

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-358
DA Number	134/2022
LGA	Lane Cove Council
Proposed Development	<p>Seniors Housing, comprising:</p> <ul style="list-style-type: none"> • Demolition of the seven (7) existing buildings on the site containing existing 52 aged care units and removal of vegetation as necessary. • Construction of two buildings (Building A on Lot 120 and Building B on Lot 51) of 6 storeys and 4 storeys in height respectively containing: <ul style="list-style-type: none"> - 52 Independent Living Apartments - Associated facilities (i.e. ground floor lobby and reception area; sales office; resident kitchen, café and undercover barbeque area; outdoor communal, outdoor open space areas - Parking for 53 vehicles in a single basement level
Street Address	40A Cope Street Lane Cove
Applicant/Owner	Retire Australia (Lane Cove) Pty Ltd - Applicant and land owner
Date of DA lodgement	DA lodged: 28 October 2022
Number of Submissions	92 unique submissions received
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	The total cost of the development is \$51,250,576.00
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Housing) 2021 • State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • Lane Cove Local Environmental Plan 2009 • Lane Cove Development Control Plan 2009
List all documents submitted with this report for the Panel's consideration	<p>Attachment 1 – Draft Reasons for Refusal</p> <p>Attachment 2 – Architectural Plans</p> <p>Attachment 3- Statement of Environmental Effects</p> <p>Attachment 4 –Applicant's Housing SEPP Compliance Table</p> <p>Attachment 5 – Applicant's ADG Compliance Table</p> <p>Attachment 6 – Plan showing Proposed Changes to Caroline Chisolm Lane</p> <p>Attachment 7 – Clause 4.6 Submission for Building Height Standard</p> <p>Attachment 8 – Clause 4.6 Submission for FSR Standard</p> <p>Attachment 9 – Heritage Impact Statement</p> <p>Attachment 10 – Traffic Report and Response to RFI</p> <p>Attachment 11 – Swept Path Analysis</p>

Report prepared by	Robert Montgomery, Principal Montgomery Planning Solutions (Independent Consultant)
Report date	16 August 2023

Summary of s4.15 matters**Yes**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Legislative clauses requiring consent authority satisfaction**Yes**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards**Yes**

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? Amended for revised plans.

Special Infrastructure Contributions**Not Applicable**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

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

Conditions

The application is recommended for refusal

N/A

This Report was prepared by Robert Montgomery, Principal, Montgomery Planning Solutions.

I confirm that I have no association with the applicant or their professional consultants. Also, I do not carry out any private consultancy work within the Lane Cove local government area.

I am an expert member of the Lane Cove Local Planning Panel. This role does not present any conflict of interest.

I hereby state that I have no conflict of interest in the preparation of this Assessment Report.



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August 2023

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1. Executive Summary

Montgomery Planning Solutions has been engaged by Lane Cove Council to provide an independent assessment of Development Application No. 134/2022.

The development comprises:

- Demolition of existing buildings, which previously provided 52 aged care units;
- Removal of vegetation as necessary.
- Roadworks in Caroline Chisholm Lane to widen the carriageway;
- Construction of two (2) buildings (Building A on lot 120 and Building B on lot 51) of six (6) and four (4) storeys containing 52 independent living units (ILAs) with the following bedroom mix:
 - 8 x one-bedroom apartments;
 - 35 x two-bedroom apartments; and
 - 9 x three-bedroom apartments.
- lower ground floor gym, treatment room and associated amenities, fire serves and pump room;
- ground floor lobby and reception area; sales office; resident kitchen, café and undercover barbeque area; outdoor communal open space area; and amenities, fire room and covered porte-cochere;
- library, lounge and salon on a mezzanine between ground floor and level 1;
- communal open space area on the podium between the buildings on level 1;
- communal open space on the top floor of both buildings.

The main issues for this assessment are:

- Whether the bonus 3.8m height provided in clause 87 (2)(c) of State Environmental Planning Policy (Housing) 2021 applies to the development.
- Whether the clause 4.6 request for exception from the FSR development standard is acceptable.
- Whether the clause 4.6 request for exception to the Building Height standard is acceptable.
- Whether the potential impacts on the amenity of surrounding residents during construction are acceptable.
- Whether the potential impacts in terms of solar access to dwellings adjoining to the south are acceptable.
- Whether Caroline Chisholm Lane can provide suitable access to the site for residents and service vehicles.
- Whether the proposal to demolish the heritage listed stone wall along the Burns Bay Road frontage for construction access and subsequent rebuilding is reasonable.
- Whether the bulk and scale of the proposed development is acceptable in terms of its relationship to adjoining land and the constraints of the site.
- Whether the proposal represents an overdevelopment of the site.
- A significant number of objections from members of the community.

The following table summarises the recommendations in relation to the relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act, 1979*.

Table 1: Summary of Relevant Matters for Consideration and Legislative Requirements

Provisions	Matters for consideration	Comment	Recommendation
State Environmental Planning Policy (Housing) 2021- Chapter 3 Part 5 Housing for seniors and people with a disability	Definitions Permissibility Development standards Site requirements Design requirements and principles Proximity to bushfire prone land.	The proposal is defined as “in-fill self-care housing” Access report submitted which identifies items which compliant and items which are capable of compliance. Compliance table submitted.	Matters relating to heritage impact, tree removal and accessibility are not well resolved and are unsatisfactory.
State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development	Consent authority must consider the design quality of the development in accordance with the design quality principles, and the Apartment Design Guide.	A compliance report was prepared by the applicant's architect. The report indicates that the proposal is satisfactory in terms of the nine principles, being Context, Built Form & Scale, Density, Sustainability, Landscape, Amenity, Safety, Housing Diversity & Social Interaction and Aesthetics.	The development is not consistent with the design principles of the SEPP and a number of ADG standards are not met.
State Environmental Planning Policy (Resilience and Hazards) 2021	Consent authority must be satisfied that the land is suitable for the proposed development, either in its contaminated state or following remediation.	Preliminary and Detailed Environmental Site Assessments revealed that there are contaminants within imported fill. A RAP is provided which recommends excavation and disposal of contaminated soil at a licensed facility.	It is considered that the Panel can be satisfied in relation to the provisions of the SEPP.
State Environmental Planning Policy (Transport and Infrastructure) 2021	The development is not “traffic generating” development and therefore referral was not required to Transport for NSW	The applicant amended the DA to provide heavy construction vehicle access to Burns Bay Road. Also, Caroline Chisolm Lane (as the only access to the development on completion) is considered unsatisfactory.	The development is not consistent with the requirements of the SEPP.

Provisions	Matters for consideration	Comment	Recommendation
State Environmental Planning Policy	The proposal is defined as regionally	The Sydney North Planning Panel is the consent authority.	N/A

(Planning Systems) 2021	significant development		
State Environmental Planning Policy (Biodiversity and Conservation) 2021	The site is highly modified, with no threatened species.	The proposal does not trigger the requirements of the SEPP or the Biodiversity Conservation Act 2016.	The Panel can be satisfied in relation to this SEPP.
Lane Cove LEP 2009	CI 4.3 Height of buildings CI 4.4 FSR CI 4.6 Exceptions to development standards CI 5.10 Heritage Conservation	Non compliance with building height and FSR standards is not supported.	It is recommended that the Clause 4.6 requests be denied. The impact on the heritage listed stone wall is unacceptable.
Lane Cove DCP 2010	Objectives and numerical requirements	Proposal presents several non-compliant aspects.	Non-compliances are not supported.
Likely Impacts	Refer to Section 5.5 of report	It is considered that likely impacts are unacceptable.	The development will have unacceptable impacts
Suitability of the Site	Refer to Section 5.6 of the report	It is considered that the site is unsuitable for the scale of development proposed.	The site is unsuitable.
Submissions Received	92 unique submissions received	Submissions are reviewed in Section 5.7 of this report	N/A
Public Interest	Whether approval is in the public interest	It is considered that approval of the development as proposed would not be in the public interest.	Not acceptable

The application was notified to surrounding residents from 31 October to 30 November 2022, including a 14-day extension. 99 submissions were received, comprising 98 objections and one submission supporting the proposal.

It is considered that the site is impacted by several constraints which are not acknowledged in the overall design of the site or in the resultant unacceptable bulk and scale of the buildings.

The development also fails to comply with numerous development standards set out in the State Environmental Planning Policy (Housing) 2021, State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development, the Apartment Design Guide and Lane Cove Local Environmental Plan 2009.

The application is therefore recommended for refusal for the reasons listed in Attachment 1.

2. Site and Surroundings

The site is located on the eastern side of Burns Bay Road and comprises two parcels (Lot 120 DP613223 & Lot 51 DP862728) with a total area of 4,995.6m². The site is rectangular in shape, with frontages of 36.5m to Burns Bay Road and Caroline Chisolm Lane.

The site slopes gently from the eastern boundary down to the west, where it meets a short, steep embankment adjacent to Burns Bay Road. The site currently contains 6 vacant two storey buildings and 1 vacant one storey building, which comprised the former Caroline Chisolm Retirement Village. All buildings are proposed to be demolished.

A number of mature trees, including a row of brush box trees and isolated ornamental trees will be removed. The only tree proposed for retention is a Bull Bay Magnolia tree located adjacent to the northern boundary.

The site contains an historic sandstone garden wall along the western frontage to Burns Bay Road and partly along the northern and southern boundaries. The wall is identified as an item of local heritage significance. This wall is proposed to be demolished to allow construction traffic to enter and exit the site from Burns Bay Road and rebuilt following the main construction on site.

The site also contains the historic residence, Walhala, a two storey dwelling constructed in 1893, which was converted into self-contained flats as part of the former retirement village. This building is not listed as a heritage item as it was considered to have substantially lost its integrity and significance as a result of multiple alterations during the 1960's to 1980's. It is proposed to demolish this building.

The site is both burdened by and benefits from a number of easements and rights of carriageway.

Figure 1: Satellite Image. Source NSW SIX Maps



Access to the site is via Caroline Chisolm Lane, which is a public laneway with a carriageway width of 4.2m and overall width of 6.095m. The lane provides vehicular access to the residential flat buildings adjoining the southern boundary of the site and to the residential flat buildings adjoining the eastern side of the lane.

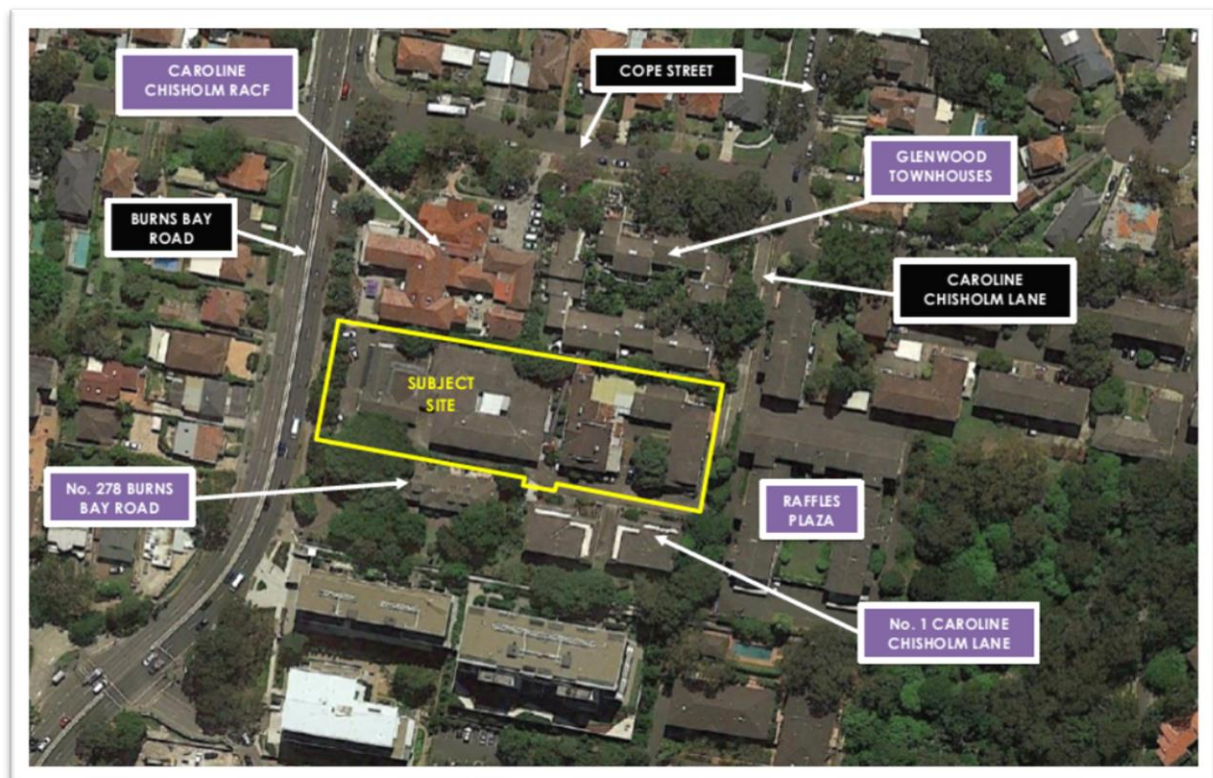
Burns Bay Road is a state road, which is controlled by Transport for NSW. Access to the site from this road is not permitted.

Figure 2: Images of the site



Figure 3: Caroline Chisolm Lane



Figure 4: Burns Bay Road Frontage Source: Google Earth**Figure 5: Site & Surrounds.** Source: Tim Shelley Planning, SEE, September, 2022.

Land adjoining to the north comprises the Caroline Chisolm Nursing Home and a town house development known as Glenwood. A residential flat development, known as Raffles Plaza, adjoins Caroline Chisolm Lane to the east. Two residential flat developments adjoin the southern boundary of the land.

Figure 6: “Glenwood” Townhouses – Cope Street

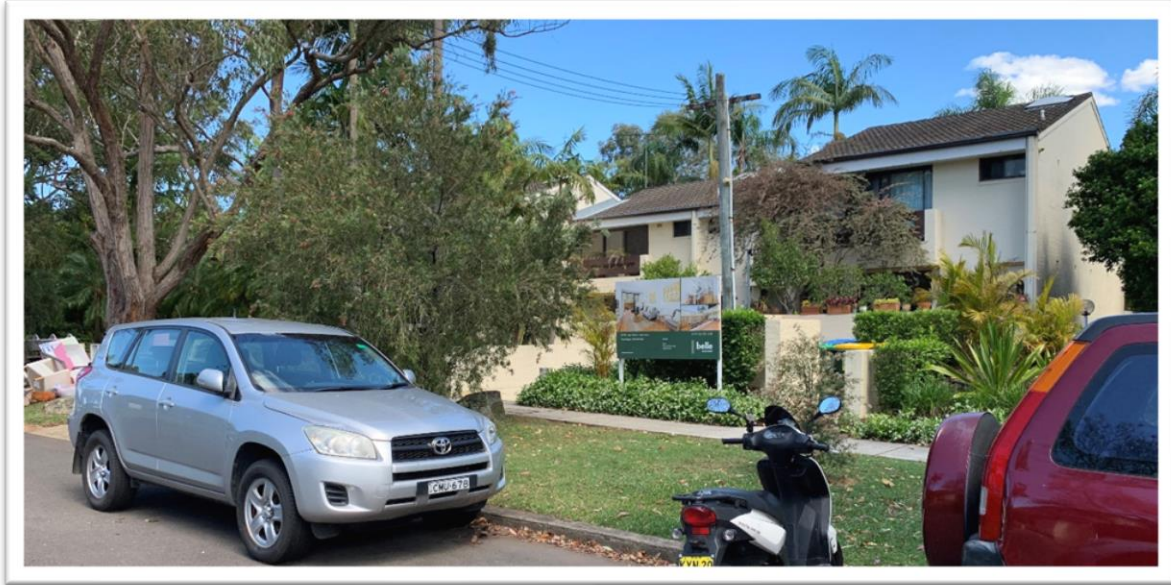


Figure 7: Caroline Chisolm Nursing Home

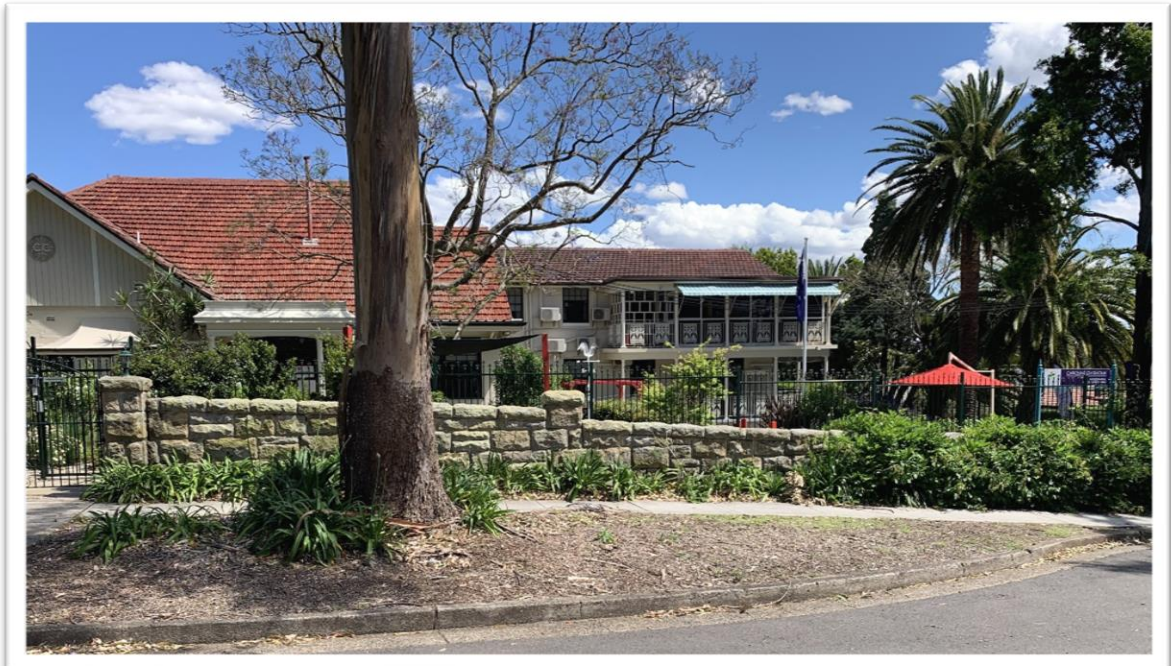


Figure 8: Residential development adjoining to south

3. Proposed Development

The development comprises:

- Demolition of existing buildings, which previously provided 52 aged care units;
- Removal of vegetation as necessary.
- Roadworks in Caroline Chisholm Lane to widen the carriageway;
- Construction of two (2) buildings (Building A on lot 120 and Building B on lot 51) of six (6) and four (4) storeys containing 52 independent living units (ILAs) with the following bedroom mix:
 - 8 x one-bedroom apartments;
 - 35 x two-bedroom apartments; and
 - 9 x three-bedroom apartments.
- lower ground floor gym, treatment room and associated amenities, and fire serves and pump room;
- ground floor lobby and reception area; sales office; resident kitchen, café and undercover barbeque area; outdoor communal outdoor open space area; and amenities, fire room and covered porte-cochere;
- library, lounge and salon on a mezzanine between ground floor and level 1;
- communal open space area on the podium between the buildings;
- communal open space on the top floor of both buildings;
- basement containing 53 car parking spaces, parking for 8 mobility scooters, waste rooms, switch rooms and a car wash bay.

The applicant proposes to demolish the heritage wall along the Burns Bay Road frontage to allow heavy vehicle access to the site during construction. The applicant intends to reinstate this wall after construction, leaving a gap of 8.5m for an electricity substation.

The proposal is designed to present as two separate buildings, joined by a podium from level 2 of Building A to level 1 of Building B. The westernmost building on Lot 120 (Building A) is six (6) storeys, while the easternmost building on Lot 51 (Building B) is four (4) storeys. The podium which joins the building provides some 616m² of communal open space, comprising a large level space with planter boxes.

Figure 9: Southern elevation. Source: Architectural plans

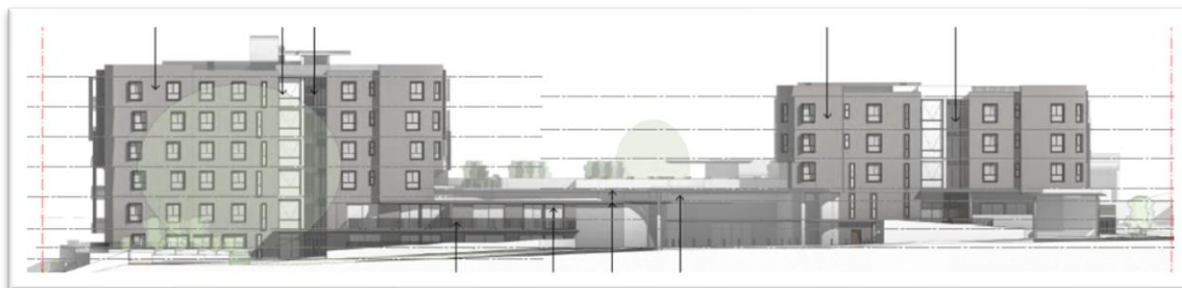
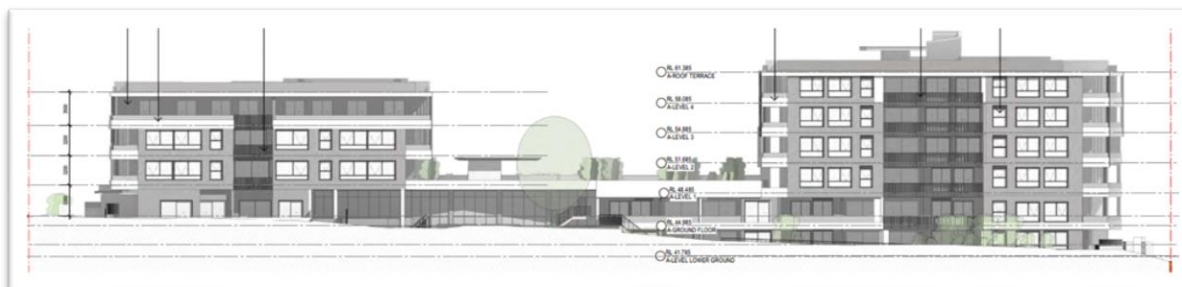


Figure 10: Northern Elevation. Source: Architectural Plans



4. Section 4.15 Matters for Consideration

5.1 Environmental Planning Instruments

5.1.1 State Environmental Planning Policy (Housing) 2021

Initially, the applicant obtained a Site Compliance Certificate (SCC) for a vertical village under the former State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The SCC has since expired, and this application is made under the provisions of State Environmental Planning Policy (Housing) 2021 (The Housing SEPP).

The relevant provisions are contained within Chapter 3, Part 5 of the Housing SEPP. The following table summarises the relevant clauses, with commentary in respect of the proposal.

Table 2: Housing SEPP Relevant Clauses Summary

Clause	Requirements	Comments
79	Land to which Part applies	The land is zoned R4 High Density Residential, which is included in Clause 79(e)
81	Development for the purposes of seniors housing may be carried out with development consent.	The development is permissible with consent.
82	Contains definitions for GFA, hostel, in-fill self-care housing, prescribed zone, seniors and serviced self-care housing	The proposal satisfies the definition of in-fill self-care housing: “in-fill self-care housing means seniors housing consisting of at least

		2 independent living units and at which none of the following services are provided on the site— (a) meals, (b) cleaning services, (c) personal care, (d) nursing care.”
84	Required minimum standards: Min site area – 1,000m ² Min frontage 20m at bldg line	Site area: 4,995.6m ² Frontage: 36.5m
87	Additional floor space ratios and height available for sites of at least 1,500m ² on land where a residential flat building is permitted under another EPI.	The subject development seeks to benefit from this clause, with a bonus of an additional 15% FSR and a building height up to 3.8m above the maximum permissible building height. It is noted that the availability of these bonuses is reliant on acceptance of written submissions under Clause 4.6 of Lane Cove LEP 2009 seeking contravention of FSR and height standards.
88	Restriction on occupants to seniors or people with a disability, people who live in the same household as above and staff employed to assist in administration.	If approved, it is usual practice to apply an operational condition of consent.
93	<p>(1) Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services—</p> <p>(a) by a transport service that complies with subsection (2), or</p> <p>(b) on-site.</p> <p>(2) The transport service must—</p> <p>(a) take the residents to a place that has adequate access to facilities and services, and</p> <p>(b) for development on land within the Greater Sydney region—</p> <p>(i) not be an on-demand booking service for the transport of passengers for a fare, and</p> <p>(ii) be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day, and</p> <p>(c) for development on land that is not within the Greater Sydney region—be available both to and from the</p>	<p>The site is located close to a range of retail, community and recreational facilities. Distances are quoted by the applicant as:</p> <ul style="list-style-type: none"> • 400m to Lane Cove West shopping centre; • Community and recreation hub some 150m to the south off Waterview Drive; • Burns Bay Reserve is located to the west of the community hub; • Some services will be available on site; • A “village bus” will provide regular services <p>There are four bus stops within 300m of the site which are serviced by four bus routes.</p> <p>Each of the bus routes provide services every 20 minutes, 30 minutes or hourly, depending on time of day and operate on Saturdays and Sundays.</p>

	<p>site during daylight hours at least once each weekday.</p> <p>(3) For the purposes of subsections (1) and (2), access is adequate if—</p> <p>(a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and</p> <p>(b) the distance is accessible by means of a suitable access pathway, and</p> <p>(c) the gradient along the pathway complies with subsection (4)(c).</p> <p>(4) In subsection (3)—</p> <p>(a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and</p> <p>(b) the distance is to be measured by reference to the length of the pathway, and</p> <p>(c) the overall average gradient must be not more than 1:14 and the gradients along the pathway must be not more than—</p> <p>(i) 1:12 for a maximum length of 15m at a time, or</p> <p>(ii) 1:10 for a maximum length of 5m at a time, or</p> <p>(iii) 1:8 for a maximum length of 1.5m at a time.</p> <p>(5) In this section—</p> <p>facilities and services means—</p> <p>(a) shops and other retail and commercial services that residents may reasonably require, and</p> <p>(b) community services and recreation facilities, and</p> <p>(c) the practice of a general medical practitioner.</p>	<p>The applicant has demonstrated that a “suitable access pathway” is available from the building to the nearby bus stops, which provide access to these services and facilities.</p>
95	<p>The consent authority must be satisfied that the development will be connected to a reticulated water system and have adequate facilities for disposal of sewage</p>	<p>The site is serviced by Sydney Water. Any approval would be subject to meeting the requirements of Sydney Water.</p>
96	<p>In determining a development application for development under this Part on land near bush fire prone land, the consent authority must—</p> <p>(a) consult with the NSW Rural Fire Service and consider its comments, and</p>	<p>Although the land is not identified as bushfire prone land, it is located some 37m to the east and some 126m to the west of the site is identified as bushfire prone land.</p>

	<p>(b) consider the following including—</p> <p>(i) the location of the development,</p> <p>(ii) the means of access to and egress from the location,</p> <p>(iii) the size of the existing population within the area,</p> <p>(iv) age groups within the population and the number of persons within the age groups,</p> <p>(v) the number of hospitals and other facilities providing care to the residents of the facilities within the area, and the number of beds within the hospitals and facilities,</p> <p>(vi) the number of schools within the area and the number of students at the schools,</p> <p>(vii) existing seniors housing within the area,</p> <p>(viii) the road network within the area and the capacity of the road network to cater for traffic to and from existing development if there were a need to evacuate persons from the area in the event of a bush fire,</p> <p>(ix) the adequacy of access to and from the site of the development for emergency response vehicles,</p> <p>(x) the nature, extent and adequacy of bush fire emergency procedures that can be applied to the development and its site,</p> <p>(xi) the requirements of Fire and Rescue NSW.</p>	<p>The applicant's response to these requirements was forwarded to NSW Rural Fire Service (RFS) for comment.</p> <p>NSW RFS confirmed that there are no specific bushfire protection measures required for this site.</p>
97	<p>The consent authority must consider the <i>Seniors Living Policy: Urban Design Guideline for Infill Development</i>, March 2004.</p>	<p>The applicant submits that the development has addressed the relevant design principles in this document, however, no detail is provided.</p> <p>There may not be adherence to all of these design principles. For example, one of the principles is to protect sun access and ventilation living areas and private open space of neighbouring dwellings. This is not achieved for a number of units located to the south of the site.</p>
98	<p>The consent authority must be satisfied that the design of the seniors housing demonstrates adequate consideration has been given to the principles set out in Division 6 (in clauses 99-105):</p> <p>99. Neighbourhood amenity and streetscape</p> <p>100. Visual and acoustic privacy</p>	<p>The applicant's table of compliance is Attachment 4 The table indicates compliance with all design principles, however, it is considered that the design is unsatisfactory in relation to:</p> <ul style="list-style-type: none"> • Heritage • Deep soil zone • Neighbourhood amenity • Impact on significant trees

	101. Solar access and design for climate 102. Stormwater 103. Crime prevention 104. Accessibility 105. Waste management	<ul style="list-style-type: none"> Accessibility These matters are discussed in detail following this table.
108	<p>Non- discretionary standards for independent living units. This clause sets out of standards, which if satisfied, cannot be used as grounds for refusal.</p> <p>a) Building height not more than 9.5m</p> <p>b) Service equipment on roof no more than 20% of surface area and no higher than 11.5m</p> <p>c) Density is 0.5:1 or less</p> <p>e) At least 30% of the site is landscaped</p> <p>f) Deep soil zone at least 15% of site area with min dimension of 3m</p> <p>g) At least 70%of dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid winter in living rooms and private open spaces</p> <p>h) Ground floor dwellings to have at least 1 private open space min at least 15m2 with dimension of 3m, accessible from a living area on the ground floor</p> <p>i) Dwellings on other floors to have a balcony with minimum dimensions of 2m with an area of at least 10m2, accessible from a living area</p> <p>j) For each 1 bedroom dwelling – an area of at least 6m2</p> <p>k) At least 0.5 parking spaces for each bedroom.</p>	<p>a) height is 23.52m (Bldg A) and 16.32m (Bldg B)</p> <p>b) Not stated by applicant, but appears to be more than 20%</p> <p>c) FSR is 1.64:1 on Lot 120 and 1.37:1 Lot 51</p> <p>e) 33% provided</p> <p>f) Does not comply. Less than 11% provided.</p> <p>g) 37 of 52 (71%) apartments achieve this standard</p> <p>h) ground floor apartments satisfy these dimensions</p> <p>i) Upper floor apartments satisfy these dimensions</p> <p>j) 1 bedroom apartments satisfy this dimension</p> <p>k) A total of 105 bedrooms are proposed. 53 spaces are provided, however, 2 are not accessible due to stacking behind other spaces.</p>
Schedule 4	<p>Schedule 4 sets out minimum standards for independent living units for:</p> <ul style="list-style-type: none"> Wheelchair access Security Letterboxes Car parking Accessible entry to dwellings Circulation space within dwellings Toilet, bathroom & laundry Surface finishes Door hardware Lifts Storage Garbage 	<p>The applicant submits that the development either complies or can comply with these requirements.</p> <p>Although technical compliance may be achieved in relation to wheelchair access, it is of concern that this is reliant on using wheelchair platforms to access the ground level communal open space and the dwellings within building A from the. Refer to discussion below.</p>

It is considered that the following aspects of the development are unsatisfactory in terms of the requirements of the Housing SEPP:

Heritage

The construction management plan relies on the removal of the entire heritage wall along the Burns Bay Road frontage to allow heavy vehicle access to the site during construction. The applicant intends to reinstate this wall after construction. An electricity substation is proposed to be located near the south-west corner of Lot 120, which will necessitate the permanent removal of some 8.5 metres of the length of the wall.

It is considered that the impact of removing the entire wall, rebuilding of 77% of the wall and leaving a permanent gap of 8.5m for the substation is unacceptable in terms of the integrity and significance of the stone wall. Even if every stone is properly stored and reinstated without damage, the wall would retain little, if any significance.

Impact on Significant Trees

Of the 45 trees located on the site, 29 are to be removed, including the row of brushbox along Burns Bay Road and a Bull Bay Magnolia located in the north-west corner. The only tree of any size to be retained is a Bull Bay Magnolia located near the northern boundary (identified as tree 23). The tree protection zone is identified as a diameter of 14.04m, which appears to be compromised by the building footprint.

Council's Tree Officer is also concerned about the impact of the development on the Port Jackson Fig located at 278 Burns Bay Road. The tree protection zone is likely to be compromised by footings for the boundary walls in this location. The arborists report recommends pruning large branches of up to 400mm to achieve building clearance. Pruning of these large primary branches is likely to affect wind dynamics and increase the likelihood of future failures.

Deep Soil Planting

The SEPP requires 15% of the site area to be set aside as deep soil zones. The DA plans show that only 11% of site area is provided, however, one of the three deep soil areas is actually the paved entry to the garbage service area. The actual provision of deep soil zones is likely to be less than 10% of the site area. Therefore, the development does not have the benefit of complying with this non-discretionary standard.

Car Parking

The application provides 53 car parking spaces, which at face value appears to satisfy the Housing SEPP requirement of 0.5 spaces per bedroom (total required 53). However, four of the spaces are provided in a stacked form, meaning that two spaces are rendered unusable, unless used by the same apartment owner.

It is also noted that the applicant proposes to have five staff members on site and provision is made for a salon, a café and treatment room within the building, which are likely to be staffed by at least three staff/or visiting health care providers. In these circumstances, it would be reasonable to provide parking for staff and these ancillary uses at a minimum rate of 1 space per two employees. It is considered that four additional spaces should be provided for staff and visiting service providers in addition to the 53 required by the housing SEPP. As only 51 spaces are effectively provided, the development does not have the benefit of complying with this non-discretionary standard.

If it is assumed that one car parking space is allocated to each of the 52 units, then there is no opportunity for visitors to park on site. Parking is not available on Burns Bay Road, so

visitors would have to park in nearby Cope Street, which is already congested with on-street parking. It is noted that the distance from the closest on-street parking space to the building entrance is in excess of 160m via Caroline Chisolm Lane or 180m via Burns Bay Road.

Accessibility

Although the proposal may be technically compliant in terms of access, it is noted that access to the lifts within building A and to the ground floor communal open space is reliant on mechanical wheelchair lifts. Pedestrian access from Burns Bay Road is also reliant on stairs and a platform lift.

For a purpose-built building for seniors, it is hard to reconcile the use of such devices in terms of universal access. For those residents and visitors who cannot use stairs, they are faced with obstacles in entering the site from Burns Bay Road and upon entering the building. This is considered to be a highly undesirable design flaw in the proposal, which is not in keeping with the principles of universal access.

It is considered that although the proposed development may achieve technical compliance with several standards included in the SEPP, matters relating to heritage impact, tree removal, deep soil planting, car parking and accessibility are not well resolved and are unsatisfactory.

5.1.2 State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

This SEPP applies to the development as it triggers the requirements for design quality. In determining an application, the consent authority must take into consideration the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide.

As required, the applicant's architect has provided a design verification statement. The nine design quality principles are listed below with comments relating to the proposal.

Table 3: SEPP 65 Design Principles

Design Principle	Comments
1. Context and neighbourhood character	<p>The applicant submits that:</p> <p><i>"The development fits the neighbourhood character, complementing the residential offer of the area. In fact, it adds opportunities for seniors living and aging in place, a step between a residential accommodation and an aged care facility."</i></p> <p>It is considered that the proposal is not in character with the neighbourhood context, due to the size and height of the development. While there are some taller buildings located some 40m to the south, the predominant form and character of the immediately surrounding properties is two and three storey buildings with a much lower density than that proposed.</p>
2. Built form and scale	<p>The applicant submits that:</p> <p><i>"The height limit on the site is different for the 2 lots: 21.8m towards Burns Bay Road and 15.8m on the Caroline Chisholm Lane. These maximum heights include the Sepp Housing bonus of 3.8m additional to the height limit set by the LEP."</i></p> <p><i>Building A encroaches the height limit by 1.72m, while building B by 0.5m, both with the roof overrun and roof articulation elements. These volumes are mainly recessed from the building perimeter and have been treated as roof articulation. The podium treatment and landscape reduce the perceived height of the buildings."</i></p> <p>Notwithstanding the applicant's submission, the abrupt jump in height from two storeys on adjoining properties to the 4 and 6 storeys proposed does not provide an appropriate transition. Indeed, the proposal creates unacceptable impacts in terms of solar access and privacy to adjoining properties.</p>
3. Density	<p>The applicant submits that:</p> <p><i>"The proposed development seeks approval for 52 independent living apartments and communal services. It meets the objectives of the R4 zone and largely complies with height; hence together with the amenities surrounding the site the density is appropriate for the location and context."</i></p> <p>The applicant fails to acknowledge that the site is constrained by a number of factors, including no access from Burns Bay Road, an unacceptable access via Caroline Chisolm Lane and the inability to confine construction impacts within the site. The impact on surrounding residents and the capacity of the local road system are both aspects which impact on density and have not been adequately considered.</p>
4. Sustainability	<p>The applicant submits that the proposal is designed considering passive solar principles and that it achieves the required solar access and cross ventilation. Also, solar panels are to be installed on the roof.</p> <p>While these factors contribute to sustainability, there is no information in relation to reduction of reliance on technology for heating and cooling. operating costs, use of sustainable materials or reuse and recycling of materials and waste.</p>

Design Principle	Comments
5. Landscape	<p>The applicant submits that:</p> <p><i>"Landscape has been carefully considered and is integral to the design.</i></p> <p><i>Landscaping is provided to the three communal areas (at ground floor near the existing tree to the North, on level 1 podium, and the building A rooftop terrace) as well as within the building setbacks. The three key landscaped areas provide separate destinations with distinctive character. The ground floor landscaped areas relate directly to the internal area for a more public activity. The podium has been structured in different areas, some more quiet, for meditation, reading, etc. and others for social interaction and gatherings. The communal spaces have been screened from the adjoining apartments by vegetation.</i></p> <p><i>The landscaping to the communal areas is well considered and contributes positively to the communal open space by providing privacy and opportunities for social interaction.</i></p> <p><i>The two large existing trees are being retained and shaped the development. In particular the tree to the North has been incorporated as a main focus, with a strong visual connection from the main entry and foyer."</i></p> <p>While the above comments are acknowledged, it is of concern that the only tree to be retained on site may be compromised by the intrusion of the building footprint into the root zone. Rather than contribute to the local context, the removal of some 29 trees and replacement largely with planter boxes and shrubs is considered to be a negative impact to the established local landscape character.</p>
6. Amenity	<p>The applicant submits that:</p> <p><i>"The apartments have been designed according to the Apartment design guide. They have adequate storage (in both the apartments and basement), useable indoor and outdoor space and open plan living areas with visual and acoustic privacy. The development strives for apartments with maximum amenity, with 70% achieving 2 hours of sunlight in midwinter and 60% of apartments cross ventilated.</i></p> <p><i>Communal areas have been designed to increase the resident interaction and build a sense of community. Communal facilities include a treatment room and a gym at lower ground floor, a resident kitchen, lounge, library and salon at ground floor and a multi-function room at the top terrace of building B.</i></p> <p><i>Communal open spaces include BBQ and entertaining area as well as hard and soft landscaped areas."</i></p> <p>In general, the amenity for future residents appears to satisfy this principle. However, access to the lifts for Building A is unusual in that they do not open directly to the lobby. In contrast to Building B, visitors and residents to Building A must make their way along a corridor and then make a right angle turn, passing the entries to 6 ground floor units. It is considered that this is likely to create poor amenity for those ground floor residents and uncertainty for visitors as the lifts are not visible from the lobby.</p>
7. Safety	<p>The applicant submits that:</p> <p><i>"The apartments are oriented to overlook all sides of the development, as well as the communal open space on Level 1</i></p>

	<p>and ground, providing passive surveillance to communal areas within the development and adjacent public areas.</p> <p><i>External lighting has been designed to ensure surveillance is maintained during night time while considering light spill to neighbouring properties."</i></p> <p>Notwithstanding the above, the ground floor corridor in Building A (described above) may give rise to security concerns with the need for non-residents to access the lifts. It is considered that this is not appropriately designed for use as a public space.</p>
8. Housing diversity and social interaction	<p>The applicant submits that:</p> <p><i>"The proposal will contribute to the neighbourhood in a positive way both socially and economically. The development will provide for aging in place, bring disposable income to the local community and generate employment opportunities.</i></p> <p><i>The development provides an opportunity for people to form a community, in a wide range of 1-, 2-, and 3-bedroom dwellings which reflect different household requirements."</i></p> <p>The development does provide a mix of apartment sizes, however, the ability to age in place is limited by the fact that no services are provided. The development is defined as in-fill self-care housing, which specifically excludes the types of services which allow for aging in place.</p>
9. Aesthetics	<p>The applicant submits that:</p> <p><i>"The proposed development will offer high end apartments so that the seniors moving here have a smooth transition downsizing from their family home.</i></p> <p><i>The building addresses the natural context and character of the site, placing the taller building towards the main road, reducing the scale towards the rear lane.</i></p> <p><i>The building is articulated in podium, residential floors, and roof/terraces.</i></p> <p><i>Each component is visually broken up in smaller parts to reduce the scale. The facades towards East, North and West have been treated with balconies and screens, while the Southern façade is more solid and has a punch hole treatment.</i></p> <p><i>The curves that shape the southern end of the buildings are determined by the solar studies to maximize the solar access to the buildings in the adjoining site towards South.</i></p> <p><i>The use of high-quality materials highlights key elements of the building, breaking up the mass to obtain a more vertical and slender forms. The brick has been used to continue the residential character of the area."</i></p> <p>The applicant's comments are acknowledged, however, it is questionable whether the development responds appropriately to the existing local context in terms of bulk, scale and height.</p>

Attachment 5 is a table of compliance with the Apartment Design Guide (ADG), prepared by the applicant. While many aspects are compliant, there are a number of provisions which are not compliant (in some instances where the applicant states compliance).

A review of the ADG reveals the following non-compliances:

- *Site analysis should illustrate that decisions are based on opportunities and constraints, site conditions and surrounding context.*

It is considered that the design of development is not a reflection of the constraints of the site and surrounding context. Rather, the proposal represents an overdevelopment of the site due to the constraints and impacts on surrounding residents and Caroline Chisolm Lane and does not recognise the surrounding context.

- *Overshadowing should be minimised to the south or downhill by increased upper-level setbacks.*

The upper level setbacks are not increased and overshadowing to adjoining residences to the south is unacceptable.

- *Substations, pump rooms, garbage storage areas and other service requirements should be located in basement car parks or out of view.*

The substation is proposed to be located on the Burns Bay Road frontage to the site. While it is understood that the energy authority needs unimpeded access to substations, this location is unacceptable due to the impact on the heritage listed sandstone wall.

- *Ramping for accessibility should be minimised by building entry location and setting ground floor levels in relation to footpath levels.*

It is noted that steps and a platform lift are required to access the site from Burns Bay Road. Once inside the building further steps and platforms are provided for entry to Building A and the ground floor communal open space. These level changes are not acceptable, especially in the context of a development designed for seniors.

- *Minimum required separation distances from habitable rooms and balconies to the side and rear boundaries are as follows:*

Buildings with 5-8 storeys are required to have a setback to the boundary of 9m for those levels. Levels 5 and 6 (3rd & 4th floors) of Building A are setback 6m from the northern boundary. The applicant submits that this is acceptable as two of the three apartments on each of these levels are orientated east-west. This is rejected, as balconies and living area windows for the six apartments on these levels are located on the northern elevation. It is considered that this reduced setback adds to the appearance of bulk and increases impacts in terms of privacy to the dwellings to the north.

- *Access, entries and pathways are accessible and easy to identify*

The applicant submits that the development is compliant. This may be technically correct as accessibility may include wheelchair lift platforms. However, reliance on mechanical aids to access the site from the road and the apartments and communal open space from the foyer is extremely undesirable for a seniors living development and is contrary to the principles of universal access.

- *The car parking needs for a development must be provided off street.*

The applicant submits that adequate parking is provided on site. It is noted that no parking provision is made for staff members or for the occupants of the proposed service shops. It is of concern the applicant only proposes the minimum required to avoid refusal rather than considering the likely needs of the development.

- *Parking and facilities are provided for other modes of transport.*

The applicant states that 8 senior scooter parking spaces have been provided. However, there appears to be no parking provision made for the "village bus", which the applicant states is provided to supplement public transport.

- *Minimum floor to ceiling levels on ground and first floors to be 3.3m.*

The applicant states that all habitable rooms are minimum 2.7m and the ground floor ceiling height is 4.1m in Building B and 3m in Building A. The first floor levels are only 2.7m ceiling height and the ground floor of Building A is also non-compliant. The implications of compliance may be a taller building overall.

- *Habitable room depths are limited to a maximum of 2.5 x the ceiling height*

This equates to 6.75m for a 2.7m ceiling height and 8.25m for a 3.3m height. The applicant states that “some living spaces have a depth of 9m”. The level of non-compliance is not quantified.

- *In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window*

The applicant submits that:

“All apartment types comply except two. These are located at the typical residential floors, on the South East in Building A and South East and South West in building B. This is also because of the increased clearances required for the kitchen benches for the seniors living in the Sepp Housing 2021”

This would equate to some 20 apartments which are non-compliant.

- *The maximum number of apartments off a circulation core on a single level is eight.*

The ground floor of Building A has 9 apartments off a single circulation core and therefore does not comply.

As demonstrated in the foregoing compliance reviews, the development presents numerous non-compliances with the provisions of SEPP 65 and the Apartment Design Guide. While each non-compliance may be minor in isolation from other requirements, it is considered that the sum of the non-compliances strongly indicates that the proposal is an overdevelopment of the site.

Accordingly, the development is considered to be unsatisfactory in terms of SEPP 65 and the Apartment Design Guide.

5.1.3 State Environmental Planning Policy (Planning Systems) 2021

In accordance with Schedule 6 of the SEPP, the proposal is defined as regionally significant development, ie development with a capital value of more than \$5 million where the Council is the applicant or owner of the land.

The consent authority is therefore the Sydney North Planning Panel.

5.1.4 State Environmental Planning Policy (Resilience and Hazards) 2021

Clause 4.6 of the SEPP provides:

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
- (a) it has considered whether the land is contaminated, and*
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The application is accompanied by the following reports:

- Preliminary Site Investigation
- Detailed Site Investigation
- Remediation Action Plan

The preliminary site investigation established that “*there is a contamination risk ranging from low to moderate on the site, associated with imported fill materials of unknown origin, hazardous building materials, application of pesticides, leaks from vehicles and off-site migration from neighbouring commercial properties*”. Accordingly, the applicant was requested to provide a detailed site investigation and remediation action plan.

The detailed site investigation found that soil samples contained lead, petroleum hydrocarbons and polycyclic hydrocarbons at concentrations which exceed the human health criteria.

The Remediation Action Plan recommends that the site is remediated by excavation of contaminated fill and disposal to a licensed waste facility. The RAP provides protocols for the management of any unexpected finds and for removal of building materials containing asbestos.

The Remediation Action Plan (RAP) concludes that the site can be rendered suitable for the proposed development subject to appropriate remediation, management and validation in accordance with the Plan.

It is considered that the consent authority can be satisfied in relation to the provisions of clause 4.6 of the SEPP. Should the development application be approved, appropriate conditions would be required to ensure the implementation of the RAP.

5.1.5 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 of the SEPP provides that vegetation must not be cleared without approval. The SEPP refers to the requirements of the *Biodiversity Conservation Act, 2016*.

The site has been highly modified, with a number of buildings, planting of non-native tree species and lawn and gardens. The proposal therefore does not affect any threatened species and does not trigger the requirement for Biodiversity Development Assessment Report.

It is considered that the requirements of the SEPP and the *Biodiversity Conservation Act, 2016* are satisfied.

5.1.6 State Environmental Planning Policy (Transport and Infrastructure) 2021

Clause 2.119 of the SEPP is reproduced below:

- 1) *The objectives of this section are—*
 - (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
 - (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*
- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*
 - (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Clause 2.112 contains provisions relating to traffic generating development. The development, as originally lodged does not trigger a referral to Transport for NSW. However, in response to concerns raised by Council about the unsuitability of Caroline Chisolm Lane for construction traffic, the applicant amended their construction management plan to provide access for construction vehicles directly from Burns Bay Road, which is a classified road. It is arguable whether this construction access would trigger the traffic generating development provisions of the SEPP. However, any access to Burns Bay Road would require the approval of Transport for NSW.

Notwithstanding clause 2.112, the construction access now proposed to Burns Bay Road raises concerns in relation to objective 1(a) and the provisions of clause 2(b) in relation potential adverse affects on the safety, efficiency and ongoing operation of the classified road. There is no indication of whether the applicant has consulted with Transport for NSW.

To comply with clause 2(a), the consent authority must be satisfied that Caroline Chisolm Lane represents practicable and safe vehicular access to the development. Council's

Traffic and Transport Manager has advised that Caroline Chisholm Lane should accommodate two way traffic from Cope Street to the car park entry, with a minimum 6m wide road. A 1.5m footpath should also be provided to provide safe, convenient and DDA compliant access between the site and Cope Street.

It is noted that the total width of Caroline Chisholm lane is 6m boundary to boundary, with a pavement width of less than 4m. The applicant proposes to widen the pavement to 4m from Cope street to the northern boundary of the site, widening to 6m for a length of approximately 12m and narrowing to 5.5m for the remaining length (the last two sections combine the existing laneway pavement with land within the site). Refer to Attachment 6. The applicant submits that this arrangement will provide for satisfactory vehicle and pedestrian access to the site.

It is considered that the consent authority cannot be satisfied in relation to Clauses 2(a) & (b) of State Environmental Planning Policy (Transport and Infrastructure) 2021 due to the following:

- **Caroline Chisholm Lane does not provide a practical and safe alternative to access from Burns Bay Road, due to the inability to provide for two way traffic and pedestrian safety;**
- **no analysis is provided in respect of the impacts of construction traffic entering and leaving the site from Burns Bay Road; and**
- **there is no approval from Transport for NSW for the proposed construction access.**

5.1.7 State Environmental Planning Policy (Building Sustainability Index: BASIX)

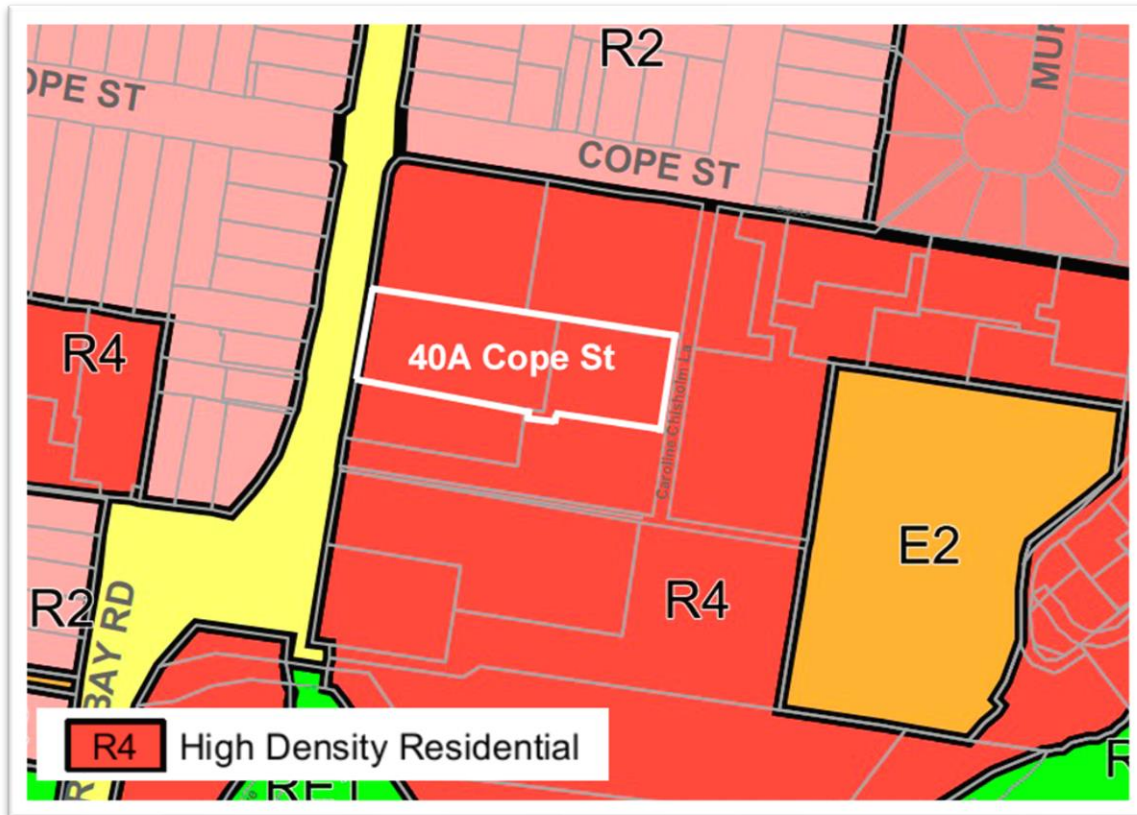
This SEPP aims to ensure consistency in the implementation of the BASIX scheme throughout the State by overriding provisions of other environmental planning instruments and development control plans that would otherwise add to, subtract from or modify any obligations arising under the BASIX scheme.

A BASIX Assessment for the proposed development was submitted for the independent living units which confirms that the relevant water and energy reducing targets have been satisfied.

5.1.8 Lane Cove Local Environmental Plan 2009

The land is zoned R4 High Density Residential under the provisions of Lane Cove LEP 2009.

Figure 11: Extract from Lane Cove LEP 2009 Land Zoning Map LZN_001



Residential flat buildings are permissible within the R4 zone. Seniors living development is not permissible in the R4 zone, however, this is overridden by State Environmental Planning Policy (Housing) 2021, which provides that development for seniors housing may be carried out with development consent on land which is zoned R4. Therefore seniors living is permissible under the provisions of State Environmental Planning Policy (Housing) 2021.

Clause 2.3(2) of Lane Cove LEP 2009 provides:

- (1) *The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.*

The objections of the zone are reproduced below with comments in relation to the development

- To provide for the housing needs of the community within a high density residential environment.*

The development satisfies this objective.

- To provide a variety of housing types within a high density residential environment.*

The development provides a range of three, two and one bedroom apartments.

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

The development includes an ancillary salon, café, library, treatment room and gym.

- *To provide for a high concentration of housing with good access to transport, services and facilities.*

The land has good access to transport, services and facilities.

- *To ensure that the existing amenity of residences in the neighbourhood is respected.*

It is considered that development will have an adverse impact on the amenity of residences in the neighbourhood in terms of overshadowing and privacy and increased traffic movements along Caroline Chisolm Lane. Further details are provided throughout this assessment report.

- *To avoid the isolation of sites resulting from site amalgamation.*

The two existing properties are to be amalgamated. Although there are some submissions suggesting that the site should be amalgamated with other properties, it is noted that there is no site amalgamation clause or map for the locality. It is considered that amalgamation of the two lots does not result in isolation of sites.

- *To ensure that landscaping is maintained and enhanced as a major element in the residential environment.*

A number of mature trees are to be removed. Replacement landscaping consists mainly of shrubs and planter boxes. It is considered that proposed landscaping does not satisfy this objective.

The consent authority must have regard to these objectives, and inconsistency with two objectives is not necessarily a determining factor on its own. However, given the close proximity to a number of neighbouring residents, it is considered that respecting the amenity of neighbours and enhancing the landscape are important matters in the circumstances of this site.

Clause 4.3 Height of buildings

(1) *The objectives of this clause are as follows:*

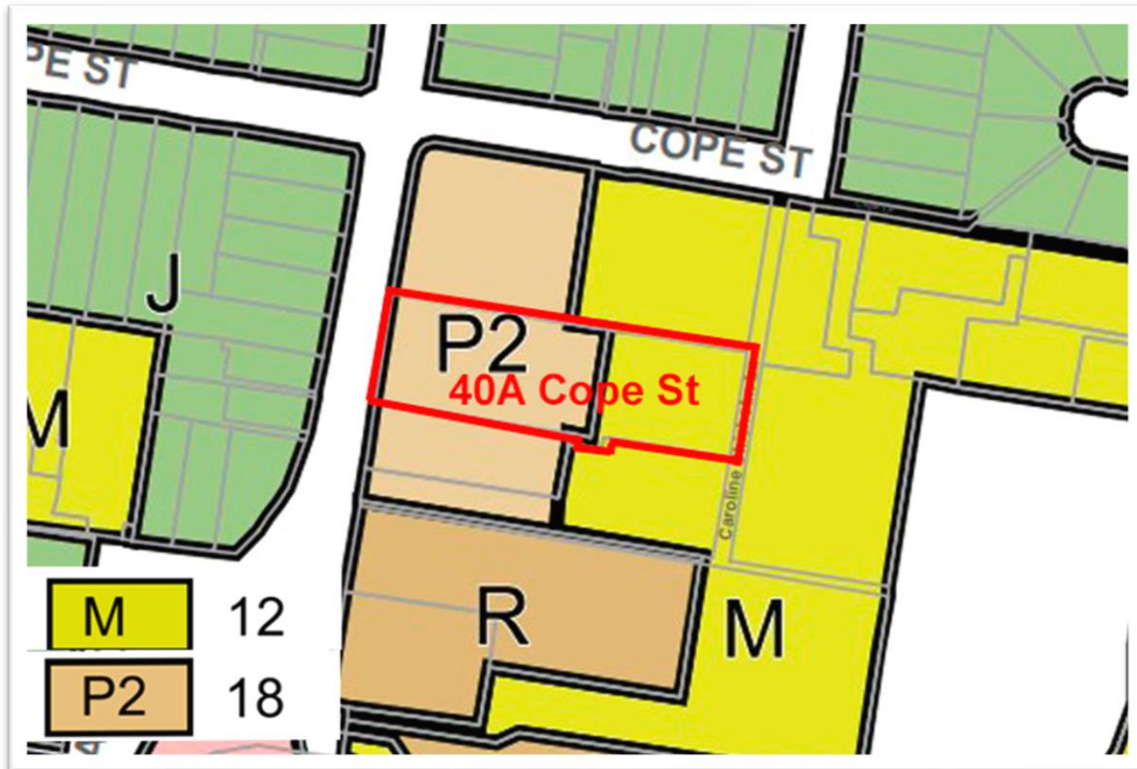
- (a) to ensure development allows for reasonable solar access to existing buildings and public areas,*
- (b) to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable,*
- (c) to seek alternative design solutions in order to maximise the potential sunlight for the public domain,*
- (d) to relate development to topography.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

The Height of Buildings Map provides different maximum heights for each of the two lots as shown in Figure 12 below. The LEP Map shows that Lot 120 has a maximum height of 18m and Lot 51 has a maximum of 12m. However, Clause 87(c) of the Housing SEPP effectively allows an additional height of 3.8m. Therefore, the maximum permissible height is 21.8m for Building A and 15.8m for Building B, subject to satisfying additional FSR provisions in Clause 2(b).

The lift overruns for both buildings exceed the maximum building height. For Building A, the height non-compliance is 1.72m and for Building B, 520mm. The applicant submits that the height of the actual buildings does not exceed the maximum height, rather the encroachments are limited to the lift overruns.

Extract from Lane Cove LEP 2009 Height of Buildings Map HOB_001



A written request was submitted by the applicant seeking to justify the contravention of the development standard in accordance with Clause 4.6 of Lane Cove LEP 2009. Detailed commentary and assessment is provided under the heading “Clause 4.6 Exceptions to development standards” in this assessment report.

Clause 4.4 Floor space ratio

- (1) The objectives of this clause are as follows:
 - (a) to ensure that the bulk and scale of development is compatible with the character of the locality.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

The Floor Space Ratio Map provides different maximum heights for each of the two lots as shown in Figure 13 below. The LEP Map shows that Lot 120 has a maximum FSR of 1.7:1 and Lot 51 has a maximum of 0.8:1. However, Clause 87(c) of the Housing SEPP effectively allows an additional FSR of 15%. Therefore, the maximum permissible FSR is 1.955:1 for Building A and 0.92:1 for Building B.

The following table details the permissible and proposed GFA and FSR for each of the lots.

Table 4: Permitted and proposed Gross Floor Area (GFA) and Floor Space Ratio (FSR)

Lot	Permitted FSR	Permitted GFA	Proposed FSR	Proposed GFA
120	1.955:1	5,312.7m ²	4,478m ²	1.64:1
51	0.92:1	1,635.9m ²	2,443m ²	1.37:1
Total		6,948.6m²	6,921m²	

A written request was submitted by the applicant seeking to justify the contravention of the development standard in accordance with Clause 4.6 of Lane Cove LEP 2009. Detailed

commentary and assessment is provided under the heading “Clause 4.6 Exceptions to development standards” in this assessment report.

Figure13: Extract from Lane Cove LEP 2009 Floor Space Ratio Map FSR_001



Clause 4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

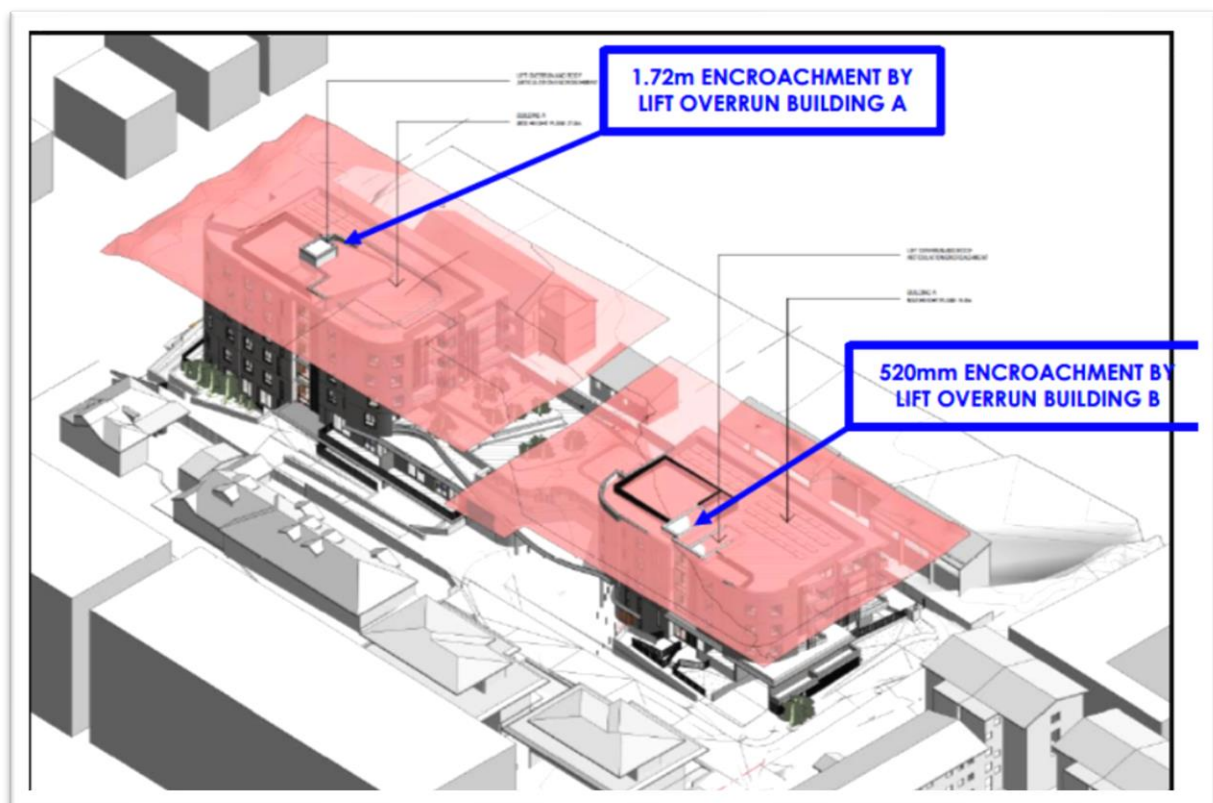
- (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Not relevant to the development - refers to rural subdivision).
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

Note: Circular PS 08-003 issued on 9 May 2008 informed Council that it may assume the Director-General's concurrence for exceptions to development standards.

The applicant has submitted detailed written requests that seek to justify contravention of the height of buildings and floor space ratio development standards. Copies of these requests are Attachments 7 and 8.

Contravention of Building Height Standard

Figure 14: Height Plane Diagram. Source: Applicant's SEE



The applicant submits that the height contraventions relate to lift overruns only, and no additional floor space is created. The applicant argues that the objectives of the standard are achieved notwithstanding non-compliance with the standard. In support of this argument it is submitted that:

- Seniors housing has a greater spatial requirement than conventional residential apartments;

- The height bonus is required to offset the more onerous parking requirements and lower unit yield compared to conventional residential flat buildings; and
- The cost to construct a retirement village is significantly greater than conventional residential apartments as they include significant areas of non-revenue floorspace, such as communal open space and other items and services that are intrinsic to the value, amenity and liveability of these villages;
- Seniors housing cannot compete with developers of conventional residential developments; and
- Providing an incentive for seniors housing has ongoing and community-wide benefits.

The applicant also presents a list of environmental planning grounds to justify contravention of the development standard, however, it is considered that the grounds provided do not justify contravening the height standard.

In other circumstances, a lift overrun height contravention may be able to be justified. However, the grounds submitted by the applicant only provide justification for the additional 3.8m building height provided by the Housing SEPP, not a further non-compliance.

It is important to look at the particular circumstances of the site and the proposed development. In this case the 3.8m height bonus is reliant on the consent authority agreeing to a clause 4.6 request to allow contravention of the FSR provisions. If that request is denied, the LEP height limit of 18m and 12m would apply. There are a range of factors which indicate that the overall design results in an overdevelopment of the site.

It is considered that the applicant has not demonstrated that compliance with the building height development standard is unreasonable or unnecessary, nor have sufficient environmental planning grounds be provided to justify the contravention. Accordingly, it is recommended that the Clause 4.6 request in relation to the height of buildings is not supported.

Contravention of Floor Space Ratio Standard

The applicant submits that the objectives of the standard are achieved notwithstanding non-compliance with the standard. In support of this argument, it is submitted that:

- Seniors housing has a greater spatial requirement than conventional residential apartments;
- The cost to construct a retirement village is significantly greater than conventional residential apartments as they include significant areas of non-revenue floorspace, such as communal open space and other items and services that are intrinsic to the value, amenity and liveability of these villages;
- Seniors housing cannot compete with developers of conventional residential developments;
- Providing an incentive for seniors housing has ongoing and community-wide benefits;
- The proposed development represents a high quality contemporary built-form outcome which is consistent with the zone, nature and scale and the existing and evolving character and is entirely consistent with a number of residential flat buildings constructed over the last 10 years;
- The proposed development proposes an appropriate transition between the two height and FSR limits as well as to the lower density townhouse development to the north; and

- The proposed development addresses its streetscape presence with appropriate and comprehensive landscape treatment.

The applicant also presents a list of environmental planning grounds to justify contravention of the development standard, however, it is considered that the grounds provided do not justify contravening the height standard.

The applicant sites the a number of environmental planning grounds to justify contravention of the standard, including:

- When spread across the whole site, the total amount of permissible floorspace is not exceeded.
- The exceedance on Lot 51 is counterbalanced by the unused amount of FSR on Lot 120.
- The built form is appropriate given the height compliance of the two buildings.
- A better outcome is achieved by not complying with the FSR in this instance.

The applicant also states the development complies with all the required design standards, which is disputed elsewhere in this report. Notwithstanding, compliance with other development standards is not appropriate justification for contravening a development standard.

Put simply, the applicant submits that contravening the FSR standard as proposed, a better outcome is achieved. However, there is no comparison provided for a compliant development to test this claim. To the contrary, there are numerous design aspects which do not comply, even with the proposed additional floor area.

It is considered that the applicant has not demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary, nor have sufficient environmental planning grounds be provided to justify the contravention. Accordingly, it is recommended that the Clause 4.6 request in relation to the FSR is not supported.

Clause 5.10 Heritage conservation

(1) Objectives

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Lane Cove,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

(5) Heritage assessment

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),*

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

The land contains an item of Environmental Heritage, being the sandstone wall along the property boundary to Burns Bay Road. It is identified as local Item I158 – “Stone walls to road frontages” in Schedule 5 of the LEP.

Figure 15: Heritage Listed Stone Wall Burns Bay Road frontage. Source: Heritage Impact Statement, Umwelt, June 2023



The wall is a retaining wall constructed of rock-faced ashlar, most likely in the late 1920s. The wall was associated with “Walhalla”, a residence built on the site by Charles Ludowici circa 1893. The residence still exists on site, but is not listed as a heritage item due to numerous non-sympathetic alterations made during the use of the building as aged care accommodation.

It is proposed to permanently remove an 8.5 long section of the wall to accommodate an electricity substation. Also, it is proposed to remove the remainder of the wall to provide for access to the site by heavy vehicles during construction. It is proposed that each stone would be numbered, stored safely and reassembled with lime mortar on a solid footing on completion.

The application was accompanied by a Heritage Impact Statement prepared by Umwelt Australia Pty Ltd (Attachment 9). It is concluded that the proposal will have an acceptable impact on the heritage significance of the sandstone retaining wall. The Statement also includes recommendations for storage and reassembly.

It is considered that even with the best of intentions, it is likely that stones will be damaged or lost during deconstruction and storage, which could result in an unacceptable proportion of the wall being reconstructed with new stone. It is also of concern that at least some of the heritage significance will be lost in that the wall will not be of “original” construction. Notwithstanding, there is no certainty that Transport for NSW would approve construction access directly off Burns Bay Road.

It is considered that the short term gain of construction site access does not justify the deconstruction and rebuilding of this heritage listed sandstone wall, which has existed on site for some 100 years. Accordingly this is not supported.

5.2 Draft Environmental Planning Instruments

There are no draft environmental planning instruments applying to the land.

5.3 Development Control Plans

Lane Cove Development Control Plan 2010 applies to the subject land. In particular, Parts B, C, F, O, Q and R. The following compliance table is reproduced from the applicant's statement of environmental effects.

Table 5: Applicant's DCP Compliance Table

PART	RELEVANT?	COMPLIES/COMMENTS
PART B – GENERAL CONTROLS	Those sections relevant identified below	
PART B4 VIEW SHARING	YES	YES Existing views from either the subject site or the adjoining properties to the east or north (who are the most likely to be potentially affected by the proposed development) are limited due to the extent of development to the west and south. In particular, the recently
	PART	RELEVANT?
		constructed buildings to the south are much taller than proposed development at 25m and which as a result, essentially block any views that may have existed towards Lane Cove River in this direction. In any event, an extensive gap is provided between the two buildings, which themselves are slender and comply with the building separation required under SEPP 65) to maintain a significant view corridor through the site. The development also comprises a flat roof which is integrated into the design of the building to minimise the impact of any perceived view loss.
B6 ENVIRONMENTAL MANAGEMENT		
6.1 Sunlight to public spaces	NO	N/A No public places on or around development site.
6.3 Energy and water efficiency buildings		YES Sustainability initiatives are incorporated in the proposal as indicated in the BASIX Certification

PART B7: DEVELOPMENT NEAR BUSY ROADS (AND RAIL CORRIDORS),	YES Site located adjacent to the state classified Burns Bay Road. However, this part essentially duplicated/overridden by provisions of Section 2.119 of SEPP (Transport & Infrastructure) 2021 which requires development to meet the acoustic requirements of Department of Planning document "Developments near rail corridors and busy roads- Interim Guidelines"	YES Acoustic report submitted with DA indicates that the proposed development can satisfy the applicable noise criteria subject to implementation of noise mitigation measures in design.
PART B8: SAFETY & SECURITY		
B9 Heritage 9.3 Development in the vicinity of heritage items	YES Heritage Impact Assessment (HIA) required where site contains or in vicinity of heritage item under schedule 5 of LCLEP.	YES Heritage Impact Assessment prepared addressing heritage item I158 (sandstone wall across BBR frontage)
PART C – RESIDENTIAL DEVELOPMENT		
C.3 Residential Flat Buildings	ONLY SETBACKS The proposed development is not a RFB and hence this part technically does not apply and is overridden by Housing SEPP (and potentially ADG) anyway. However, setbacks adopted in absence of any other standards as agreed with Council.	YES/NO Both buildings comply to front, rear and southern side setbacks. However, top floor of Buildings A and B less than 9.0m to northern boundary. Variation requested and deemed appropriate as discussed below.
PART	RELEVANT?	COMPLIES/COMMENTS
PART F – ACCESS AND MOBILITY	NO Overridden by specific requirements of Housing SEPP but complies anyway. See submitted Access Report	N/A
PART J – LANDSCAPING		
1.5 When is a landscape plan required?	YES Landscape plan required with DA (seniors housing not stated but agreed)	YES Landscape Design submitted
1.6 Landscaped area	NO Overridden by specific requirements of Housing SEPP (which complies anyway)	N/A
3.2 Preservation of significant trees	YES Significant trees making major contribution to landscape to be retained	YES Large Bull Bay Magnolia on site to be retained and protected. Basement designed around root zone of large fig on adjoining site to south.

PART O – STORMWATER MANAGEMENT	YES Stormwater Management Plan to be submitted addressing various sections and specific requirements for RFBs under section 7.1.2 (noting seniors housing not specifically mentioned)	YES Stormwater Management Plan submitted addressing relevant requirements
PART Q – WASTE MANAGEMENT AND MINIMISATION	YES Site Waste Minimisation and Management Plan (SWMP) to be submitted addressing various sections and specific requirements for RFBs under section 4.3 (noting seniors housing not specifically mentioned)	YES Operational SWMP submitted addressing relevant requirements. Demolition/Construction SWMP to be submitted with construction certificate.
PART R – TRAFFIC, TRANSPORT & PARKING.		
R.2 Parking	NO Overridden by specific requirements of Housing SEPP	N/A
R.3 Public Transport	NO Overridden by specific requirements of Housing SEPP	N/A
R.4 Pedestrian and Bicycle Facilities	NO Overridden by specific requirements of Housing SEPP (i.e. criteria for pedestrian pathways to bus stops identified in SEPP and no requirements for bicycles required by SEPP due to nature of development)	N/A
R.5 Transport Access Guide / Sustainable Travel and Access Plan	NO Not relevant to/impractical to apply to seniors housing	N/A

Concerns is raised with the following aspects of the Lane Cove Development Control Plan:

- Part B7 – The acoustic report specifies that all apartments which fronting Burns Bay Road will be unable to be used for natural ventilation, as compliance with noise criteria for Burns Bay Road requires these windows to be closed. This will impact some 12 units, which will not comply with the natural ventilation requirements of the ADG.
- Part B9 – Removal and reinstatement of the heritage sandstone wall is not supported.
- Part C3 – The top two floors of Building A does not comply with the minimum setback of 9m to the northern boundary.

It is considered that there are non-compliances with the DCP which cannot be supported when considered in the context of the overall development and its interaction with adjoining properties.

5.4 Matters Prescribed by the Regulations

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires the consent authority to take into consideration the provisions of AS2061 for a development application for the demolition of a building. As the proposal includes demolition of building

this matter has been considered and if approved, an appropriate condition of consent could be applied.

5.5 Likely Impacts of the Proposed Development

5.5.1 Impacts on the Built Environment

(I) *Character*

The immediate locality is a mix of residential flat buildings of predominantly three storeys and two storey town houses. There are some taller apartment buildings located further south along Burns Bay Road, where the maximum building height is 21m. By utilising the additional 3.8m height benefit of the Seniors Housing SEPP, the proposal fails to provide an appropriate transition between the subject land and land adjoining to the north east and south, which has long established two and three storey residential developments.

Similarly, the proposed exchange of FSR between the two lots creates a building of larger bulk than would result from compliant FSR. Although the applicant submits that this exchange of FSR provides a better outcome, there is no comparison with a compliant scheme to support this. It is noted that even with the additional benefits of building height and FSR offered by the Housing SEPP, and the proposal to exchange FSR, the development is problematic in the following ways:

- The upper levels of building A do not comply with the required setback of 9m to the northern boundary;
- The apartments along Burns Bay Road will not comply with fresh air circulation, due to the need for non-opening windows to reduce traffic noise;
- A number of apartments do not meet the natural light requirements of the ADG;
- The proposal relies on removal of the heritage listed stone wall on Burns Bay Road for electrical services and construction access;
- The proposal will result in the unacceptable loss of solar access for living areas and/or private open space to at least six apartments in buildings adjoining to the south; and
- The use of the single direction carriageway of Caroline Chisolm Lane for a development of this size will create unacceptable impacts in terms of traffic conflict and pedestrian safety.

(II) *Amenity and Privacy*

The site is constrained by the need to provide access via Caroline Chisolm Lane only. The main access to the building, port cochere and vehicle turning area is located centrally to the site in an east west direction, however, is located close to the southern boundary, where a number of dwellings are located on adjoining land to the south. Those dwellings are orientated to take advantage of the northerly aspect, and therefore will be impacted by vehicle and pedestrian activity which is funnelled through the main entrance to the development.

It is also noted that the upper two levels of building A do not meet the required 9m setback from the northern boundary. This non-compliance is likely to create privacy impacts for the land adjoining to the north.

Although the acoustic report recorded noise measurements in the immediately locality, the report specifically has not considered the potential noise impacts from the carpark, access door operation, vehicles moving along the southern and eastern boundaries of the site.

In relation to noise from plant, the acoustic report makes generic comments about locating away from boundaries and providing acoustic screens as far as practical. Given the number and location of neighbouring properties, it is considered that this detail is critical to the design of the proposal.

(III) Solar Access and Overshadowing

Detailed shadow diagrams were submitted with the development application. Some early submissions from neighbouring property owners pointed out that the apartment number descriptions were incorrect on the plan. The applicant provided amended shadow diagrams to rectify this.

The shadow diagrams indicate that the development will totally remove solar access in mid-winter between 9am and 3pm at 1 Caroline Chisolm Lane to units 6 and 7 and reduce solar access to units 4, 10 and 9 during those times. At 278 Burns Bay Road, units 1, 2, 3 and 4 and private open space. The applicant states that the overshadowing is no worse than would be generated by an LEP compliant development, however, this is not an appropriate measure for overshadowing. In the circumstances it is not considered acceptable to reduce solar access to adjoining buildings. This is considered to be another indicator that the proposal may be an overdevelopment of the site.

It is considered that the proposal will have unacceptable impacts on the built environment and the amenity of surrounding residents.

5.5.2 Access, Transport & Traffic

(I) Access,

Access to the site is via Caroline Chisolm Lane, which is a public laneway with a carriageway width of 4.2m and overall width of 6.095m. Vehicles will enter the site in a driveway which is partially within the site and partially within the right of carriageway along the southern boundary. Passenger vehicles enter the basement car park via a ramp in the south east corner of the site, or continue west to the drop off area and port cochere. Service vehicles will also enter along the same route, with turning space for a large ambulance and a loading area for 6.4m small rigid vehicles. A dedicated bay for a small rigid waste collection vehicle is provided near the eastern boundary adjacent to Caroline Chisolm Lane.

Caroline Chisolm Lane provides vehicular access to the residential flat buildings adjoining the southern boundary of the site and to the residential flat buildings adjoining the eastern side of the lane. Burns Bay Road is a state road, which is controlled by Transport for NSW. Access to the site from this road is not permitted.

A traffic report was prepared by Colston Budd Kafes, who also responded to Council's concerns about the inadequacy of Caroline Chisolm Lane to service the development. Attachment 10 is the traffic report and response.

Council is of the view that to properly service this development, Caroline Chisolm Lane should be widened to 6 metres from Cope Street to the southern boundary of the site. This would necessitate removal of a number of trees and the garden bed along the western boundary of the lane, which would have unacceptable impacts in terms of amenity of the adjoining residences and loss of tree canopy overall. In response, the applicant proposes to:

- Provide a 13m long passing bay at the northern end of the lane; and
- Widening the lane to 5.5 metres for the last 35 metres (along the site boundary).

Attachment 11 is a plan of the proposed works to Caroline Chisolm Lane.

The applicant's traffic response states that AS2890.1-2004 notes that a 5.4m carriageway is appropriate for two way traffic flow. Council's Traffic and Transport Manager has reviewed the proposed works and is not satisfied that the works will safely accommodate two way traffic between the site and Cope Street. It is also noted that there is no dedicated pedestrian pathway, which raises additional safety issues.

The traffic report estimates that the development would generate between 5 to 10 vehicles per hour two-way during weekday peak periods. It is stated that the net increase would be only be 5 vehicles per hour, when allowance is made for the existing development on the site (now vacant). It is not clear how the discount of 5 vehicles per hour was calculated as the existing development is not operational. It is noted, however, that the existing development was not in-fill self-care accommodation and although there were 52 units they were much smaller and were operated as a retirement village in conjunction with the adjoining nursing home.

An analysis of the local road network and intersections was carried out using the SIDRA model. The analysis found that the additional traffic generated by the development would not impact on the level of operation, although it was noted that the intersection of Penrose Street and Cope Street has a current level of service of D and is near capacity.

In the absence of widening of Caroline Chisolm Lane to 6m, it is considered that access to the site is unsuitable and is likely to lead to unacceptable safety issues for both vehicles and pedestrians.

(II) Public Transport

Local bus services are provided by Transport NSW. Bus stops are located on either side of Burns Bay Road adjacent to the site. Services provide access to City CBD, Chatswood and Burwood with connections to train services. The services include the following:

- route 251: Lane Cove West to City (Wynyard) via Freeway;
- route 252: Gladesville to City (King Street Wharf) via North Sydney;
- route 530: Chatswood to Burwood; and
- route 536: Chatswood to Gladesville via Hunters Hill.

It is considered that the site is well serviced by public transport.

(II) Parking

The development provides 53 car parking spaces. The minimum required by the Seniors SEPP to avoid parking as grounds for refusal is 0.5 spaces per bedroom, which equates to 53 spaces. It is noted that four of the spaces are in a stacked configuration, creating two spaces which can only be accessed if the space in front is vacant. In residential flat buildings, this is usually only permitted where the stacked spaces are owned/controlled by the same owner. The applicant provides no information as to how this may operate, and in the circumstances, the two rear stacked spaces should not be counted toward parking provision.

It is noted that the development will employ 5 staff members. Provision is made for a salon, a café and treatment room within the building, which is likely to be staffed by at least three staff/or visiting health care providers. In these circumstances, it would be reasonable to provide parking for these ancillary uses at a minimum rate of 1 space per two employees. However, there are no parking provisions for staff or visiting health care providers. If it is

assumed that one car parking space is allocated to each of the 52 units, then there is no opportunity for visitors to park on site. Parking is not available on Burns Bay Road, so visitors would have to park in nearby Cope Street, which is already congested with on-street parking, or Penrose Street. It is noted that the distance from the closest on-street parking space to the building entrance is in excess of 160m via Caroline Chisolm Lane or 180m via Burns Bay Road.

The development provides insufficient parking for residents, staff and visitors. As the number of spaces is less than the minimum required under the Housing SEPP, the development is considered to be unacceptable.

5.5.3 Social Impacts

As the population of Lane Cove progressively ages and the number of residents over the age of 65 increases, there is greater demand for appropriately designed seniors living development to be established in locations with good access to transport and services. In meeting this demand a range of facilities are required from residential care facilities to self care independent living units (as proposed).

The proposed development will assist in meeting the future needs of an aging population, however, the predominance of such developments places high importance on creating well designed accommodation which does not compromise the amenity of future residents or adjoining residents.

5.5.4 Economic Impacts

The proposal would provide short term employment opportunities during demolition and construction and long-term employment for 5 staff members. In my experience, developments such as that proposed also provide significant ongoing opportunities for local contractors in servicing the buildings, plant and equipment.

It is considered that the development will have a positive economic impact.

5.5.5 Public Domain

It is considered that the public domain will be negatively impacted by increasing traffic and potential conflicts in Caroline Chisolm Lane. The proposed changes to widen the Lane in one place to create a passing bay and remove some existing garden beds is not supported by Council. It is considered that increasing the two way traffic volume in a one way only width lane will create additional conflict between vehicles and between vehicle and pedestrian movements.

It is also noted that the applicant proposes to access the site from Burns Bay Road for large construction vehicles. Although there is no indication of whether approval from Transport for NSW would be forthcoming, the movement of large heavy vehicles on and off the site during construction is likely to create adverse impacts on traffic on this classified road.

It is considered that the development will have unacceptable impacts in terms of the public domain.

5.6 Suitability of the Site for the Proposed Development

The site is essentially rectangular in shape is relatively flat. The site has a total area of 4,995.6m², with frontages of 36.5m to Burns Bay Road and Caroline Chisolm Lane.

However, the site is constrained by the following aspects:

- Vehicular access can only be provided by Caroline Chisolm Lane;
- The use of shared right of carriageway along the southern boundary;
- The close proximity to a number of residents adjoining to the north, east and south of the site;
- Heritage listed retaining wall;
- Two different building height standards;
- Two different FSR standards; and
- Lack of space for parking, delivery, storage and access during construction.

Although the site may be suitable for some form of seniors housing, it is considered that the constraints of the site make it unsuitable for the scale of development as proposed. In particular:

- Caroline Chisolm Lane is unsuitable for vehicle access and cannot be effectively upgraded for two way movements and pedestrians;
- Required setbacks to all boundaries are not achieved;
- Impact to surrounding residents is unacceptable in terms of solar access and privacy, due to the height and bulk of the buildings and minimal boundary setbacks;
- A number of the units are compromised in terms of internal amenity (natural ventilation and light);
- Non-compliance with height and FSR standards;
- There is insufficient space for the provision of required parking;
- The need for removal of the heritage sandstone wall along Burns Bay Road frontage to provide construction access; and
- The development footprint leaves insufficient space for construction workers' parking, materials storage and site offices/facilities during construction.

It is considered that the site is unsuitable for the bulk and scale of the development as proposed.

5.7 Submissions Received

The application was notified to surrounding residents from 31 October to 30 November 2022, including a 14-day extension. 99 submissions were received, comprising 98 objections and one submission supporting the proposal. The number of unique submissions is 92, as some submitters made multiple submissions.

Table 6: Submission Type

No. of Submissions	Type	Comment
73	Individual, representing 62 adjoining or nearby households	Addresses included
14	Planning alerts website	Addresses not identified
8	Individual, address not identified	
4	Representing Strata Plan owners	2 x planning consultants, 1 x Strata Manager, 1 resident on behalf of SP.

The following table provides a summary of the matters raised in the submissions and comments in response.

Table 7: Summary of matters raised in submissions

Matters Raised		Freq- uency	Comment
1	Traffic congestion in Cope Street and safety	54	Refer to Section 5.5.2 Access, Transport & traffic in this report
2	Impacts on surrounding residents and traffic from construction of the development	47	It is agreed that there will be unacceptable impacts due to the constraints of the site.
3	Insufficient parking provided on site. 54 spaces insufficient for independent living units. Also no provision for staff and visitor parking	43	Agreed. This is discussed in Section 5.5.2 of this report
4	Impact on amenity of adjoining residents including, noise, privacy and solar access.	35	It is considered that the development will have unacceptable impacts on the amenity of adjoining residences. This is discussed in various sections of the report.
5	Insufficient width of Caroline Chisolm Lane for two way traffic and pedestrians. Widening will remove trees.	32	Agreed. Refer to Section 5.5.2 of this report.
6	Pedestrian safety on Caroline Chisolm Lane will be compromised. Currently highly trafficked by pedestrians from surrounding residences.	27	Agreed. Discussed in various sections of this report.
7	Overshadowing to adjoining dwellings with some dwellings and POS losing all solar access on 21 June.	27	It is considered that the development should not impact on solar access to adjoining dwellings. Refer to Section 5.5.1 of this report

8	The proposal is an overdevelopment of the site and is not in character with surrounding buildings.	13	Agreed. Refer to Section 5.6 of this report.
9	Unacceptable impact on heritage sandstone wall on Burns Bay Road	20	Agreed. The removal and reinstatement of the wall is not supported. Refr to Section 5.8.1 of this report.
10	Excessive height – building is too high compared to adjoining buildings. Also LEP/SEPP building height should not be exceeded	17	Agreed. Refer to Sections 5.1.8 and 5.5.1
11	Loss of trees on site and impact on significantly trees on adjoining land	16	Agreed. Refer to end of Section 5.5.1 for discussion.
12	Noise impact of service vehicles on adjoining residents	8	It is considered that the locations proposed for service vehicles (eastern and southern boundaries) are likely to give rise to unacceptable noise impacts. Refer to Section 5.5.1 of this report.
13	Breach of right of carriageway obligations / impact and use unreasonable	8	It is understood that there are no restrictions on the use of right of carriageway, as is usually the case. However, prior to any development approval, a thorough search of the terms of the carriageway would be required to demonstrate that unrestricted rights apply.
14	Inadequate public transport outside of peak hours. Some bus services stop completely between morning and afternoon peak	6	Acknowledged, however, public transport services comply with the requirements of the Housing SEPP.
15	Insufficient turning space in car park/driveway. Swept path diagrams not accurate	2	Amended swept path diagrams provided by applicant. Refer to attachment 11.
16	Site isolation / amalgamation	7	There is no statutory provision which would require the site to be amalgamated with adjoining land. Refer to Section 5.8 of this report.
17	Potential damage to adjoining land from excavation	5	Should any excavation be approved close to an adjoining boundary, it is usual practice to impose a condition which requires the applicant to prepare before and after dilapidation reports on affected adjoining structures.
18	The historic dwelling on the land (Valhalla) should be retained / fully documented prior to demolition	5	Valhalla is not listed as an item of heritage significance. Should an approval be granted for development of this site, a condition would be imposed requiring archival recording of the building prior to demolition.
19	The development will devalue surrounding properties	4	This is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979.
20	Adjoining owners have not consented to rock anchoring at basement level if required	4	It is not clear whether rock anchoring to adjoining land will be required. This would

			need to be clarified and if proposed, adjoining owner's consent would be required.
21	Non compliance with Site Compatibility Certificate	3	The Site Compatibility Certificate previously issued is not relevant to the current application. Under the current Housing SEPP, there is no provision for site compatibility certificates.
22	Potential unauthorised use of private driveway adjoining Caroline Chisolm Lane	3	This is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979.
23	Anomalies with shadow diagrams	3	These were addressed by the applicant with amended plans. Notwithstanding the amended plans, there is unacceptable overshadowing of some adjoining residences.
24	Insufficient boundary setback	2	Agreed. The upper two levels of building A do not satisfy the ADG 9m setback requirement. Other setbacks are minimal, which adds to the amenity impacts to adjoining residents.
25	Solar reflection from glass surfaces	2	The solar reflectivity of any glass in new buildings is regulated by the BCA.
26	Development will increase trespassing on adjoining land	1	It is not clear how the development will increase trespassing.
27	Light pollution	1	Light pollution is not considered to be unreasonable.
28	Non-compliance with SEPP 65 & ADG	1	There are several non-compliances. Refr to Section 5.1.2 of this report.
29	Development incorrectly described as in-fill self-care	1	<p>The application is for "in-fill self-care housing" under the housing SEPP. This definition specifically excludes the provision of services on site for meals, cleaning, personal care or nursing care.</p> <p>The applicant states that "home care personnel would be available to attend to emergencies on an on-call basis".</p> <p>Notwithstanding the proposed salon and treatment room, it appears that there is no intention to provide services on a permanent basis.</p>
30	Insufficient deep soil zone	1	<p>Agreed. The proposal provides deep soil zones of 501m² or 11% of the site area. It is also noted that one of the three areas shown as deep soil is actually the vehicle access for garbage trucks in the north-eastern corner of the site.</p> <p>The result is that the provision of deep soil zones is significantly below the 15% of site area required by the housing SEPP.</p>
31	Incorrect BCA classification	1	A BCA Assessment Report was submitted with the application. Council's Building Officer has raised no objection in this regard.
32	CPTED non-compliance	1	The applicant provides a summary of the design and management aspects to minimise crime risk. However no CPTED report was provided.

33	Insufficient waste storage facilities	1	Council's Waste Officer has highlighted a number of deficiencies, including Insufficient space for Council waste vehicle,, insufficient recycling bins, no commercial waste storage provisions for salon or café and difficulty with movement of bins for collection.
34	Non compliance with industry & employment SEPP re signage	1	No signage is proposed.
35	No-compliance with Lane Cove DCP 2010	1	Refer to section 5.3 of this report
36	Proposed changes to Housing SEPP not considered	1	The proposed changes are not a statutory matter for consideration under Section 4.15 of the Environmental Planning Act, 1979.

5.8 The Public Interest

It is apparent from this assessment and the level of objection from neighbouring property owners, that the proposal is not compliant with several development standards and will have adverse environmental impacts.

Approval of the proposal would be contrary to the public interest of maintaining the relevant development standards and providing development which minimises external impacts.

5. Conclusion

The development application has been assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979 and the provisions of relevant environmental planning instruments as detailed in this report. Some 99 unique submissions were received in response to the public notification period, the majority of which raise legitimate concerns about potential adverse impacts.

It is considered that the site is impacted by several constraints including:

- Inadequate vehicular access;
- Close proximity to a number of residents adjoining to the north, east and south of the site;
- Heritage retaining wall;
- Building height and FSR standards;
- Lack of space and access during construction.

These constraints are not acknowledged in the overall design of the site and in the resultant unacceptable bulk and scale of the buildings.

The development also fails to comply with numerous development standards set out in the State Environmental Planning Policy (Housing) 2021, State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development, the Apartment Design Guide and Lane Cove Local Environmental Plan 2009.

It is recognised that the proposed development would assist in meeting the future needs of an aging population. However, the predominance of such developments places high importance on creating well designed accommodation which does not compromise the amenity of future residents or adjoining residents.

Accordingly, the application is recommended for refusal.

6. Recommendation

- A. The Panel is not satisfied that that the applicant's request for contravention of the building height standards contained in Clause 4.3 of Lane Cove Local Environmental Plan 2009 and Clause 87 of State Environmental Planning Policy (Housing) 2021 has adequately addressed the matters required to be demonstrated by Clause 4.6 of Lane Cove LERP 2009, and the proposed development would not be in the public interest.
- B. The Panel is not satisfied that that the applicant's request for contravention of the floor space ratio standards contained in Clause 4.4 of Lane Cove Local Environmental Plan 2009 and Clause 87 of State Environmental Planning Policy (Housing) 2021 has adequately addressed the matters required to be demonstrated by Clause 4.6 of Lane Cove LERP 2009, and the proposed development would not be in the public interest.
- C. That pursuant to the provisions of Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979 the Sydney North Planning Panel, as the relevant consent authority, refuse Development Application DA134/2022 for the demolition of existing structures and construction of a seniors living development at 40A Cope Street Lane Cove for the reasons listed in Attachment 1.

