Road and Castle Hill Road [at 6.2 of Appendix 8], as discussed in the following:

Character [extract - see 6.2 for entire submission]

The applicant advised that:

“The overall Anglicare village is some 46 hectares. It has developed over 60 years and displays a wide variety of building forms, scales and typologies...”

The character of the existing housing (Hunter Terraces) where the development is proposed to be sited, whilst being single storey, is not a low density character. It comprises villa style housing in a terrace/row housing typology with banks for detached carports which is also uncharacteristic of the R2 zone in nearby areas and an urban form not characteristic of a low density residential environment.

Kennedy Associates Architects notes that the Anglican village is (p11) a unique entity, analogous to a suburb, with its own structure, character and function. The R2 zone that has been applied to the site is not representative of the existing character of the Anglicare village which exhibits an entirely different building typology and subdivision pattern to the adjoining R2 zoned land.

Kennedy Associates Architects has considered the proposed building height relationships within the overall village in their Urban Design Report, September 2020. In Section 5.2.1 they observe that 3 to 4 storey built forms can be considered to be an established, expected and accepted part of the built form and character of Anglicare Castle Hill. In their opinion, there is no compelling reason to suggest that the proposed development as a whole and the 3 and 4 storey forms in particular are fundamentally incompatible with the built form character Anglicare Castle Hill."

Comment: The Character argument is not sufficient to demonstrate sufficient environmental planning grounds to vary the 2 storey building height control adjacent to the property boundaries for the following reasons:

- The applicant's argument that "the character of the existing housing (Hunter Terraces) where the development is proposed to be sited, whilst being single storey, is not a low density character" is inconsistent with other arguments in the Clause 4.6 statement such as in the conclusion that *"Notwithstanding that the proposed buildings are not a building typology typically found in a R2 zone, the proposed built form achieves a low density residential environment as a result of large open spaces, large building separations, street trees and generous landscape character."*
- The existing 3 to 4 storey built forms in other villages in the Anglicare Campus are not a reason to abandon the 2 storey height control adjacent to the site boundaries. SEPP Seniors and previous historic versions of this policy anticipates 3 storey buildings setback from the boundary within a landscaped setting in R2 zones.
- The development site extends beyond the existing Anglicare Campus. Part of the site adjacent to Old Northern Road that includes the 3 to 4 storey RACF has never been previously approved for Seniors Housing.

Site Planning Outcomes [extract - see 6.2 for entire submission]

The applicant advised that:

"The design approach of buildings with a 3 and 4 storey scale responds to the site constraints by minimising building footprint to enable buildings to be sited where they minimise impacts to the Blue Gum High Forest, existing trees and the landscape corridor through the site.

The overall site coverage is equivalent to 15% of the site area based on a site area of 78,159m² (refer DA-601). This low percentage of site coverage maximises landscaped area on the site and ensures that existing vegetation is retained and protected where possible. In addition, the precinct around Tom Thumb Lagoon is preserved and enhanced as a major vegetation corridor for the overall village ensuring that the proposed development and its landscape outcome ties in with the landscape character of the overall village. A total landscaped area of 53,021m² is provided. This is considerably more than the 7,760m² required under SEPP Seniors or the Hornsby DCP controls.

These landscape outcomes have been achieved by responding to the site's constraints by consolidating building footprints in 3 storey formats. An alternative option to achieve the same yield would be to reduce building heights of Buildings B8, B9A, B9B, B18 and provide more buildings or larger building footprints, however this would increase the overall site coverage and reduce the landscaped area. It would potentially compromise the quality and scale of the landscape precinct around Tom Thumb lagoon."

Comment: The above argument does not demonstrate sufficient environmental planning grounds to vary the 2 storey building height control adjacent to the property boundaries as:

- The argument above is relating to the development as a whole over an expansive and irregular area;
- The additional floorspace could be located elsewhere in the development area where single storey footprints and extensive driveways are proposed.

Scale Transition

The applicant advised that:

"As noted previously, clause 40(4)(b) of SEPP Seniors contains a notation that explains that the Purpose of the 2 storey height control is to avoid an abrupt change in the scale of development in the streetscape.

The scale relationship reasons discussed in Section 4.1.2 of this variation statement (in relation to the unreasonable and unnecessary argument) are equally applicable to providing the environmental planning grounds for a variation to the two (2) storey height control for Buildings B8, B9A, B9B and B18. The previous arguments have not been repeated but the rationale presented above has been reconsidered in the context of sufficient environmental planning grounds.

The Urban Design Report, September 2020 provides a thorough analysis which demonstrates that the proposed 3 and 4 storey buildings where they are adjacent to a boundary of the site provide for appropriate transitions in height, separation and landscape treatment and collectively this ensures that the proposed 3 and 4 storeys do not create an abrupt change in scale in the streetscape."

Comment: The applicant's argument provided under 'Scale Transition' refers to Section 4.1.2 of the written statement, however this is incorrect and perhaps is intended to refer to Section 6.1 that refers to Section 5.5.3 of the Kennedy Urban Design Report. The reasoning provided at Section 5.5.3 of the Kennedy Urban Design Report is fundamentally that the 3 to 4 storey buildings adjacent to Castle Hill Road and Old Northern Road present as 1 to 2 storeys in height to the public domain because of the landform, solid fencing and landscaped setbacks. In principle this is supported as a sufficient environmental planning ground to vary the 2 storey height control adjacent to the boundary as it relates directly to the height breach. The arguments above should be clarified, and any errors remedied in any amended Clause 4.6 statement.

Apartment Design Guide (ADG) Separation

The applicant's discussion that the proposal complies with the building separation controls within the ADG does not relate to the height breach and is not a sufficient environmental planning ground to vary the 2 storey height control adjacent to the site boundary.

Solar Access

In 'Micaul' and 'Initial Action', the Chief Judge clarified that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. The argument provided under in the Clause 4.6 submission under 'Solar Access' does not in itself demonstrate sufficient environmental planning grounds as it does not comprehensively address a lack of adverse amenity impacts from the variation to the 2 storey height control.

Objectives of the Standard in Question – cl 4.6(4)(a)(ii)

The consent authority must directly form the opinion that the proposed development will be in the public interest because it is consistent with the objectives of the development standard.

The 2 storey height control applies to a building that is adjacent to the boundary of the site. Clause 40(4)(b) of SEPP Seniors contains a notation that explains that the purpose of the 2 storey height control "is to avoid an abrupt change in the scale of development in the streetscape."

As previously discussed, the Clause 4.6 submission has adequately demonstrated that the objectives of the control are achieved. The development is considered to be consistent with the objectives of the height control for the following reasons:

- The 3 to 4 storey buildings adjacent to Castle Hill Road and Old Northern Road avoid an abrupt change in the scale of development in the streetscape as they present as 1 to 2 storeys in height to these boundaries as a consequence of the site's landform, solid fencing and landscaped setbacks; and
- The 3 to 4 storey RACF avoids an abrupt change in the scale of development to the northern side boundary with the adjacent Church due to the stepping of the building height, the substantial side boundary setback and intervening landscaping.

Objectives of the R2 Zone - cl 4.6(4)(a)(ii)

The development is consistent with the objectives of the R2 zone for the reasons previously provided at the discussion of the Clause 4.6 variation to the 8m ceiling height control.

2.1.3.5 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. There is no public benefit in maintaining the development standards as the underlying objectives of the development standard and the objectives of the R2 zone are achieved notwithstanding the variation.

In conclusion, the while the height of the amended proposal is supported in principle, there are technical concerns with the Clause 4.6 submission that are required to be resolved prior to the issuance of a consent. These concerns have been communicated to the applicant.

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 over this highly modified site. Kilvinton Village is being lowered in the order of 2 metres, excluding the proposed basement that lies below the modified ground level. The applicant has advised that the earthworks strategy involves lowering and reshaping the land to keep most of the buildings beneath the 8m ceiling height control under *SEPP Seniors*. This minimises the visibility of the development to Old Northern Road and Castle Hill Road.

The amended application of September 2020 adequately manages the building interface areas around the site to achieve an adequate level of residential amenity, a landscape buffer to Old Northern Road and Castle Hill Road, and a landscaped interface to Milne Court in the east and to the Church in the north. There is no impact on heritage.

Excavation is to be staged to manage truck movements and a Construction Management Plan has been prepared and construction impacts can be addressed via consent conditions. The quality of the soil to be excavated has been addressed and can be appropriately conditioned, as discussed under *SEPP No.55*. The management of stormwater across this modified landscape is supported by Council's Engineers subject to consent conditions.

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 involves **other land at or below the flood planning level** per Clause 6.3(2) of the *HLEP*.

The amended application incorporates an overland flow path from the property boundaries towards Tom Thumb Lagoon and along Clarke Drive that discharges into the existing drainage system to the north-west of the Lagoon adjacent to the neighbouring Church. A number of OSD tanks are provided throughout the development to manage stormwater and an additional weir is proposed in Tom Thumb Lagoon to manage the stormwater during a 100 year ARI storm.

The ground between Building 10 and the Lagoon is higher than the ground floor of Building 10. A landscape berm at RL166.80 is proposed to the north and east of building 10 to protect the building from overland flooding in 100- year ARI storm.

The proposed development will not significantly affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses as these are being left unchanged and the site discharge into Tom Thumb Lagoon and further into Pyes creek is being controlled through OSDs.

The Council's Engineers have not raised concerns regarding flooding, subject to consent conditions.

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

The site is serviced by the following public buses operated by Hills Bus that traverse the Anglicare campus:

Route 632 – Pennant Hills to Rouse Hill via Norwest and Castle Hill

Route 635 -Castle Hill to Beecroft

The bus services operate on Monday to Friday with multiple services satisfying the frequency requirements of Clause 26. These bus services connect the village with the Castle Hill town centre which offers a wide range of services and facilities. The altered road network through the site is been designed to accommodate the public buses. Some of the existing bus stops in Clarke Drive and Western Road will be relocated.

Consent conditions would ensure that suitable access to bus stops is maintained throughout the staged construction.

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

The development is “serviced self-care housing” accordingly 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. Detailed documentation including an urban design assessment has been submitted with the application.

2.2.6 Clause 33 – Neighbourhood Amenity and Streetscape

Clause 33 Required Consideration	Comment
(a) recognise the desirable elements of the location’s current character <i>(or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character)</i> so that new	Achieved. The character of the proposal should consider the both the external streetscape along Old Northern Road and Castle Hill Road and the internal

Clause 33 Required Consideration	Comment
buildings contribute to the quality and identity of the area,	<p>streetscape that comprises a ring road traversed by public buses.</p> <p>The existing character in and around Kilvinton Village is a low-rise built form in a landscaped setting with large canopy trees.</p> <p>The proposal comprises buildings in a landscaped campus with canopy trees extending along the streetscapes to moderate the building bulk. The removal of existing significant trees is limited and offset by new plantings.</p> <p>The building height is predominately 3 storeys as viewed from within the site and 1 to 2 storeys from outside the site which is consistent with the heights envisaged for the R2 zone within SEPP Seniors.</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:	Achieved.
(i) providing building setbacks to reduce bulk and overshadowing, and	The amended application includes adequate setbacks to Old Northern Road, Castle Hill Road and the internal road network to reduce bulk and maintain residential amenity and character.
(ii) using building form and siting that relates to the site's land form, and	While extensive site excavation is proposed, there are no substantial impacts on residential amenity or streetscape that warrant refusal of the application.
(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and	Achieved. Building Heights comply with the underlying objectives of the applicable controls as previously discussed at Clause 4.6.
(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and	NA. No building walls proposed on the boundary.
(d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,	Achieved.

Clause 33 Required Consideration	Comment
(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and	Achieved.
(f) retain, wherever reasonable, major existing trees, and	Achieved. Tree removal is minimised.
(g) be designed so that no building is constructed in a riparian zone.	Achieved.

The Council's Urban Design Consultant has advised in relation to the amended plans that:

"In terms of urban design considerations, the amended proposal demonstrates well considered responses in relation to:

- i Character of the Site and its immediate surroundings;*
- ii Residential amenity in terms of privacy, sunlight, safety and security - together with the correlates of residential territory and social interaction.*

Overall, I consider that the amended plans have addressed concerns that were expressed by contentions which are relevant to urban design quality."

2.2.7 Clause 34 – Visual and Acoustic Privacy

No significant concerns are raised in relation to privacy with the amended plans. Council's Urban Design Consultant has advised in relation to the amended plans that:

In general, the amended plans raise no pronounced concerns regarding privacy:

- i Notwithstanding 'localised' opportunities for 'low-impact' viewing into ground floor dwellings, there are no opportunities for viewing from intensively-occupied public or communal areas: - Although building 13 has an entrance bridge to the lobby on level one, that bridge is shrouded by an architecturally-designed screen which protects units G-01 and G-06; - The entrance to building 10 has been reconfigured as a straight path from the street footpath, which has replaced the previous switch-back ramp.*
- ii Amended landscape sections have been fully-annotated to describe proposed plantings and their screening potential: due to deep soil setbacks in excess of 3m, effective landscaped screening can be provided for 'lower-ground' apartments in buildings 10 and 13.*

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 level of sunlight access to the residential units is satisfactory. Council's Urban Design Consultant has advised in relation to the amended plans that:

"a reasonable proportion of the proposed apartment dwellings would receive satisfactory sunlight... At least three hours of daily sunlight to living areas and private open spaces in 72% of the proposed apartments; - At least two hours of daily sunlight to 84% of the apartments."

Solar access to the bedroom windows of the RACF has been improved in the amended plans by modifications to the floor plans and improved setbacks and landscape treatment.

2.2.9 Clause 36 – Stormwater

Stormwater from the development would be collected and gravity drained to the existing internal drainage system. This requires the relocation of an existing RMS stormwater drainage easement from Castle Hill Road onto the site. No significant concerns are raised in relation to the stormwater drainage system by Council's Engineer, subject to conditions.

However, Transport for NSW do not agree to the relocation of the stormwater drainage easement over the site as discussed at 4.2.1 of this report. If the applicant wishes to contest this matter, the mechanism would appear to be Section 89 of the Conveyancing Act which gives the Supreme Court power to modify existing easements in limited circumstances. Therefore, if the proposed relocation of the stormwater easement was the only remaining issue, then a consent could be issued with a deferred commencement condition requiring the registration of a new drainage easement.

2.2.10 Clause 37 – Crime Prevention

The application is assessed as satisfactory in this regard.

2.2.11 Clause 38 – Accessibility

Plans have been provided showing the accessible paths to and through the development.

2.2.12 Clause 39 – Waste Management

The concerns raised by the Council's Waste Management team can be addressed by consent condition and include the following:

- *No provision for green waste bins has been made. However, most of the bin storage rooms have sufficient space for additional bins, so should a green waste bin service be implemented in the future then there is space to do so. This is acceptable.*
- *The bulky waste storage area for B16 is about 60m from the lifts which is excessive. The bulky waste storage area needs to be relocated closer to the B16 lifts. This is achievable by turning parking space #39 into a bulky waste storage room. This can be conditioned. It is noted that there is an excess of parking spaces for the combined B16 & B17 car park in accordance with both the SEPP and ARV standard parking requirements.*

- The stage 2 works, being the RACF and loading bay, is unclear on whether it includes the RACF bin storage room or just part or even none of it since most of this room is within B9A which is to be constructed in stage 3. The RACF bin storage room is required to be completed prior to the RACF use commencing. This can be conditioned.

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,	Does not comply. Clause 4.6 objection submitted. See discussion at 2.1.3
(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 Seniors* 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. The applicable controls within Schedule 3 are a mandatory requirement that cannot be varied pursuant to Clause 4.6 of the *HLEP*. This could be conditioned.

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

The following provisions are deemed to comply standards, they are not mandatory development controls that require modification via Clause 4.6 of the *HLEP*.

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,	Exceeds Deemed to comply FSR at Kilvinton Village however is supported. 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 (ii) in any other case—a minimum of 30% of the area of the site is to be landscaped,	Complies.
(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	Complies.

Clause 50 Self Contained Unit Deemed to Comply Standards	Comment
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.	
(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,	Complies
(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 SEPP 65 ADG.
(h) parking: if at least the following is provided— (ii) 1 car space for each 5 dwellings for a social housing provider.	Complies

2.2.17 Clause 55 – RACF required to have fire sprinklers

The amended plans demonstrate compliance.

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. Council's Natural Resources Team generally supports the amended proposal, however raise the following minor issues that require additional information prior to the issuance of any consent.

I have noted that the driveway for Building 15, as shown in the Landscape Plan (D08010033, Tree Retention Plan 2 of 2, DA-L-0201), requires significant excavation within the TPZ of T89 which is to be retained. The Arboricultural Report (AIA) by Tree Wise Men (D08934872) only notes that the driveway ramp is within the TPZ but there doesn't appear to be an assessment of the incursion or discussion about how the tree could be retained.

I have reviewed the updated Flora and Fauna (F&F) Assessment and support the proposed replacement planting. I note there is a small discrepancy between the F&F report and the AIA regarding the number of trees to be removed. The F&F lists 116 trees to be removed and the AIA lists 120. Clarity needs to be made as to exactly which trees are proposed for removal and which are to be retained.

The removal of Building 12 Café from within trees to an open area to the north of the lagoon is a good outcome.

2.4 State Environmental Planning Policy Infrastructure 2007 (ISEPP)

2.4.1 Development Adjacent to Railway Corridors

The North-West metro rail corridor is located within a stratum beneath the site parallel to Castle Hill Road. The application was referred to the Railway Authority for concurrence pursuant to Clause 86 and 87 of the ISEPP. On 14 October 2020, the Railway Authority provided concurrence subject to a number of conditions

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. ISEPP includes the following provisions in relation to development with frontage to a classified road:

Clause 101 Development with frontage to classified road

(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

(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.*

Comment: The RMS advised that it does not support the application in its current form due to the impact on Old Northern Road as discussed at 4.2.1 of this report. Appropriate conditions could be affixed in relation to road noise.

2.5 State Environmental Planning Policy 55 Remediation of Land

State Environmental Planning Policy No.55 Remediation of Land (SEPP 55) provides for a statewide planning approach to the remediation of contaminated land. The development involves extensive earthworks. The applicant has submitted a Remediation Action Plan (RAP) that provides a remediation strategy for known areas of soil contamination and asbestos impacted fill. An Unexpected Finds Protocol (UFP) is included in this RAP in case any other areas of contamination are encountered during construction works. Subject to conditions the proposal would be consistent with this Policy.

2.6 Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean

Clause 4 of *SREP No.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. The development is consistent with this policy to conserve and enhance flora and fauna communities, to locate structures where possible in areas which are already cleared or disturbed and to mitigate impacts of development on water quality.

2.7 State Environmental Planning Policy (Vegetation in Non-rural Areas) 2017

An Arboricultural Impact Assessment has been submitted by the application. The AIA has assessed a total of 373 trees and proposes to retain 257 trees (68.9%) and remove 116 trees (31.1%). The Council's Natural Resources Team and Arborist has not raised any significant concerns, other than requiring some additional information as previously noted at 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 as a potential or core Koala habitat. The Council's Natural Resources team has not raised any concerns regarding habitat loss.

It is noted that *State Environmental Planning Policy (Koala Habitat Protection) 2019* supersedes SEPP No.11 and commenced on 1 March 2020. Pursuant to the savings provisions at Clause 15 of the 2019 SEPP a development application made, but not finally determined, before the commencement of this Policy in relation to land to which this Policy applies must be determined as if this Policy had not commenced.

2.9 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

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 No. 65 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	Yes
<p>Responding to context involves identifying the desirable elements of an area's existing or future character. As identified within the Jackson Teece Statement, <i>"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 east."</i></p> <p>The proposed development comprises two precincts, being the south precinct and the north east precinct, described by Jackson Teece as follows:</p> <p><i>The south precinct is denser in nature and the buildings are three stories with part of the RAC being four stories. These buildings are barely visible from the external streets but internally a new character is created. In this precinct the existing trees adjacent along the boundaries are mostly retained with the landscaping designed so trees line the new streets along Clarke Drive, James Cook Drive and the entry road.</i></p> <p><i>The north east precinct is where the majority of existing trees are located and mostly retained. The remnant Blue Gum High Forest (BGHF) place high importance to the amenity landscaping of the area and this is reinforced with additional canopy trees and evolving the understory plantings, that can mature in time. Within this precinct the buildings are smaller in scale and footprint with only one basement. This also relates to the buildings around its perimeter which are often single dwellings</i></p> <p>Comment: Previous concerns raised by Council related to the proposed character of the southern precinct as it did not respond to the existing character at Kilvinton Village nor respond to the future character anticipated for Seniors developments within an R2 low density zone. The Planning principle in Project Developments identifies that the most important contributor to character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping. With the removal of one 4 storey ILU building from Kilvinton Village and the inclusion of a landscaped streetscape, the character of the southern precinct is supported and consistent with the objectives of the R2 zone.</p>	

Principle	Compliance
2. Built Form and Scale	Yes
<p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Comment: As previously discussed, the development is consistent with the built form and scale anticipated for Seniors developments within an R2 low density zone.</p>	
3. Density	Yes
<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Comment: A high level of amenity is achieved by the proposal.</p> <p>Appropriate densities are consistent with the area's projected population and can be sustained by existing or proposed infrastructure.</p> <p>Comment: The density at Kilvinton Village exceeds the deemed to comply control of 0.5:1 for the 132 apartments at Kilvinton Village by 3,165m². This density is consistent with the potential population as 98% of the units are 2 and 3 bed units that are mostly 15m² + larger than the minimum unit areas prescribed in the ADG. Furthermore, the overall density of the 44 hectare Anglicare campus does not exceed 0.5:1.</p>	
4. Sustainability	Yes
<p>Comment: The applicant has submitted a BASIX Certificate for the proposed development. In achieving the required BASIX 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	Yes
<p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity</p> <p>Comment: The buildings and landscaping have been cohesively designed to maximise the amenity for residents and provide a landscaped setting consistent with the desired future character of the area. Existing significant trees are largely retained and augmented with new plantings and the existing green network is retained.</p>	
6. Amenity	Yes
<p>Comment: The proposal achieves an adequate sunlight access and privacy to existing and proposed residents. 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>	

Principle	Compliance
7. Safety and Security	Yes
<p>Comment: 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>62m² for 1-bed units (3 units or 2% of mix)</p> <p>90 to 107m² for 2-bed units (87 units or 60.5% of mix)</p> <p>106 to 137m² for 3-bed units (54 units or 37.5% of mix)</p> <p>The applicant advises that Anglicare's research indicates there is little demand in this area for smaller, one-bed apartments with most future residents downsizing 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. There are a range of housing options catering for a diversity of household budgets available within the broader campus.</p>	
9. Aesthetics	Yes
<p>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 Apartment Design Code.</p>	

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	Buildings generally separated by 12metres	Habitable rooms 12m – up to 4 storey Non-habitable rooms: 6m – up to 4 storey	Yes
Unit Sizes	Studio – NA 1 br – 62m 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	Mostly min 2.4m (ex one 2-bed unit at 2.1m).	1-2 bed - 2m 3 bed – 2.4m	Yes
Minimum Ceiling Height	2.7m	2.7m	Yes
Total Storage Area	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	Yes
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 zone pursuant to *HLEP* and therefore the built form controls within Part 2 of the DCP 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 7.11 Contributions Plan 2020-2030 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 retains major existing trees. The Arboricultural Impact Assessment has assessed a total of 373 trees and proposes to retain 257 trees (68.9%) and **remove 116 trees** (31.1%). Within the development area 148 trees are BGHF species, of which 131 trees are to be retained and 27 BGHF species are to be removed. The majority (20) of the 27 BGHF species to be removed are recent plantings in the south-eastern corner adjacent to Milne Court. The seven remaining BGHF trees to be removed are:

Tree No.	Name	Height	Location	Applicant Arborist Retention Value
24	Native Daphne	9m	Villa 21A	D
92	Sydney Blue Gum	11m	Building 15	D
93	Sydney Blue Gum	15m	Building 15	B
126	Illawarra Flame Tree	10m	Building 16	B
131	Sydney Blue Gum	22m	Pathway to south of Lagoon	dead
293	Rough Barked Angophora	22m	Villa 22B	A
305	Sydney Blue Gum	12m	Amphitheatre pathway	C

The trees to be removed are offset by extensive plantings proposed through the area around the themes of Blue Gum High Forest (BGHF) clusters, legacy parklands, Tom Thumb Lagoon, streetscape planting and amenity planting. This includes a mix of **324 new trees** incorporating 147 BGHF feature trees and 65 exotic street trees. The proposed street tree *Zelkova serrata* “Green Vase” would provide a 10-15m tall deciduous tree canopy, extending along the main entry road from Old Northern Road and then continuing along Clarke Drive and Western Road within the retirement village.

Council's Natural Resources Team and Arborist have identified some discrepancies in the documentation as previously noted at Section 2.3 of this report.

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 that currently discharges on the site. The RMS objects to the relocation of the easement. In relation to the relocation of the easement the Council's Engineer has advised the following:

1. *The existing RMS easement falls short of the lagoon.*
2. *The proposed system also falls short of the lagoon.*
3. *The proposed easement drains into the proposed drainage system within the internal roads. This could be problematical. i.e. normally a private system drains into a public system. This proposal is the other way around. The public system should not incorporate a private system and the RMS pipeline should be completely separate with an easement from Old Northern Rd to Tom Thumb Lagoon and the RMS should be required to maintain this system. However, I do not see a problem with the internal drainage system draining into the RMS system as this is a normal situation i.e. houses draining into the road.*
4. *The applicant has supplied a long section of the proposed pipeline showing the HGL (hydraulic grade line). Which shows that the design will work hydraulically.*
5. *The pipeline has been designed for a 1 in 20 ARI which is in accordance with normal engineering design requirements.*
6. *A deferred consent could require the applicant to negotiate with the RMS with respect to the easement*

The RMS comments that additional maintenance would be required by a relocated easement is correct.

If the proposed relocation of the stormwater easement was the only remaining issue, then a consent could be issued with a deferred commencement condition requiring the registration of a new drainage easement.

2.15 Built Environment

2.15.1 Built Form

The proposed built form is compatible with the area.

2.15.2 Traffic

A traffic and parking assessment has been submitted with the proposal. The Council's Traffic Engineers have not raised any concerns with the proposal. The RMS have raised concerns that the impact of the road widening works on 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 adequately addressed the relevant provisions within the *HLEP 2013*.

3.2 Railway Corridor

Part of the land is traversed by the north-west railway corridor. The application has been referred to the Railway Authority that has provided concurrence subject to consent conditions.

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 this period, Council received 2 submissions that raised concerns regarding the character of the development, impact on vehicular and pedestrian access to the Church, acoustic impacts, impact on overland flow and removal of existing carparking.

The amended application has placed on public exhibition between 1 October and 22 October 2020. During this period Council received 1 submission from a resident located 400m to the north of the Kilvinton village. Concerns were raised regarding impacts on privacy. The proposed building separation to the property boundaries is well in excess of the minimums prescribed within the SEPP No.65 ADG. This is not a reason for refusal

4.2 Public Agencies

The amended 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:

The works at Old Northern Road also require approval under the *Road Acts 1993*. Section 138(2) of the Roads Act relevantly provides that ‘A consent may not be given with respect to a classified road except with the concurrence of RMS.’ Transport for NSW has advised via letter dated 20 October 2020 that it does not provide concurrence under Section 138 of the *Roads Act* for the following reasons:

TfNSW has reviewed the submitted information and does not support this application in its current form and provides the following comments to Council for consideration:

1. *TfNSW has previously acquired an easement for drainage over the subject property as shown by the brown colour on the attached Aerial - "X", defined by DP654242. It is also noted that the Dealing Q736772 indicated the relocation of the drainage easement to the current position in DP585390. The proposed relocation of drainage easement in the application will result in a convoluted and long pipe system, which will result in more assets to TfNSW for maintenance. It should be noted that an easement is required for the whole pipe system, from where the pipe crosses into the subject property to the outlet. This proposal only shows an easement from the road to Milne Court, meaning the rest of the system is technically in private property which will preclude TfNSW from accessing to the system for maintenance. As such, TfNSW requires that the easement is left in its current location or relocated to the most direct route as possible from the road to Tom Thumb Lagoon.*

2. *It is understood that the Old Northern Road widening, to accommodate the proposed right turn lane and the central median, will be constructed on the road reserve along Old Northern Road, which are not owned by the Proponent. However, there is no such an agreement allowing the Proponent to do construction along the frontage of other properties, which are not under the Proponent's ownership. The Proponent is to obtain owner's consent for the submission of the development application. TfNSW requires 3.5 metres of land within the private property to be dedicated as public road along the length of the right turn lane and the central median, at the full cost to the developer. As such, the civil design plan should be updated and meet the following requirements:*
 - *The design of the proposed access driveway and associated infrastructure upgrade along Old Northern Road needs to be on their own set of plans rather than integrated into the whole site proposal.*
 - *The existing and proposed road boundaries should be clearly displayed on the plans, and land proposed to be dedicated as road reserve hatched and noted on the plans.*
 - *Cross sections or long sections should be provided.*
 - *A minimum of a 3.5m wide nature strip is to be provided at 2-3% crossfall sloping towards the road along the entire frontage of where the right turn bay works are proposed. Providing a verge followed by 3:1 batters to contain the works within the road reserve will not be accepted. If a retaining wall is required to provide the footway graded at the correct crossfall, then the wall should be provided on private property and maintenance carried out by the property owner.*
 - *A concrete footpath is to be provided along the entire frontage of where the right turn bay and central median works are proposed, to match the width of the existing path as a minimum.*
 - *The kerbside lane proposed to be reconstructed should be a minimum of 3.5m wide, except at the tie-ins where it will taper to match existing. The 3.2m wide right lane is acceptable.*
 - *The proposed right turn bay appears to sit on existing pavement. As the road is crowned, the crossfall of the proposed right turn bay will be towards the new median. A median drainage may be required, subject to the further concept design.*

- *The existing drainage line under the existing kerb cannot be maintained in its current location, as it would be sitting underneath the proposed travel lanes. This drainage line should be demolished and a new line under the proposed kerb line constructed.*
- *A sight distance analysis should be undertaken for the proposed access driveway and demonstrates that sight distance are satisfactory with the requirements set out in Austroads and Australian Standards.*
- *W Beam is no longer a TfNSW accepted safety barrier product. Either an accepted product needs to be nominated on the plans or use the generic 'Steel rail safety barrier' terminology.*

Comment: The RMS advised it requires 3.5 metres of land to be dedicated to the RMS along the length of the road works. The proposed road widening is approximately 165 metres in length adjacent to the site, and 100m in length adjacent to the neighbouring Anglican Church property. The RMS concurrence requirement to dedicate land and relocate retaining walls outside of the road corridor is unable to be conditioned as it requires owners consent from the adjacent Church property and will impact on the proposed development and the landscaped setting along Old Northern Road.

4.2.2 RailCorp

The application was referred to the Railcorp for advice as the north-west rail corridor traverses the site and has provided concurrence subject to conditions.

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 built form of the development is acceptable however there is a significant concern regarding the impact of the proposed turning bay at Old Northern Road. It is not in the public interest to construct a development that impacts on the existing or future capacity of Old Northern Road.

CONCLUSION

The renewal and continued use of the site for Seniors Housing has planning merit and the scale of the modified application is now in keeping with the desired future character of the locality informed by the sites R2 Low Density Residential zoning.

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. The applicant provided no response, and rather lodged a deemed refusal appeal with the Land and Environment Court in October 2019. In response to the Council's Statement of Facts and Contentions and S34 discussion, the applicant submitted an amended application to Council in September 2020. The primary outstanding issue relates to roadworks at Old Northern Road.

The purpose of this report is to enable the Panel to consider the proposal the subject of Court Proceedings No. 339336 of 2019. It is recommended that the proposal be refused in accordance with the reasons detailed in 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.

SCHEDULE 1

1. The development proposal has failed to demonstrate compliance with the requirements of the NSW Roads and Maritime Service (RMS) in that the development impacts on Old Northern Road, taking into account the matters raised by the NSW Roads and Maritime Service and the relocated RMS drainage easement from Castle Hill Road results in a convoluted pipe system with problematic maintenance.
2. 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) Does not adequately demonstrate there are sufficient environmental planning grounds to justify contravening the development standard; and
 - b) Accordingly, has not adequately addressed the matters required to be demonstrated by subclause (3) of clause 4.6 of the *Hornsby Local Environmental Plan 2013*.
3. 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) Includes erroneous arguments to demonstrate that compliance with the development standard is unreasonable and unnecessary;
 - b) Does not adequately demonstrate there are sufficient environmental planning grounds to justify contravening the development standard; and
 - c) Accordingly has not adequately addressed the matters required to be demonstrated by subclause (3) of clause 4.6 of the *Hornsby Local Environmental Plan 2013*.
4. Inadequate Information has been provided to ensure the legibility and finality of any approval in relation to arboricultural impacts on Tree T89 and there is a discrepancy between the Flora and Fauna Assessment and the Arboricultural Report regarding the number of trees proposed to be removed.