

SYDNEY NORTH PLANNING PANEL COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-367
DA Number	DA2021/1912
LGA	Northern Beaches
Proposed Development	Alterations and additions to an existing building for a mixed use development including seniors housing and boarding house
Street Address	2-4 Lakeside Crescent, 8 Palm Avenue and 389 Pittwater Road, North Manly 2100 Lot 1 DP 544341 Lot 46 DP 12578, Lot 47 DP 12578, Lot 48 DP 12578, Lot 45 DP 12578 and Lot 22 DP 865211
Applicant/Owner	Link Wentworth Housing Limited Landcom
Date of DA lodgement	21/10/2021
Number of Submissions	85 in objection
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Council recommendation to refuse Crown Development Application pursuant to Section 4.33 Environmental Planning and Assessment Act 1979
List of all relevant s4.15(1) (a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2021 • State Environmental Planning Policy (Hazards and Resilience) 2021 • State Environmental Planning Policy (Building Sustainability Index: BASIX) • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy No 65 – Design Quality of Residential apartment Development (SEPP 65) • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) • State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPPARH) • Warringah Local Environmental Plan 2011 (WLEP 2011) • Warringah Development Control Plan 2011 (WDCP)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 - Clause 4.6 Variation Requests • Attachment 2 – Flood Risk Management Report • Attachment 3 – Boarding House Plan of Management
Clause 4.6 requests	Clause 4.3 Building Height WLEP 2011, Clause 40(4) Ceiling Height SEPP HSPD 2004 and Clause 30(1)(b) Room Size SEPP ARH 2009.
Summary of key submissions	<ul style="list-style-type: none"> • Flooding and flood evacuation • Building height • Compatibility with R2 Low Density Residential Zone
Report prepared by	Jordan Davies – Principal Town Planner

Responsible Officer	Jordan Davies - Principal Town Planner
Report date	10 May 2023

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **YES**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **YES**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **NO**

Conditions

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

EXECUTIVE SUMMARY

This development application seeks consent for the adaptive re-use of the former Queenscliff Community Health Centre to become a mixed housing development containing a boarding house comprising 12 rooms on the ground floor and seniors housing with 25 self-contained dwellings on the upper two floors. The applicant for the development is Link Wentworth Housing who is a registered community housing provider. The owner of the site is 'Landcom' and as such, the application is a 'Crown Development Application'.

As the application is recommended for refusal, the application is referred to the Sydney North Planning Panel (SNPP) pursuant to Section 4.33 of the *Environmental Planning and Assessment Act 1979*. The application is made pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) and State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH). The application seeks a variation to three (3) development standards under the Warringah LEP 2011 (WLEP 2011) for Building Height 18.8%, SEPP HSPD for ceiling height 17.4% and SEPP ARH for boarding room size 12.8%. The application has received 84 submissions across two notification periods, each submission objecting to the application.

Concerns raised in the objections predominantly relate to building bulk, height, scale and density of the development, compatibility with the R2 Low Density Zone, insufficient car parking, increase in traffic and suitability of the site due to the flood affectation of the locality. These issues are discussed in detail within the assessment report and have been considered by the relevant technical (traffic and flooding engineers).

The application seeks to provide additional housing choice and affordability in the locality by providing a range of small Seniors Housing Units/studios and Boarding Rooms aimed at enabling lower cost housing offered by a community housing provider. The application seeks to retain and undertake the adaptive reuse of the former Queenscliff Community Health Centre building which has been part of the

existing streetscape since 1971. Whilst the adaptive reuse and provision of affordable and diverse housing are both concepts that Council applaud, there remain issues that prevent Council from supporting the proposal.

The flood affectation of the locality and the introduction of Seniors and People with a Disability into an existing flood affected area is of fundamental concern and cannot be supported by Council's Flood Engineers. Furthermore, the conversion of the existing ground floor of the building into a boarding house introduces new habitable floor space below the flood planning level and the applicant has not satisfied Council's concerns regarding the structural integrity of the building and protection of the ground floor from inundation of flood waters. The flooding issues are discussed in detail within this assessment report and result in Council being unable to support the application.

The second key issue is the increase in building height resulting from the additional level proposed onto the existing building. The area of concern is the northern edge of the new third storey adjoining the northern boundary with a relatively small setback. There is currently a separate application lodged with Council (DA2021/1914) by the landowner (Landcom) for the re-subdivision of the land and creation of three (3) residential lots that sit to the north and will accommodate detached residential private dwellings. The entire length of the northern façade is non-compliant with a number key built form controls pertaining to building height, wall height, spatial separation and building envelope and the visual impact of this wall adjoining the northern boundary is heightened by the minimal building separation to the northern boundary (3.8m) and the continuous length of the non-compliant third level façade. Furthermore, the proposal is well in excess of the 0.5:1 FSR 'must not refuse' standard contained in the SEPP HSPD (with the application proposing a 0.86:1 FSR) and based on the combination of built form control non-compliances the northern portion of the façade is considered to result in an overdevelopment of the site having regard to the R2 Low Density Residential Character which surrounds the site (which predominately comprise of detached two storey dwellings and the existing building itself being largely two stories).

This report concludes with a recommendation that the SNPP refuse the development application for the reasons outlined at the end of this assessment report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for the adaptive re-use of the former Queenscliff Community Health Centre to become a mixed housing development containing a boarding house comprising 12 rooms on the ground floor and seniors housing with 25 self-contained dwellings on the upper floors. The building will comprise of a total of 37 units.

Specifically, the development comprises:

- Adaptive re-use of the ground floor for the purpose of a 12 room boarding house with communal room.
- Adaptive re-use of the first floor for the purpose of 12 Seniors Living Units and a communal room.
- Adaptive re-use of a portion of the existing third storey element and construction of the remaining level 2 as a new level for the purpose of 13 Seniors Living Units.
- Reconfigure carpark on the western side to comprise of 8 parking spaces and three motorcycle spaces.
- Creation of a central communal area courtyard and landscaping around the site to enhance communal spaces.
- Tree Removal.
- Create two separate strata units, one for the ground floor boarding house and the other, for seniors living housing on levels 1 and 2.

The Plan of Management for the boarding house (ground floor) nominates a maximum of 19 persons as occupants. The seniors living component comprises of seventeen (17) studio apartments and

eight (8) one-bedroom apartments.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 5.21 Flood planning
 Warringah Local Environmental Plan 2011 - 6.1 Acid sulfate soils
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - E11 Flood Prone Land

SITE DESCRIPTION

Property Description:	Lot 1 DP 544341 , 2 - 4 Lakeside Crescent NORTH MANLY NSW 2100 Lot 46 DP 12578 , 2 - 4 Lakeside Crescent NORTH MANLY NSW 2100 Lot 47 DP 12578 , 2 - 4 Lakeside Crescent NORTH MANLY NSW 2100 Lot 48 DP 12578 , 2 - 4 Lakeside Crescent NORTH MANLY NSW 2100 Lot 45 DP 12578 , 8 Palm Avenue NORTH MANLY NSW 2100 Lot 22 DP 865211 , 389 Pittwater Road NORTH MANLY NSW 2100
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Detailed Site Description:

The subject site is currently part of six allotments with an area of 4,032.98m² as follows:

- Lot 22 in DP 865211; 389 Pittwater Road, North Manly NSW 2100
- Lot 1 in DP 544341; 2-4 Lakeside Crescent, North Manly NSW 2100
- Lot 45 in DP 12578; 8 Palm Avenue, North Manly NSW 2100
- Lot 46 in DP 12578; 2-4 Lakeside Crescent, North Manly NSW 2100
- Lot 47 in DP 12578; 2-4 Lakeside Crescent, North Manly NSW 2100
- Lot 48 in DP 12578; 2-4 Lakeside Crescent, North Manly NSW 2100

Located on the site is an existing two (and part three) storey community building known as 'Queenscliff Community Health Centre'. The building was previously used as a community health centre however has not been in operation for over 2 years. The building is mid-century brick building, with a curvilinear form and deep central recess. The site contains a carpark on the western side and the northern side of the building, each carpark has separate vehicular access. There is no direct vehicular access to the site from Pittwater Road. The western carpark contains a right of carriageway which provides access a residential dwelling at 8A Palm Road.

Surrounding the building is a number of locally native trees, including around the street frontage of Palm Avenue and Lakeside Crescent. The tree canopy sits above the existing building.

The site and surrounding roads are identified as being subject to medium to high risk flood as designated on Council's flood mapping.

The site is located within the R2 Low Density Residential Zone. The land to the east, south and west is R2 Low Density Residential. Adjoining the site to the north is Pittwater Road which is a Classified Road and zoned SP2 Classified Road. Across Pittwater Road to the north is land zoned IN2 General Industrial.

The site is almost flat with a slight fall towards the northern boundary.

Detailed Description of Adjoining/Surrounding Development

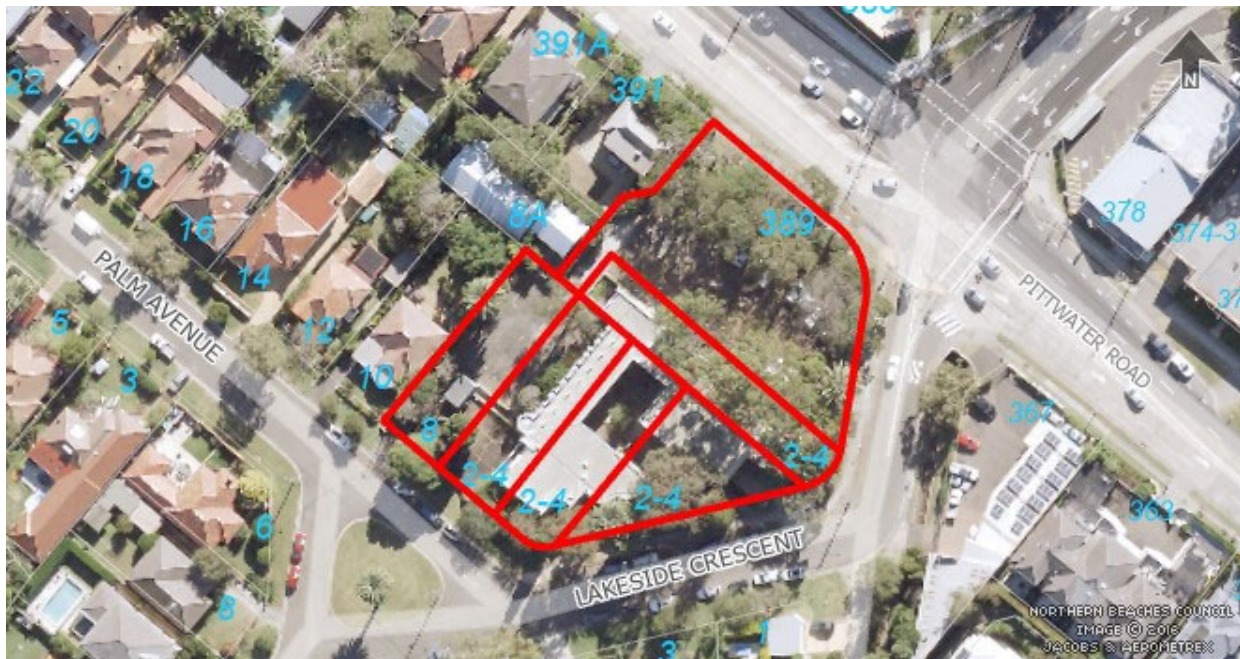
Adjoining and surrounding development is characterised by detached one and two storey the east, south and west. Across the road to the east is a single storey mechanics workshop on the corner of Lakeside Crescent and Pittwater Road. Across the road to the north are a mixture of on industrial buildings.

The site only shares one common boundary, being the eastern side boundary, which adjoins three residential dwellings. The residential dwellings consist of one and two storey dwelling houses.

Future Lot Configuration

The site is also subject to a current proposal for the re-subdivision of the existing parcels on the land under DA2021/1914 (currently being considered by Council). The proposal is to create four (4) allotments from the existing six (6) allotments. In doing so, three (3) new residential lots are proposed to front Pittwater Road (approximately 450m² each) and the remaining land being 2665m² containing the footprint of the proposed development and western carpark within a single lot.

Map:



SITE HISTORY

The land has been used as part of the Queenscliff Community Health Centre for an extended period, comprising of the health centre building and associated car park. A search of Council's records has revealed the following relevant history:

- Pre-lodgement Meeting **PLM2019/0076** was held on 07/05/2019 for 'Use of the site for Seniors Housing'.
- Application **DA2020/1318** for 'Demolition works and subdivision' on the subject land was withdrawn on 03/02/2021.
- Application **DA2021/1912** for 'Alterations and additions to an existing building for a mixed-use development including seniors housing and boarding house' is the subject application.

The applicant's Statement of Environmental Effects provides a detailed history of the site use dating back to the early 1900's.

Design Sustainability Advisory Panel

The application was referred to the DSAP on 25 November 2021. The panel had a number of recommendations to improve the development in order to gain the panel's support. The concluding comments of the panel were:

The Panel is supportive of the proposal overall, but cannot support the scheme in its current form. Redesign of aspects outlined in the recommendations above is required.

Although the proposal's breach of the height control is generally supported by the Panel, the applicant would need to demonstrate;

- *adequate amenity to existing and future neighbouring development;*
- DA2021/1912

- *appropriate streetscape response; and*
- *higher levels of amenity to all top floor dwellings*

The applicant has provided a response to each of the eleven (11) recommendations of the Panel in the package of information submitted to Council. The DSAP comments are considered by Council below in this report under the referrals.

Notwithstanding the applicant has provided a response to the DSAP recommendations, including amendments to the applicant to address building bulk at the eastern corner of the site (above the bin store), increase cross ventilation for some apartments and introduce privacy screening for the future northern residential lots, the proposal has not satisfied Council with other matters in relation to building height and flooding.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to flooding, traffic and parking, architectural design and stormwater. The additional information was provided and forms part of</p>

Section 4.15 Matters for Consideration	Comments
	<p>the assessment of the application.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter can be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development in regards to flooding. The site is affected by both medium and high risk flooding, as well as the surrounding street which provide access to the site. See detailed comments against the relevant flood controls later within this assessment report.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of the Warringah LEP and Warringah DCP with regards to flooding and will result in a development which will create an undesirable precedent such that it would undermine the safety of future residents within the development, result in an undesirable flood risk and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/06/2022 to 27/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 85 submission/s from:

Name:	Address:
Richard Llewellyn Bartlett	32 Palm Avenue NORTH MANLY NSW 2100
Richard James Gatt Jennifer Alice Hambling	8 A Palm Avenue NORTH MANLY NSW 2100
Nicola Joy Hensler	303 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Tony Lynch	Address Unknown
Mr Paul Sydney Cole	6 Lakeside Crescent NORTH MANLY NSW 2100
Mrs Glenda Margaret Alderton	5 Palm Avenue NORTH MANLY NSW 2100
Mrs Patricia Leone Vaughan	7 Riverview Parade NORTH MANLY NSW 2100
Mr Vincenzo Condomitti	14 Palm Avenue NORTH MANLY NSW 2100
Mrs Lisa Louise Molloy	2 / 42 Fairlight Street FAIRLIGHT NSW 2094
Ms Katherine Condomitti	23 Woolgoolga Street NORTH BALGOWLAH NSW 2093
Mr Robb Norman Macnicol	68 Riverview Parade NORTH MANLY NSW 2100
Mark James Lenyszyn	419 Pittwater Road NORTH MANLY NSW 2100
Emma Kathryn Lenyszyn	27 Lakeside Crescent NORTH MANLY NSW 2100
Mr James Dixon	3 Palm Avenue NORTH MANLY NSW 2100
Mr Wayne Edward Lewis	3 Riverview Parade NORTH MANLY NSW 2100
Mr Kenneth Richard Hoetmer	15 Riverview Parade NORTH MANLY NSW 2100
Mr Edwin Safarian	10 Lakeside Crescent NORTH MANLY NSW 2100
Miss Marianne Suzanne Davey	3 Palm Avenue NORTH MANLY NSW 2100
Mrs Teresa Aruego Easter	106 Prince Alfred Parade NEWPORT NSW 2106
Mrs Nicole Ann Boyde	9 Palm Avenue NORTH MANLY NSW 2100
Mr Michael John Jones	411 Pittwater Road NORTH MANLY NSW 2100
Mr Glen Vilo	415 Pittwater Road NORTH MANLY NSW 2100
Mr Malcolm Ian Auld	36 Riverview Parade NORTH MANLY NSW 2100
Mrs Julie Anne Wheatley	16 Palm Avenue NORTH MANLY NSW 2100
Ms Rachel Ann Howitt	24 Palm Avenue NORTH MANLY NSW 2100

Name:	Address:
Edward Richard Guz	1 Hopetoun Avenue CHATSWOOD NSW 2067
Mr Colin Frederick Ambrosoli	34 Riverview Parade NORTH MANLY NSW 2100
Ms Jane Amanda Wild	7 Palm Avenue NORTH MANLY NSW 2100
Mr Edward John Kwanten Christine Dalziel Kwanten	19 Lakeside Crescent NORTH MANLY NSW 2100
Mr John Stephen Currie Mrs Anita Currie	20 Riverview Parade NORTH MANLY NSW 2100
Mrs Claudia Lurline Bettina Nicholson	30 Palm Avenue NORTH MANLY NSW 2100
Ms Beverley Ann Hadgraft	141 Pittwater Road MANLY NSW 2095
Mr Anthony Keneth Blay	10 Palm Avenue NORTH MANLY NSW 2100
Mr Jason Ker Letchford Sally Ann Letchford	14 Riverview Parade NORTH MANLY NSW 2100
Ms Judith Helen Pettersson	3/29 Fairy Bower Road MANLY NSW 2095
Timothy John Rogers	5 Riverview Parade NORTH MANLY NSW 2100
Mr John Michael Worrell	3 Lakeside Crescent NORTH MANLY NSW 2100
Mr Scott Campbell Edgar Creelman	12 Riverview Parade NORTH MANLY NSW 2100
Helen Sagan	213 Fullers Road CHATSWOOD NSW 2067
Mrs Louise Patricia Richards	5 Lakeside Crescent NORTH MANLY NSW 2100
Ms Ruth Robertson	22 / 1 Fitzell Place BROOKVALE NSW 2100
Ashton Investments Pty Ltd	26 The Drive FRESHWATER NSW 2096
Mrs Julie Anne Hely	11 Lakeside Crescent NORTH MANLY NSW 2100
Stephen Geoffrey John Papp	12 Lakeside Crescent NORTH MANLY NSW 2100
Mrs Elaine Anne Gaughan	36 Palm Avenue NORTH MANLY NSW 2100
Richard Walker	Address Unknown
Mr Benjamin Alfred Brian McMurdo	24 Palm Avenue NORTH MANLY NSW 2100
Tom Brett	22 Palm Avenue NORTH MANLY NSW 2100
Lauren Ford	Address Unknown
Mr Brian William Bassham	12 Palm Avenue NORTH MANLY NSW 2100
Mrs Dianne Maree Browning	32 Riverview Parade NORTH MANLY NSW 2100
Daisy Ford	22 Palm Avenue NORTH MANLY NSW 2100
Mr Stuart Craig Hely	11 Lakeside Crescent NORTH MANLY NSW 2100
Thea Margaret Bassham	12 Palm Avenue NORTH MANLY NSW 2100
Mrs Lucy Mary King	13 Lakeside Crescent NORTH MANLY NSW 2100
Shannon Paige Barwell	419 Pittwater Road NORTH MANLY NSW 2100
Mr Sean Andrew Fry	18 Palm Avenue NORTH MANLY NSW 2100
Mrs Catherine Jane Scott	64 Riverview Parade NORTH MANLY NSW 2100
Miss Keely Jones	411 Pittwater Road NORTH MANLY NSW 2100
Mr Peter James John Roche	18 Riverview Parade NORTH MANLY NSW 2100
Mr Angus Noel Dunn	13 Riverview Parade NORTH MANLY NSW 2100

Name:	Address:
Mr Mark Christian Newton Mrs Kerrie Anne Newton	20 Palm Avenue NORTH MANLY NSW 2100
Mr Ben Robert Chalmers	417 Pittwater Road NORTH MANLY NSW 2100
James Lovell & Associates Pty Ltd	Level 1 Suite 2 20 Young Street NEUTRAL BAY NSW 2089
Meaghan Lara Sambrooke Hoetmer	15 Riverview Parade NORTH MANLY NSW 2100
Mr Graeme David Jory	11 Riverview Parade NORTH MANLY NSW 2100
Mr Marc Robert Lee Wooldridge	30 Riverview Parade NORTH MANLY NSW 2100
Mr James Lovell	PO Box 716 TURRAMURRA NSW 2074
Mr Stephen Howell Alderton	5 Palm Avenue NORTH MANLY NSW 2100
Mr Adrian Charles Marks	10 Riverview Parade NORTH MANLY NSW 2100
Mrs Megan Therese Chalmers	417 Pittwater Road NORTH MANLY NSW 2100
Robert John Chalmers	4 Corrie Road NORTH MANLY NSW 2100
Mrs Jill Mary Careless	359 Pittwater Road NORTH MANLY NSW 2100
Mrs Mari Catherine Notaras	25 Lakeside Crescent NORTH MANLY NSW 2100
Mr Jason Andrew Mulveny	47 Golf Parade MANLY NSW 2095
Mrs Jane Margaret Jory	11 Riverview Parade NORTH MANLY NSW 2100
Gregory Walter Moncrieff Largier	429 Pittwater Road NORTH MANLY NSW 2100
Mrs Jane Lesley Gadd	17 Riverview Parade NORTH MANLY NSW 2100
Mr Yorick Benjamin Sweetnam	375 Sydney Road BALGOWLAH NSW 2093
Jack Ford	Address Unknown
Mathew Lindsay Hosking	13 Palm Avenue NORTH MANLY NSW 2100
Jennifer Lisa Clarkson	17 Lakeside Crescent NORTH MANLY NSW 2100
Gabrielle Maria Hardaker	16 Lakeside Crescent NORTH MANLY NSW 2100
Julia Mcgrath	1 Lakeside Crescent NORTH MANLY NSW 2100
Maria Condomitti	14 Palm Avenue NORTH MANLY NSW 2100

The application was initially notified and advertised for a period of 14 days between 10 November 2022 and 14 November 2022. Following receipt of amended plans and updated information, the application was again notified and advertised for a period of 14 days between 13 June and 27 June 2022.

The following issues were raised in the submissions:

- Overdevelopment of the site which is compounded by the subdivision of the northern lots proposed under a separate application.
- Insufficient carparking to cater for the development and increase in traffic congestion.
- Breach of a number of built form development controls including building height under the SEPP HSPD and Warringah LEP, breach of built form controls under the DCP and breach of the 0.5:1 FSR under the SEPP HSPD.

- The alterations and increase in height to the building will be out of character for the R2 Low Density Residential Zone.
- Flooding concerns due to the increase in the number of people residing in the flood impacted locality. The development will increase the number of people at flood risk.

The above issues are addressed as follows:

- **Overdevelopment of the site which is compounded by the subdivision of the northern lots proposed under a separate application.**

Comment:

The subdivision of the land to reconfigure the existing six (6) lots into four (4) lots is considered under a separate application DA2022/1914, along with the assessment of that subdivision against the controls. It is relevant that the lot to be subdivided Lot 22 DP 865211 is already a separate parcel of land that the building sits upon and could be subdivided independent of this application.

The issue regarding overdevelopment of the site is considered against the built form controls and development standards addressed throughout this report and below.

- **Insufficient carparking to cater for the development and increase in traffic congestion. The street parking will become congested due to a lack of parking.**

Comment: The SEPP HSPD and SEPP ARH both prescribe parking rates that override the local DCP controls and prescribe parking rates that if complied with cannot form reasons for refusal of the application. The application, although only providing a total of 8 parking spaces to cater for a 12 room boarding house and a 25 Unit Seniors Living Development is technically compliant with the SEPP controls (noting that a reduced rate is applied when the application is made by a community housing provider).

Council's traffic engineers have reviewed the impact of the development with regards to traffic and parking and are satisfied that the proposal both complies with the off-street parking controls and will not cause an unreasonable impact on the surrounding traffic network.

- **Breach of a number of built form development controls including building height under the SEPP HSPD and Warringah LEP, breach of built form controls under the DCP and breach of the 0.5:1 FSR under the SEPP HSPD.**

Comment:

A detailed assessment is undertaken against each of the built form planning controls within this report. Of importance is the height breach of the third storey which is for the most part a new element introduced into the building. The third storey is considered under the Clause 4.6 Assessment and whilst portions of the three storey elements may be acceptable, the three storey presentation to the northern boundary is considered excessive and out of character for the R2 Low Density Residential Zone, with the northern façade failing to achieve a number of the built form controls in the WLEP (Building Height), WDCP (Building Envelope and Wall Height), SEPP HSP (Ceiling Height) and the Apartment Design Guidelines (2F Building Separation). The non-compliances are due to the reduced setback to the northern boundary which is only 3.8m to the upper floor façade and is not considered to provide an appropriate

transition to the proposed residential lots to the north which will have a low-density character.

Furthermore, the SEPP HSPD has controls that state the application must not be refused based on Density and Scale if a Floor Space Ratio of 0.5:1 is achieved. The proposed development will have an FSR of 0.86:1 which is well in excess of the must not refuse standard. Based on the combination of non-compliances for the northern upper floor elevation and exceedance of the 0.5:1 control, the application is recommended for refusal due to density and scale, particularly due to these breaches which do maintain a R2 Low Density Character with regards to building scale and separation to the boundary.

- **The alterations and increase in height to the building will be out of character for the R2 Low Density Residential Zone.**

Comment: The issue of building height is discussed in detail throughout this report, including the building height presenting to the street frontage. The height and character are discussed under the Clause 4.6 assessment and each SEPP assessment.

It is also discussed within this report that the new controls under the SEPP (Housing) 2021 are now in force, however technically are not applicable to this application because of a transitional and savings provision. The new SEPP (Housing) 2021 controls allow a 9.5m building height and anticipate a three storey form, however require a setback equal to the height of the building where adjoining a side or rear boundary.

Whilst the building façade presenting to the street frontage and the western boundary would be capable of complying with the new controls, the northern boundary would require a much greater setback to minimise the impact of the façade on the adjoining boundary.

Given the northern facade does not comply with several the current planning controls, along with what could be possible if the application were lodged under the current SEPP (Housing) 2021 controls, the proposal is not considered consistent with the R2 Low Density Residential Character due to the height and lack of setback to the northern façade. For this reason, the application is not supported.

- **Flooding concerns due to the increase in the number of people residing in the flood impacted locality. The development will increase the number of people at flood risk.**

Comment: The issue of flooding is discussed in detail within the assessment if Clause 5.21 of the Warringah LEP 2011 and discussed in the flooding referral. Council's flooding engineers have considered in detail the flood risk management report submitted with the application, however, are not satisfied the development is compatible with the flood behaviour of the land having regard to the introduction of residential floor area below the flood planning level (ground floor boarding rooms) and the introduction of Seniors and People with a Disability a medium and high risk flooding zone (Level 1 and 2 Seniors Living).

See detailed discussion later in this assessment report. As Council is not satisfied with the flood risk of the development the application is unable to be supported and the application is recommended for refusal due to the issues relating to flooding.

REFERRALS

Internal Referral Body	Comments
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Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported subject to conditions</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Acid Sulphate)	<p>Supported subject to conditions</p> <p>For the demolition and excavation of existing structures, as stated in the acid sulfate soils report, an Acid Sulfate Soil Management Plan is deemed necessary due to the underlying presence of PASS.</p>
Environmental Health (Contaminated Lands)	<p>Supported subject to conditions</p> <p>Site Audit Statement mentions that hydrocarbon contamination has been remediated and works validated, that the site is fit for use. We are satisfied with these controls and see no need to condition the site for the excavation of bitumen driveways.</p> <p>There is, however, the matter of asbestos mentioned in the waste management report. The environmental consultant has informed Council that this this was likely mentioned as a precaution for 'unexpected finds' in excavated material. A condition provided below is suitable for managing asbestos.</p>
Environmental Health (Industrial)	<p>Supported subject to conditions</p> <p>The acoustic report has provided some reasonable measures to mitigate potential noise sources and protect residents from excessive noise. These measures can be used as consent conditions.</p>
Landscape Officer	<p>Supported subject to conditions</p> <p>The development application is for the adaptive re-use of the former Queenscliff Community Heath Centre as a mixed housing development containing a 12 room boarding house on the ground floor, and seniors housing with 25 self-contained dwellings on the upper floors, upon a single allotment described as Lot 1 in the concurrent subdivision application.</p> <p>Council's Landscape Referral section have assessed the application against the following relevant landscape controls and policies:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • State Environmental Planning Policy - Housing for Seniors or People with a Disability 2004 - (SEPP HSPD): clause 33 Neighbourhood amenity and streetscape, clause 34 Visual and acoustic privacy, and clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings • State Environmental Planning Policy - Affordable Rental Housing 2009 (SEPP ARH): clause 29 (2) (b) landscaped area; and clause 30A Character of local area, • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP65) under: clause 28(2)(b) against the design quality principles within schedule 1; the Apartment Design Guide under SEPP 65 clause 28(2)(c); and clause 30, and the associated Apartment Design Guide, including Principle 5: Landscape, and the objectives of control 3D Communal and public open space, 3E Deep Soil Zones, 4O Landscape Design, 4P Planting on Structures, • Warringah Development Control Plan 2011, and the following Warringah Development Control Plan 2011 controls (but not limited to): D1 Landscaped Open Space and Bushland Setting and E1 Preservation of Trees or Bushland Vegetation. <p>Landscape Plans and a Arboricultural Impact Assessment accompany the development application.</p> <p>The Landscape Plans submitted provide an indication of existing trees to be retained or removed as coordinated with the Arboricultural Impact Assessment with the exception of existing tree identified as T34 - Cypress, proposed for retention in the Arboricultural Impact Assessment whilst proposed for removal in the Landscape Plan. As this tree is an Exempt Species the management or removal of this tree does not require Council consent, and in applying the landscape design proposal, removal will be required. The landscape proposals includes hard and soft landscape treatments to enhance the existing landscape character of the property within Lot 1. The landscape component of the proposal meets the minimum landscape requirements of the relevant State Environmental Planning Policies, including landscaped area, common open space and deep soil areas, and no concerns are raised with the proposed Landscape Plans.</p> <p>The Arboricultural Impact Assessment recommends the removal of sixteen existing trees, and the retention and protection of sixteen existing trees, and tree protection measures are provided and the recommendations and activities associated with the tree protection measures shall be subject to imposed conditions. The existing trees proposed for removal are impacted by development works and should the application be approved, no design alternative is available for preservation, and these include the following identified species: T3, T4, T45, T46, and T47 (Weeping Bottlebrush); T5 (Crepe Myrtle); T7 (Oleander); T16 and T17 (Bangalay); T35 (White Feather Honey Myrtle); T36 (Mock Orange); T40 (Southern Blue Gum); T41a and T44 (Giant Bird of Paradise); T42 (Cheese Tree); and T43 (Coast Banksia). Two trees identified as T35 and T40, proposed for removal</p>

Internal Referral Body	Comments
	<p>have medium retention value, and the remaining are rated with low to very low retention values. Five species recommended for removal are Exempt Species under Warringah DCP and do not require Council consent for management or removal identified as T5 and T7 are exempt by species type and T45, T46 and T47 are exempt by height at 5 metres or less.</p> <p>Landscape Referral raise no concerns regarding the landscape outcome for the proposed landscape proposal upon Lot 1, subject to conditions of consent should the application be approved, including the protection of trees and vegetation as recommended in the Arboricultural Impact Assessment, and the completion of the landscape works as documented in the Landscape Plans.</p>
NECC (Bushland and Biodiversity)	<p>Supported subject to conditions</p> <p>The application seeks approval for the adaptive re-use of the former Queenscliff Community Health Centre to become a mixed use development containing a boarding house comprising 12 rooms and seniors housing comprising 25 self-contained dwellings.</p> <p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) Biodiversity Conservation Regulation 2017 (BC Reg) State Environmental Planning Policy (Resilience and Hazards) 2021</p> <ul style="list-style-type: none"> • Division 3 Coastal Environment Area <p>Warringah Development Control Plan (WDCP)</p> <ul style="list-style-type: none"> • Clause E2 Prescribed Vegetation • Clause E6 Retaining unique environmental features <p>Additional information is provided with the application. It is noted that the combined total of native vegetation removal (DA2021/1912 and DA2021/1914) does not exceed 0.25ha, therefore the Biodiversity Offset Scheme (BOS) is not triggered, and concerns relating to s7.1 (3) of the BC Reg are satisfied.</p> <p>On inspection of the site, it was noted that several trees have been incorrectly identified within the submitted Arboricultural Impact Assessment. Of relevance to the Biodiversity Referral are those identified as 'Allocasuarina torulosa' which are Casuarina glauca, and those identified as 'Eucalyptus botryoides' are primarily Eucalyptus microcorys. Tree 16 & 17 (Eucalyptus microcorys) are dying/poor health and have a very low retention value. On this basis, and as they are not locally-native, no objection is raised to their removal. Locally-</p>

Internal Referral Body	Comments
	<p>native trees proposed for removal include:</p> <ul style="list-style-type: none"> • Tree 3, 4 (<i>Callistemon viminalis</i>) • Tree 35 (<i>Melaleuca decora</i>) • Tree 42 (<i>Glochidion ferdinandi</i>) • Tree 43 (<i>Banksia integrifolia</i>) <p>Tree 35 is located within 2m of the existing building and benefits from a clearing permit exemption under E1 of the WDCP. Both T35, and T42 are located in small garden beds in the centre of the site where they are unlikely to contribute valuable foraging or breeding habitat for native species. T3 and T4 are planted in garden beds adjoining the driveway. On this basis, and subject to replacement with species of local provenance, no objection is raised by the Biodiversity Referral to their removal.</p> <p>Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Coast and Catchments)	<p>Supported subject to conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience & Hazards) 2021 (sections 2.10, 2.11 & 2.12); and • Relevant LEP and DCP clauses. <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p> <p>The application is supported subject to conditions:</p> <ul style="list-style-type: none"> • Stormwater management (prior to construction certificate) • Installation and maintenance of erosion and sediment controls (prior to commencement)
NECC (Development Engineering)	<p>Not Supported</p> <p>Comments 16/9/22</p> <p>Reference is made to the Natural Environment Referral Flooding response dated 14/9/22, which states :</p> <p><i>It is a unclear how the ground floor will be protected from flooding via potential water entry points such as through ventilation openings and the existing ground floor. Council needs to be assured that the existing building can support the new level and maintain structural integrity up to the PMF, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion so that structural failure is avoided during a flood. Refer to Warringah DCP E11 Flood Prone Land) Clause B2.</i></p>

Internal Referral Body	Comments
	<p>The application is therefore not supported.</p> <p>Comments 16/8/22</p> <p>1) The application to convert the existing health facility to a boarding house is not supported as the Development application does not comply with the Flood controls as set down in Councils Warringah Development Control Plan (WDCP)- E11 Flood Prone Land. Please refer to the Flood teams comments for specific information (DA2021/1914)</p> <p>2) Additionally the application is not supported based on advice from councils Traffic Engineer which is supported and includes vehicle circulation issues/conflicts and mobility issues.</p> <p>Previous comments</p> <p>The application to convert the existing health facility to a boarding house is not supported as the Development application does not comply with the Flood controls as set down in Councils Warringah Development Control Plan (WDCP)- E11 Flood Prone Land. Please refer to the Flood teams comments for specific information (DA2021/1914)</p>
NECC (Flooding)	<p>Not Supported</p> <p>The proposed development is for alterations and additions to an existing building for a mixed- use development including seniors housing and boarding house at 2- 4 Lakeside Crescent and 8 Palm Avenue and 389 Pittwater Road, North Manly.</p> <p>Following review of provided material, the Council's flood referral body has several concerns with the development. As per Clause 5.21 Flood Planning of the Warringah LEP 2011, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied of 5 requirements (2) (a)-(e). With respect to those requirements, Council flood referral body is not satisfied that the proposed development:</p> <p>(a) is compatible with the flood ... behaviour on the land</p> <p>The proposed development is surrounded by high hazard flooding in the 1% AEP flood. The depth of flooding surrounding the building is greater than 1m. The flooding can occur very quickly after rain occurs and cause the land to be isolated and submerged for several hours.</p> <p>Introducing vulnerable landuse (Senior's Living) to the area is not considered compatible with the flood behaviour status of the land. The proposed change of use of the ground floor from community health centre to an unsupervised habitable use (including 12 boarding house units – two of which must be accessible units) is also not consider</p>

Internal Referral Body	Comments
	<p>compatible with the flood behaviour status.</p> <p>(c) will not adversely affect the safe occupation and efficient evacuation of people ... in the event of a flood</p> <p>The intended design and scale of buildings resulting from the development must be considered by the flood referral body, as per Clause 5.21 Flood Planning (3) of the Warringah LEP 2013. It is deemed that the change of use to the ground floor, the introduction of Seniors Living to the floodplain and the scale of additional residences on the floodplain may adversely affect safe occupation and efficient evacuation of people in the event of a flood. This is because the ability to reliably predict flash flooding is not currently possible, therefore in reality the flood plan provided is not expected to be followed by residents independently of emergency services (SES) intervention and prior to the site becoming isolated. This means that the emergency will likely require additional resources to efficiently evacuate people and there are significant concerns for vulnerable people to shelter in place at the site. There is also deemed not to be an efficient means of medical evacuation (Prescriptive Control E2 of E11 Flood Prone Land in the Warringah DCP).</p> <p>(d) incorporates appropriate measures to manage risk to life in the event of a flood</p> <p>The intended scale of the building has been considered in assessing the appropriateness of the measures. Although the development incorporates some measures to manage flood-related risk to life, the flood referral body is not satisfied that that the risk to life will be appropriately managed in the event of a flood. The inadequacies of measures resulting in risks to life in the event of a flood include but are not limited to:</p> <ul style="list-style-type: none"> • the introduction of a vulnerable community to a floodplain with a practical means of medical evacuation (Prescriptive Control E2 of E11 Flood Prone Land in the Warringah DCP) • the shelter in place must be intrinsically accessible to all people on the site ... without the reliance on an elevator [i.e lift] (Prescriptive Control E1 of E11 Flood Prone Land in the Warringah DCP). In order for seniors and for the inhabitants of accessibility boarding house units to get to the first floor (to shelter above the Probable Maximum Flood level) they would need to use the lift, stair lift or stairs. During flood emergencies it is common for power and back-up power sources to fail, the lifts may not have power and stairs may not be possible for vulnerable people to reach the shelter in place refuge without a ramp. • the applicant has not provided sufficient information as to alleviate concerns of structural integrity of the building during a flood greater than a FPL (Prescriptive Control B2 of E11 Flood Prone Land in the Warringah DCP). Specific details required to satisfy Council of this will be compiled and requested separately via written correspondence. • the applicant has not provided sufficient information, to confirm how the ground floor will be protected from flooding via potential water entry points up to the FPL (flood-proofing requirement of Prescriptive

Internal Referral Body	Comments
	<p>Control C6 of E11 Flood Prone Land in the Warringah DCP). Specific details required to satisfy Council of this will be compiled and requested separately via written correspondence.</p> <p>The above concerns and Council's flood assessment position has generally been supported by a consultant conducting a peer review of the flood assessment. Further details including the peer reviewer's final report will be provided to the applicant when finalised.</p> <p>The suitability of the development under the Seniors Living SEPP (2004) is also questioned. Although the identified flood risk is not mapped in an Environmental Planning Instrument, the natural hazard and high flood hazard on the site is mapped in the adopted Manly Lagoon Flood Study (2013) and Manly Lagoon Floodplain Risk Management (2018). Mapping of the hazard in an adopted study has been deemed in case law to be sufficient for the SEPP to either not apply or for flood risks to be considered with greater emphasis).</p> <p>The Flood referral body considers the proposal to be compliant with the requirements from Clause 5.21 Flood Planning (2b and 2e) of the Warringah LEP 2011 as follows:</p> <p>(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties</p> <p>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of riverbanks or watercourses.</p>
Traffic Engineer	<p>Supported subject to conditions</p> <p><u>Comments on applicants response to traffic matters - 18/10/22</u></p> <p>The response to traffic matters prepared by Colston Budd Rogers & Kafes Pty Ltd dated 6 September 2022 has been reviewed and has addressed the traffic concerns to an extent that the development application can now be supported from a traffic perspective subject to conditions</p> <p><u>Comments on amended plans - 28/6/22</u></p> <p>The amended plans dated 13/5/22 have been reviewed together with the letter from GLN planning dated 17 May 2022 summarising the response to Council's Request For Further Information. In terms of the response to the traffic issues the following comments are made:</p> <p>1. It was requested that the driveway from Palm Avenue be widened to at least 5.5m to a point no less than 6m inside the property boundary, it was also requested that the driveway width be dimensioned this has not occurred. The existing scaled driveway width of approx 4.8m is insufficient to allow two vehicles to safely pass and there is concern that this may lead to vehicles reversing back</p>

Internal Referral Body	Comments
	<p>onto Palm Avenue to allow an opposing vehicle to pass. The amended plans have provided for a passing bay inside the property boundary however this could be deleted if the requested widening above were provided.</p> <p>2. It was requested that swept path plots be provided to confirm that opposing vehicles could pass at the passing bay. These have not been provided and are required. The motorcycle parking spaces have been relocated to the head of the carpark within what used to be a turning bay. There is concern that turning from the adjacent disabled parking spaces will place any parked motorcycles at risk of damage. the motorcycle parking spaces should be relocated away from the turning bay</p> <p>3. Waste Collection is to occur from kerbside adjacent to the indented parking bay on Lakeside Crescent. The easternmost 20m of this parking bay is to be designated "No Parking 6pm Tuesday to 6pm Wednesday" to facilitate kerbside collection of waste. Plans will be required for Traffic Committee approval as a condition of consent with the changed parking arrangement to be implemented at the developer's cost prior to occupation</p> <p>4. The applicant has confirmed that there will be a maximum of 19 boarding house tenants with no resident manager. There is not therefore any need for a parking space to be designated as a manager's space.</p> <p>5. SEPP (Housing) 2021 is now in force and has slightly differing parking requirements to those for SEPP Affordable Rental Housing which it supersedes. The SEPP Housing requires 1 parking space for each 5 boarding rooms plus 1 motorcycle space for each 5 boarding rooms plus 1 bicycle parking space for each boarding room. As there are 12 boarding rooms parking for 3 cars, 3 bicycles and at least 12 bicycles is required to support the boarding house use. The Seniors Living component requires parking for 5 vehicles. i.e the car parking numbers and motorcycle parking numbers are compliant with SEPP requirements and are acceptable however parking for 12 bicycles should be shown on the plans.</p> <p>6. There are no pram ramps from the carpark to the adjacent footpaths and drivers with mobility issues or in a wheelchair therefore have no convenient means of egress from the carpark. The plans should be amended to show these ramps consistent with requirements of AS1428.1</p> <p>7. Spaces 5 & 6 are shown with a hatched area adjacent. It is unclear from the plans if this hatched area is at the same level as the parking bay. If it is intended as an unload area for disabled drivers/passengers, it needs to be at the same level as the parking bay and have a disabled access ramp to allow wheelchair access to and from adjacent footpath areas.</p>

Internal Referral Body	Comments
	<p>Further information and amended plans are required addressing the changes requested above.</p> <p>Original comments - 23/12/21</p> <p>Proposal description: Proposed Affordable Housing and Seniors Living Development</p> <p>The proposed development contains a boarding house comprising 12 rooms on the ground floor and seniors housing comprising 25 self-contained dwellings on the upper floors. It provides eight car parking spaces (six accessible), three motorcycle and three bicycle spaces. Vehicular access to the proposed development will be via the existing driveway on Palm Avenue. Pedestrian access will be provided from Lakeside Crescent.</p> <p>The site was previously occupied by a community health centre, with the building currently vacant. Access to the site was provided from Lakeside Crescent, just south of Pittwater Road (to a car park of some 20 spaces) and from Palm Avenue (to a car park of some 8 spaces). There is a right of way (ROW) for access to 8A Palm Avenue on the Palm Avenue access.</p> <p>The development is located within the Low-Density Residential (R2) Land Use Zoning of Northern Beaches LGA based on <i>Warringah Local Environmental Plan 2011</i> Maps. ARH SEPP and the Seniors SEPP apply to the subject site.</p> <p>The plans (Master Set) – Drawing DA – 0102 issue E, designed by the Integrated DESIGN Group, dated 30/9/21, the Traffic and Parking Assessment prepared by Colston Budd Rogers & Kafes Pty Ltd dated 29 September 2021, the TfNSW referral response letter (ref: SYD21/01348) dated 18 Nov 2021 and the Statement of Environmental Effects prepared by GLN Planning dated 11/10/2021 have been reviewed by the Traffic team.</p> <ul style="list-style-type: none"> • Parking requirements for the proposed development are set out in the ARH SEPP and the Seniors SEPP. <ul style="list-style-type: none"> o According to ARH SEPP, at least 0.2 parking spaces are to be provided for each boarding room

Internal Referral Body	Comments
	<p>when operated by a social housing provider, not more than one (1) parking space is to be provided for each person employed in connection with the development and who is resident on-site, and at least one (1) parking space for every 5 boarding rooms is to be provided for bicycle and motorcycle spaces.</p> <p>o According to Seniors SEPP, at least one (1) car space for each 5 dwellings is to be provided where the development application is made by, or by a person jointly with a social housing provider.</p> <p>It is unclear how many employees are expected to serve for the proposed development. It is suggested that some information about the anticipated number of development employees, how many will be resident on the site and the associated parking requirements be included in the traffic report. Applying the rest of the parking rates to the proposed development would equate to eight (8) car parking spaces, three (3) motorcycles and three (3) bicycle spaces.</p> <p>It is reported that the parking allocation is as follows:</p> <p>o Three (3) car parking spaces including one (1) accessible space are proposed for the boarding house component,</p> <p>o Five (5) accessible spaces are proposed for the seniors housing component, and</p> <p>o Three (3) motorcycle spaces and three (3) bicycle spaces are proposed for the seniors housing component.</p> <p>subject to clarification of the parking required to cater for employed persons resident on site, the above rates are acceptable</p> <ul style="list-style-type: none"> • All parking spaces dimensions and layout appear to be compliant with Australian Standard AS2890.1:2004 Off-Street Parking requirements and AS2890.6-2009. • The existing driveway via Palm Avenue will be maintained for the proposed development. The driveway at the property line is measured to be approximately 4.8 metres wide reducing to 3 meters wide inside the property. These

Internal Referral Body	Comments
	<p>dimensions require confirmation by the applicant.</p> <ul style="list-style-type: none"> It is noted that a low volume driveway carrying less than 30 vehicles per hour (two way) is anticipated for the development; however, given that the existing right of way to 8a Palm Avenue will be retained via the same driveway, and the roadway is more than 30m long to access the proposed parking area and 8a Palm Avenue, for safety reasons and to prevent vehicles having to reverse back onto Palm Ave the driveway shall be widened to at least 5.5m for the first 6m inside the property boundary to provide passing opportunities for two way traffic. Swept path analysis to demonstrate that vehicle passing is achievable within the property shall be provided. Waste collection is proposed from Lakeside Crescent, with the bin store located adjacent to the pedestrian access. Given that Council requires that residential waste collection occur from the street, subject to it not impacting on local traffic and taking into account the safety of waste collection staff, the consultant proposes the northern section of the indented parking bay on the Lakeside Crescent frontage of the Site is to be designated 'No Parking' for part of the day that waste is collected. This would allow the waste collection vehicle to pull into the indented bay and collect waste from the bin store clear of traffic flow on Lakeside Crescent. This can be considered separately if requested by Council's Waste Services team. The proposal will generate minimal traffic during the peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance. <p>Further details showing an amended driveway arrangement, with swept path plots, should be provided prior to further assessment of this application and further information regarding employee numbers resident on site and associated parking requirements should be included.</p> <p>Once these further details are provided the development can be given further consideration.</p>
Waste Officer	<p>Supported subject to conditions</p> <p>Waste Management Assessment (Updated Plans dated 13/5/22)</p>

Internal Referral Body	Comments
	<p>Proposal is approved with conditions</p> <p>Waste Management Assessment Recommendation - acceptable, subject to conditions.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported subject to conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.122 - Traffic generating development	<p>Supported subject to conditions</p> <p>The application was referred to Transport for NSW under Clause 101 SEPP (Infrastructure) due to the having a frontage to a classified road. Transport for NSW have responded advising they do not raise any objections, subject to recommended conditions provided in their response. The requirements of Transport for NSW are to be reflected if consent is to be issued for the proposal.</p>
Design Sustainability Advisory Panel	<p>The Panel is supportive of the proposal overall, but cannot support the scheme in it's current form. Redesign of aspects outlined in the recommendations below is required.</p> <p>Although the proposal's breach of the height control is generally supported by the Panel, the applicant would need to demonstrate;</p> <ul style="list-style-type: none"> • adequate amenity to existing and future neighbouring development; • appropriate streetscape response; and • higher levels of amenity to all top floor dwellings <p>The Panel's recommendations were as follows:</p> <ol style="list-style-type: none"> 1. Remove mass comprising bin store and part of apartments 1.12 and 2.12. 2. Consider consolidation of apartments G.11, 1.11 and 2.11 with remaining portion of apartments G.12, 1.12 and 2.12 respectively to configure larger apartment type. 3. Consider options to add back mass at western side of building. Solution shall require to retain winter sunlight to communal area. 4. Relocate bin store and instate landscaped setback in place. 5. Consider approach to parking management 6. Provision for greater number of canopy succession plantings. Consider planting some larger succession specimens e.g. Cook pine; Araucaria columnaris 7. Incorporate clerestory windows to top level dwellings to enable

	<p><i>greater access to sunlight and cross ventilation.</i></p> <p>8. <i>Relocate northern boundary to allow for adequate privacy and demonstrate adequacy</i></p> <p>9. <i>Consider utilising electric heat pump hot water and induction cooktops to replace the use of gas.</i></p> <p>10. <i>The Panel recommends maximizing the amount of rooftop PV given the management regime that will apply to the site</i></p> <p>11. <i>Add external windows to bathrooms and utility rooms wherever possible.</i></p> <p>Council Comment:</p> <p>The applicant provided a response to the DSAP comments, including redesign of some aspects of the proposal to address the concerns. Of note, the additional building bulk over the bin store comprising of apartments 1.12 and 2.12 were deleted from the proposal, reducing some of the building mass presenting to the eastern street frontage.</p> <p>Reconfiguration of the some of the apartments were undertaken in response to the DSAP comments to optimise layout. Including of clearstory windows on the upper level for some apartments were included to improve light and ventilation.</p> <p>The sustainability measures were included into the proposal where possible by the applicant. The applicant has provided a detailed response which is attached to this report.</p> <p>The applicant has provided a full response to the DSAP comments with the package of additional information submitted with the DA and amended plans.</p> <p>The applicant was not required to be referred back to the DSAP as part of the assessment process and their comments and recommendations have been considered as part of the assessment.</p> <p>Although the Panel were generally supportive of the proposed building height (subject to some reduction around the eastern frontage over the bin store), Council's position remains that the exceedance of building height along the northern elevation is still excessive and does not provide an appropriate transition between the low density residential lots to the north (proposed under DA2021/1914) and the boarding house/seniors development.</p>
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ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a three storey residential development for the provisions of 25 self-contained dwellings (25 of which are seniors living).

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application. The assessment is only relevant for the Level 1 and Level 2 Seniors living, with the ADG not applicable to the ground floor boarding house.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

Northern Beaches Council has an appointed Design and Sustainability Advisory Panel (DSAP). Refer to the DSAP referral earlier within this report. Overall, the DSAP was generally supportive of the development, subject to some minor amendments to further improve the amenity of the development and reduce the visual bulk adjoining the street (particularly around the eastern corner of the building fronting Lakeside Crescent). The comments made by the DSAP were incorporated into an amended set

of plans submitted to Council. However, the DSAP did make a recommendation to relocate the proposed northern boundary to allow adequate privacy for the future proposed lots to the north. The applicant has instead introduced privacy screening to the northern elevation to mitigate privacy and retained the alignment of the northern boundary.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area

including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The proposal makes use of the existing building footprint and introduces a new upper level to create a three storey building character. Having regard to the deep central recess of the building and generous setback to the western boundary, the proposal at the street frontage and western length of the façade responds to the site context in a satisfactory way. However, Council is not satisfied regarding the height and length of the northern façade given its close proximity to the future northern lots. This minimal setback and three storey wall does not provide a suitable transition in low density residential character between the development and proposed low density subdivision to the north.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment: Regard has had to what could be undertaken on the site with regards to building height under the provisions for Seniors Housing within the new SEPP (Housing) 2021 which allows a 9.5m height limit for Seniors Living developments, however the control also requires the third storey to be setback equal to the height of the wall where adjoining a side/rear boundary. This instrument is not technically applicable to the development, however, does have relevance in what could be proposed under the current controls.

Whilst the scale at the site frontage is generally 9.5m (which would be allowed under the new SEPP (Housing) 2021) and the western façade is setback between approximately 10m and 20m, the scale of the northern wall breaches a number of current planning controls with regards to wall height, building height, envelope and spatial separation under the ADG. When considered in accordance with the current planning controls and what could be undertaken under the current SEPP (Housing) 2021, the northern façade fails a number of key controls which guide built form and scale and is therefore considered out of context with the surrounding R2 Low Density Character and not what is reasonably expected in the R2 Zone.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: The density has been guided by the applicant's response to affordable housing needs in the area and the shape of the existing building footprint. The site is within a well serviced location and has been demonstrated to meet the parking rates required by the SEPP ARH and SEPP HSPD. The size of the units meet the size requirements for a 'studio' under the ADG and some are just shy of the 50sqm requirement for a 1 bedroom unit. However, the unit sizes are driven by the affordable housing nature of the development and existing building geometry. The density of the development could be further reduced by a better response to bulk and scale for the northern wall and a reduced floor area at the northern extent of the building.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment: The application is supported by a BASIX certificate. A total of 4 out of 25 units (16%) are cross ventilated being units 1.01, 2.01, 2.05 and 2.06. The applicant has argued that the lack of cross ventilation is compensated by the shallow apartment depths. However, given this is such a large non-compliance Council is not satisfied cross ventilation has been optimised for the development.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment: The existing significant landscaping features on the site are able to be largely retained due to the existing building footprint being retained. With new landscape planting around the site frontage, as proposed on the landscape plan, the proposal would have an acceptable landscape outcome.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment: Direct overlooking to the western neighbour has been mitigated through generous spatial separation in accordance with the ADG. The direct overlooking of the northern future residential lots has been mitigated through privacy screen treatments and obscure glazing to the windows. A superior

outcome would be increased spatial separation to the northern boundary or a reduction in building bulk along the northern edge of the building. Cross ventilation is less than ADG compliance. The applicant has argued that the lack of cross ventilation is compensated by the shallow apartment depths. However, given this is such a large non-compliance Council is not satisfied cross ventilation has been optimised for the development.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The public and private domain is well defined for the site and the communal open space is protected from the street. Passive surveillance is provided over the street from the new proposed windows.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment: This development is a particularly unique situation being proposed by a social housing provider which integrates seniors living and a boarding house within the same building (across separate levels). Shared communal open space exists within the building and providing the plan of management for the boarding house is followed, this could provide a good social mix with potential to foster social interactions between occupants of various ages.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment: The façade presentation and addition to the building is considered to be of high quality and good architecture, as considered by the DSAP panel. The retention of existing mature trees around the building will enable integration into the streetscape. However, the scale and bulk of the northern wall is not in character with the R2 Low Density Zone and breaches a number of key controls which guide building bulk and scale. The design of the northern wall is not supported and has excessive visual bulk and scale.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

It is noted that the above assessment is only relevant to the senior's living component on Levels 1 and 2, not the ground floor Boarding House (as SEPP 65 does not apply to boarding houses).

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		

Site Analysis	Does the development relate well to its context and is it sited appropriately?	Yes - The development is sited appropriately by using the existing fabric of the building on the site.												
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Yes - An appropriate amount of solar access achieved within the development and no unreasonable impacts on adjoining sites.												
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Yes - Clear entrances are provided and boundaries between the private and public are delineated through landscape and control points such as sliding entrance gate to the communal area.												
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Yes - An internal communal space is provided on Level 1, with a north-easterly aspect picking up the morning sun, will receive 3 hours. There is approx. 885sqm of communal open space on the site (includes front setback areas which are landscape gardens) which is 33% of the site area.												
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	Yes -There is 245sqm/9% of deep soil area with minimum 6m dimensions in the front setback.
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as	No - Northern Facade - Ground and L1 2.3m to												

follows:

Building height	Habitable rooms and balconies	Non-habitable rooms
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.

balcony and 3.1m to facade

No - Northern Facade L2 - 3.8m to facade

Yes - Western Facade - L1 and L2 - 8m to balcony and 10m-20m facade

Privacy treatments are provided to the northern facing windows including translucent glazing up to 1.6m above floor level and angled balconies to mitigate views towards the three (3) future residential lots proposed under DA2021/1914 (by the same land owner).

The architectural devices such as translucent glazing and skewed screening devices on the balconies sufficiently mitigate visual privacy between the development and northern future lots.

However, the visual bulk and scale of the new top storey northern wall is of concern and is beyond what would reasonable be expected within the R2 Low Density Residential Zone. The shortfall of building separation as required by the ADG to Level 2 along the northern boundary, together with the height breach and DCP control breaches mean Council does not support the northern facade of the building and interface with the new lot boundary to the north. This forms a recommended reason for refusal.

On of the aims of control 2F is "ensure that new

		<p>development is scaled to support the desired future character with appropriate massing and spaces between buildings". The desired future character of the area is R2 Low Density Residential and Council is not satisfied that a three storey wall, setback less than the ADG requirement, meets the aims of Control 2F.</p> <p>The aims of control 2F also state "assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook". Whilst visual privacy has been mitigated via screening devices, the outlook from the future residential lots to the north would be less than ideal and inconsistent with what you would reasonably expect to see on the adjoining site within the R2 Low Density Residential Zone with regards to building height, setback, bulk and scale.</p>
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	Yes - Pedestrian access well identified through the street frontages.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Yes - Single vehicle access point provided to the satisfaction of Council's engineers.
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 	Yes - The application complies with the parking requirements of the SEPP HSPD and SEPP ARH.

	<p>Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. 	<p>No - 17 of the 25 seniors living apartments receive minimum 2 hours direct sunlight to their windows on the 21 June between 9am and 3pm when assessing the building form, achieving 68% solar access.</p> <p>Applicant has stated that some top floor apartments have been provided with skylights to increase solar access, however, this is not demonstrated on the plans. It is considered that with the inclusion of skylights, compliance could be achieved, and this could be dealt with via condition if consider were to be granted.</p>
	<ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	<p>No - 4 out of 25 (16%) would not be capable of receiving direct sunlight between 9am and 3pm (Units 1.02, 1.03, 1.11 and 1.12).</p>
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p>	<p>No - 8 out of 25 units (32%) are cross ventilated. These units being Unit</p>

	<ul style="list-style-type: none">At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	1.01, 1.04, 1.07, 2.01, 2.04, 2.05, 2.06 and 2.07. The applicant has argued that the lack of cross ventilation is compensated by the shallow apartment depths. However, given this is such a large non-compliance Council is not satisfied cross ventilation has been optimised for the development.												
	<ul style="list-style-type: none">Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Yes - The apartments have a shallow depth.												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	No - Level 1 apartments have a 2.5m floor to ceiling height, with the top floor apartments having a 2.7m floor to ceiling height. The apartments are very shallow however, which does provide some compensation for the level 1 ceiling height.
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m²</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	No - The studio apartments meet the minimum 35m ² size. However, some of the 1 bedroom apartments are just shy at 48.2m ² to 49.7m ² . Given the building is an adaptive reuse. the minor shortfall is considered acceptable.		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													

	each.																
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Yes															
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Yes															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Yes															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Yes															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Yes															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments 	Yes															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Yes															
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr> </thead> <tbody> <tr> <td>Studio apartments</td><td>4m²</td><td>-</td></tr> <tr> <td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>No - Only 6/25 apartments have a compliant sized balcony. The remainder either have no balcony or an undersized balcony. The applicant has provided detailed justification for the non-compliance given the nature of the use and the adaptive reuse concept for the building, with generous outdoor communal open space on the site. The DSAP did not raise the lack of private balconies as a particular issue for the development.</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	N/A - None of the seniors apartments are at ground level.															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	No - There is 12 units off the circulation core Level 1 and 13 Units on Level 2.															

	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A											
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	No - Units achieve 4m3 to studios, 6m3 to 1 beds, and 8 m3 to 2 beds, excluding the kitchen and wardrobes. Storage is incorporated into laundry and hall cupboards, living room / TV joinery, window box seats with integrated storage, and open shelving. No external storage provided given the nature of the use and no basement parking is provided to facilitate this.											
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>		Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	
	Dwelling Type		Storage size volume										
	Studio apartments		4m ²										
	1 bedroom apartments		6m ²										
	2 bedroom apartments		8m ²										
3+ bedroom apartments	10m ²												
At least 50% of the required storage is to be located within the apartment.													
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Yes - Plant rooms are located away from the dwellings.											
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Yes - Noise mitigation has been considered in the layout of the building.											
Configuration													
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Yes - The development is made on behalf of a community housing provider and therefore, provides predominantly one bedroom units and studio to meet the affordable housing needs of people in the area.											
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Yes - In terms of safety and security, the site is in a R2 Low Density Zone and entrances to the building are well defined and lit.											
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Yes in part - Visual interest is provided to the street and builds upon the existing former community health centre in a positive way. However, concern is raised with the extent of the northern facing elevation in terms of the											

		presentation of bulk and scale to the future residential allotments.				
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Yes - Flat roof to minimise building height.				
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Yes - Landscape plan responds to the R2 Low Density Zone and retains significant trees in the front setback.				
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				N/A - Planting on structure is not proposed, all deep soil.	
	Plant type	Definition	Soil Volume	Soil Depth		Soil Area
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm		10m x 10m or equivalent
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm		6m x 6m or equivalent
	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm		3.5m x 3.5m or equivalent
	Shrubs			500-600mm		
	Ground Cover			300-450mm		
	Turf			200mm		
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features				Yes - Adaptable units are a requirement of the SEPP Seniors development which the proposal achieves.	

Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Yes - The proposal makes use of an existing community building to provide for affordable housing to meet the needs of the community. The design takes the original form of the development and replicates the building footprint above to complement the existing form and enhance the use of the building.
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	N/A
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	N/A
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Yes - BASIX Certificate Provided meeting the requirements.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Yes - Measures for water conservation are listed in the BASIX Certificate.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Yes - Waste management plan submitted.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Yes - The materials are suitably robust for the life of the development.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment: The applicant is not recommended for refusal for any of the above reasons.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment: The applicant is not recommended for approval; however, a Design Verification Statement has taken into account the design principles of the ADG. Council is not satisfied that the design Principles regarding building separation at the northern wall have been met and for this reason, the application is not supported.

SEPP (Affordable Rental Housing) 2009

The development application was lodged with Council on 21 October 2021. At the time of lodging the application State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) was in force. On 21 November 2021, the SEPP (ARH) was repealed because of the SEPP (Housing) 2021 coming into force. However, pursuant to Schedule 7A Savings and Transitional Provisions Clause 2 (1) (a) the SEPP Housing 2021 does not apply to "*a development application made, but not yet determined, on or before the commencement date*". Therefore, due to the savings provisions, the application is considered under the SEPP ARH.

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 3: Boarding houses

Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

- "(a) is wholly or partly let in lodgings, and*
- (b) provides lodgers with a principal place of residence for 3 months or more, and*
- (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

In this Division 'communal living room' means "a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room".

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	Consistent The site is located within the R2 Low Density Residential Zone and, as such, the proposed use is permissible with consent under SEPP ARH. The land use 'Boarding House' was permissible under the R2 Low Density Residential Zone at the time of lodging the application under WLEP 2011.

Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area. Note: Accessible area means land that is within: (c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and	Consistent The site is located within the R2 Low Density zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday. There is an east bound and west bound bus stop located on Pittwater Road which provide regular access to Manly, this bus being the 199 Manly to

18.00 on each Saturday and Sunday.	Palm Beach Route.
(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	Not applicable. The site is located within the Sydney region.

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as development which may be carried out with consent.

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP	Not applicable
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP	Not applicable
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum	The site is located in the R2 Zone and residential flat buildings are not permitted.	Not applicable

	<p>floor space ratio for any form of residential accommodation permitted on the land, plus:</p> <p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>		
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	The height limit under the WLEP 2011 is 8.5m. The boarding house is located within the ground floor plan and the boarding house component complies with the height limit. See discussion regarding the seniors living development above, elsewhere within this report.	Compliant
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The site retains the existing quantum of landscaping around the front boundary and therefore is compatible with the existing streetscape.	Compliant
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	The applicant has provided a solar access study demonstrating 3 hours is achieved to the communal room at mid-winter, which consists of a North-east facing window.	Compliant
(d) private open space	if at least the following private open space areas are provided (other than the front	Central communal open space area is provided at least 20m ² and 3m dimensions.	Compliant

	<p>setback area):</p> <p>(i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of 2.5m is provided adjacent to that accommodation,</p>		
(e) parking	<p>if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in</p>	<p>The development is to be carried out by a community housing provided (Link-Wentworth Housing), is located within the accessible area and has 12 rooms, requiring 2.4 spaces (rounded up to 3). The new carpark on the western side of the building has three (3) parking spaces designated to the boarding house use.</p>	Compliant

	connection with the development and who is resident on site,		
(f) accommodation size	if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least: (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or (ii) 16 square metres in any other case.	Each boarding room has a size of at least 12sqm (single) or 16sqm (double).	Compliant
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Each room has private bathroom and kitchen facilities	Compliant
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	The matters set out above do not form reasons for refusal of the application.	Compliant

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	A communal living room is provided on the ground floor for the boarding house users	Compliant
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ² ,	There are three (3) rooms which exceed the maximum 25sqm size. The variation sought is 2.6m ² (10.4%) at Unit G.05, 3.2m ² (12.8%) at Unit G.06 and	Not compliant - See Clause 4.6 Assessment of this issue. The non-compliance is not a reason for refusal.

	<p>2.8m² (11.2%) at Unit G.07.</p> <p>The applicant has provided justification in their application as follows:"The proposal makes for efficient use of the space as an adaptive re-use project. The design skillfully uses space to within the existing building envelope to integrate the 12 proposed boarding house rooms. The ARH SEPP does not allow for more than 12 rooms and more than 12 could compromise the livability of the boarding house rooms. The boarding house is to be operated by a Community Housing provider specifically to provide affordable accommodation and there is clearly not an intention to operate a use other than a boarding house."Council agrees that the non-compliance is partially a result of the adaptive re-use of the building and existing size of the ground floor plan, therefore resulting in the exceedence of the room size. See Clause 4.6 assessment elsewhere within this report.</p>	
(c) no boarding room will be occupied by more than 2 adult lodgers,	The plan of management addresses maximum occupation	Compliant
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Bathroom and kitchen facilities are provided within the boarding rooms	Compliant
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The plan of management specifies that there is a maximum occupancy of 19 boarders. Therefore, a on-site manager is not required. If consent is granted, compliance with the PoM is to form a condition of consent.	Compliant
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be	N/A - Zoned residential	Not Applicable

used for residential purposes unless another environmental planning instrument permits such a use,		
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	Three (3) bicycle and three (3) motorcycle spaces are required. Space is designated for 3 motorcycle spaces in the eastern part of the carpark. Bicycle parking is located just outside the communal area on the ground floor.	Compliant
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	N/A - New boarding house	Compliant

Clause 30AA: Boarding houses in Zone R2 Low Density Residential

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Comment:

Comment The subject site is zoned R2 Low Density Residential and the proposed boarding house has 12 rooms.

Clause 30A: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

Comment:

The boarding house component of the development is within the existing ground floor plane of the existing building on the site, which has been on the land for an extended period of time and has formed part of the local character of the area. The change of use to the boarding house on the ground floor does not raise any specific concerns regarding compatibility with the streetscape. The additional level of seniors living development is addressed under the SEPP HSPD discussion elsewhere within this

report.

In this regard, it is considered that the scale of the development is compatible with the streetscape and consistent with the first principle.

- The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

Comment:

As above, the boarding house component is within the existing building on the land and the boarding house component does not add visible building bulk or is detrimental to the streetscape.

In this regard, the development is considered to be compatible with the scale of surrounding development and consistent with the second principle.

- The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

Comment:

Significant trees around the perimeter of the site are retained and there is no reduction of the front building setback as a result of the change of use to a boarding house for the ground floor component.

In this regard, it is considered that effective methods have been employed in the design of the development to reduce its visual dominance and is consistent with the third principle.

- The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment:

The building retains the brick façade and compliments the visual appearance of the ground floor through introduction of new windows to achieve light and ventilation for the boarding rooms.

In this regard, the development is considered to be consistent with the fourth principle.

The above principles were further developed in *Project Venture Developments v Pittwater Council* (2005) NSWLEC 191 to include the following:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of

constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

The change of use of the ground floor of the boarding house does not result in physical impacts on the adjoining site such as overshadowing, privacy, views or restrict future development potential. Noise is dealt with in a satisfactory way via the operational management plan and acoustic report submitted with the application which will form consent conditions if consent were to be issued.

Privacy

The ground floor windows of the boarding house will not give rise to unreasonable privacy impacts.

Overshadowing

The change of use of the ground floor does not give rise to additional overshadowing of adjoining sites.

Noise

Noise is dealt with in a satisfactory way via the operational management plan and acoustic report submitted with the application which will form consent conditions if consent were to be issued.

Conclusion to character assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is compatible / incompatible with the character of the local area and surrounding wider locality.

This matter does not warrant the refusal of the Development Application.

Conclusion

The boarding house component is generally consistent with the requirements of the SEPP ARH, with the exception of the variation to the boarding house room sizes which is addressed under a Clause 4.6 variation assessment elsewhere within this report. The variation to the room sizes is reasonable and does not form part of the recommended reasons for refusal of the application.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1243888M dated 29 September 2021).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	45

If consent were to be granted, a condition would be included requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Housing for Seniors or People with a Disability) 2004

The development application was lodged with Council on 21 October 2021. At the time of lodging the application State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) was in force. On 21 November 2021, the SEPP (HSPD) was repealed because of the SEPP (Housing) 2021 coming into force. However, pursuant to Schedule 7A Savings and Transitional Provisions Clause 2 (1)(a) the SEPP Housing 2021 does not apply to "a development application made, but not yet determined, on or before the commencement date". Therefore, due to the savings provisions, the application is considered under the SEP HSPD.

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for in-fill self-care housing. The SEPP HSPD relates to Level 1 and Level 2 of the development.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows.

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment: The proposal aims to increase the supply of affordable housing for Seniors in a location close to public transport. The proposal is of good design with the exception of the upper level of the northern elevation which does not have a sufficient setback to the northern boundary.

Chapter 2 – Key Concepts

Comment: The development is a form of 'in-fill self-care housing' as defined in the SEPP HSPD.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and	Yes, the proposal is in close proximity to bus services which provide access to these services.	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	(c) the practice of a general medical practitioner		
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400 metres away.	Yes - there is a east bound and west boundary bus service to Manly which provides these services. The bus stop is within 400m of the site and meets the gradient requirements.	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	N/A	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Yes - The site has connection to services.	Yes
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	Consideration has been had to the proposal with regards to the bulk and scale of each elevation, taking into consideration this is an adaptive re-use. However, the L2 upper floor northern elevation is excessive and does not have sufficient spatial separation. Services are available for the residents by means of bus transport. The northern elevation is not compatible with the R2 Low Density Residential character due to the height and minimal setback to the northern boundary.	No

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	Yes - Site analysis provided	Yes

Clause 31 Design of in-fill self-care housing

Pursuant to Clause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	<p>Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form.</p> <p>Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.</p>	Consideration has been had to the policy controls of Warringah DCP and Warringah LEP in regards to built form and scale in the R2 Zone. In particular the numerous controls which have been breached and lack of spatial separation for the upper floor adjoining the northern elevation is of concern and this element is considered visually excessive and bulky presenting to the northern boundary.
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation. 	The building has incorporated privacy measures to mitigate direct overlooking. The proximity of the L2 addition to the northern boundary is visually dominating adjoining the northern boundary and out of context for the R2 Zone.
3. Impacts on streetscape	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape. 	The retention of existing vegetation within the front setback and maintenance of the existing building position retains street character, whilst having regard to the 9.5m building height which is now permitted for Seniors Housing under SEPP (Housing) 2021.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	Visual privacy to the western neighbours has been mitigated through large spatial separation of between 8m (to balcony) and

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

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Control	Requirement	Proposed	Compliance
	<p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,</p> <p>(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.</p> <p>d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,</p> <p>e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</p> <p>f. retain , wherever reasonable, major existing trees, and</p> <p>g. be designed so that no building is constructed in a riparian zone.</p>	<p>The building maintains the existing setbacks to the street frontage.</p> <p>Mature trees are retained in the front setback and enhanced as per the landscape plan to the satisfaction of Council's landscape officer.</p> <p>Mature trees are retained in the front setback and side setbacks to the satisfaction of Council's landscape officer.</p> <p>Not constructed in a riparian zone</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
CL 34 Visual and acoustic privacy	<p>The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking</p>	<p>Visual privacy to the western neighbours has been mitigated through large spatial separation of between 8m (to balcony) and between 10m and 20m to the facade. Visual privacy to northern neighbour mitigated through sill height windows and privacy screening, however could be improved and further mitigated through increased spatial separation.</p>	<p>Yes - Screening devices are used to mitigate views.</p>

Control	Requirement	Proposed	Compliance
	areas and paths.		
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	<p>17 of the 25 seniors living apartments receive minimum 2 hours direct sunlight to their windows on the 21 June between 9am and 3pm when assessing the building form, achieving 68% solar access.</p> <p>Applicant has stated that some top floor apartments have been provided with skylights to increase solar access, however, this is not demonstrated on the plans. It is considered that with the inclusion of skylights, compliance could be achieved, and this could be dealt with via condition if considered to be granted.</p> <p>4 out of 25 units (16%) are cross ventilated. These units being Unit 1.01, 2.01, 2.05 and 2.06.</p> <p>The applicant has argued that the lack of cross ventilation is compensated by the shallow apartment depths. However, given this is such a large non-compliance Council is not satisfied cross ventilation has been optimised for the development.</p>	No - Cross ventilation is poor
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	Stormwater has been reviewed by Council's engineer and is satisfactory and could be addressed via conditions if consent were to be granted	Yes
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the	Secure entry points are used for the building at the ground level and courtyards.	Yes

Control	Requirement	Proposed	Compliance
	approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.		
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	Pedestrian access to and from the site is clear and well defined.	Yes
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	Waste management has been designed in accordance with Council's requirements.	Yes

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	4,033m ² existing Lot 1 - However, pursuant to Clause 40(5), this does not apply to an application made by a social housing provider.	N/A
Site frontage	20 metres	46m and 33m frontage - However, pursuant to Clause 40(5), this does not apply to an application made by a social housing provider.	N/A
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	No - A clause 4.6 variation request has been submitted. This 4.6 variation request is not supported particularly due to the exceed of the northern upper floor elevation.	No
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	No - The building is three stories adjoining the northern boundary and facing the western boundary. The northern facade presentation is not supported due to the minimal setback.	No
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	Pursuant to Clause 40(5), this does not apply to an application made by a social housing provider.	N/A

Clause 41 Standards for hostels and self-contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The application is accompanied by an Access report prepared by 'Funktion' dated 20/09/2021 which makes confirms the matters of Schedule 3 can be met. Should consent be granted, compliance with this report would be a condition of consent.

Part 5 Development on land adjoining land zoned primarily for urban purposes

This part is not applicable to the subject site.

Part 6 Development for vertical villages

This part is not applicable to the proposed development.

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

Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self-contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	The building exceeds 8m to the ceiling height. This is a matter that Council is not satisfied in relation to height and scale of the building, particularly at the northern edge. The application is recommended for refusal due to this non-compliance.	No - The site has variable levels associated with the slope of the site, with a maximum height of 9.39m proposed, and a variation of between 8.7 metres (8.8%) to 9.39 metres (17.4%) from the development standard. This is a reason for refusal and discussed under the Clause 4.6 assessment.
Density and scale	0.5:1	0.84:1 FSR	No - The proposal exceeds the FSR and the upper-level addition contributes to the non-compliance and adds to bulk and scale. This is a reason for refusal.
Landscaped area	30% of the site area is to be landscaped	31.4% (838m ²)	Yes
Deep soil zone	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	31.4% (838m ²)	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings	17 of the 25 seniors living apartments receive minimum 2 hours direct sunlight to	No

Control	Required	Proposed	Compliance
	of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	<p>their windows on the 21 June between 9am and 3pm when assessing the building form, achieving 68% solar access.</p> <p>Applicant has stated that some top floor apartments have been provided with skylights to increase solar access, however, this is not demonstrated on the plans. It is considered that with the inclusion of skylights, compliance could be achieved, and this could be dealt with via condition if consent were to be granted.</p>	
Private open space	<p>(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and</p> <p>(ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling),</p>	No - Only 6/25 apartments have a compliant sized balcony. The remainder either have no balcony or an undersized balcony. The applicant has provided detailed justification for the non-compliance given the nature of the use and the adaptive reuse concept for the building, with generous outdoor communal open space on the site. The DSAP did not raise the lack of private balconies as a particular issue for the development.	No

Control	Required	Proposed	Compliance
	that is not less than 2 metres in either length or depth and that is accessible from a living area		
Parking	1 car space for each 5 dwellings where the development application is made by, or is made by a person jointly with, a social housing provider.	Yes - Compliant amount of spaces is provided as the application is made by a community housing provider	Yes

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

Transport for NSW (TfNSW)

Section 2.118 - Development with frontage to classified road states:

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.

Comment:

The application was referred to Transport for NSW for comment. Transport for NSW have provided their concurrence and support for the proposal, subject to conditions. The conditions will be included if any consent is issued.

Section 2.119 - Impact of road noise or vibration on non-road development states:

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

Comment:

An acoustic report has been submitted with the application demonstrating that internal noise levels in accordance with the above are able to be achieved with the use of selective glazing. The report concludes that appropriate noise levels can be achieved for the development.

Section 2.121 and Schedule 3 of this Policy requires that the following development(s) are referred to the RMS as Traffic Generating Development. The proposal does not trigger traffic generating development and as such, concurrence is not required under Clause 2.121. TfNSW have considered the development in accordance with the other relevant clauses (as discussed above) and are satisfied with the proposal.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
 - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
 - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the

Fisheries Management Act 1994,

- c) the carrying out of any of the following:
 - i) earthworks (including the depositing of material on land),
 - ii) constructing a levee,
 - iii) draining the land,
 - iv) environmental protection works,
- d) any other development

Comment:

Not within coastal wetlands or littoral rainforest.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

Not within proximity to coastal wetlands or littoral rainforest.

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

Not within coastal vulnerability area.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.

Comment:

Council has considered the matters a) to g) and are satisfied that the development will not have adverse impacts on these matters. Council's coast and catchment team have provided a separate assessment against the relevant chapter of the SEPP.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

Council is satisfied the development has been cited to avoid impacts.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - iv) Aboriginal cultural heritage, practices and places,
 - v) cultural and built environment heritage, and
 - b) is satisfied that:

- i) the development is designed, sited and will be managed to avoid an adverse
 - ii) impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The development, due to its proximity to the coastline and lagoon, is not considered to give rise to impact on the matters listed i) to v). The site is highly disturbed because of a number of years of use as a community facility. Council is satisfied impact has been avoided.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The development will not increase coastal risk or coastal hazards.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

There is no coastal management program applicable to the land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of the SEPP, the applicant has submitted a Site Audit Report dated 10 September 2020 and prepared by Senversa Pty Ltd. In its conclusion, the investigation states:

JBS&G (2020a and 2020c) conclude that the site is considered suitable for residential land use with accessible soils with no further contamination remediation or management required.

Based on the information presented in the Validation Report, Supplementary Assessment, and observations made on site and following the Decision-Making Process for Assessing Urban Redevelopment Sites in NSW EPA (2017) Guidelines for the NSW Site Auditor Scheme (3rd edition), the auditor concludes that the site is suitable for the proposed land use of low density residential with

accessible soils (i.e. gardens).

Implementation of an Unexpected Finds Protocol during site redevelopment should be considered given that sampling was not able to be undertaken beneath the current building. The expected site includes a brown- black silty clayey sand fill layer across much of the site that has inclusions of ash, bitumen, slag and gravel.

Therefore, as the Site Audit Statement indicates that the site is suitable for a low-density residential land use, Council is satisfied that the land is suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the site audit statements (unexpected finds protocol) are included as conditions if consent were to be granted.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Between 8.65m and 10.6m	1.7% to 18.8%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
5.21 Flood planning	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Building Height Clause 4.3 WLEP 2011 Ceiling Height Clause 40(4)
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	(a) SEPP HSPD Maximum Room Size Clause 30 (1)(b) SEPP ARH
Requirement:	8.5m (top of building) WLEP 2011 8m (measured to ceiling) SEPP HSPD 25m ² maximum room size SEPP ARH
Proposed:	10.6m building height 9.39m ceiling height 28.2m ² maximum room size (three (3) rooms are in excess of the standard)
Percentage variation to requirement:	18.8% building height 17.4% ceiling Height 12.8% room size



Source: Integrated Design Group, DA-9400 Rev B

Figure 1 - Height plane prepared by architect.



Figure 2 - Section plan prepared by Architect.

Assessment of request to vary a development standard:

The following assessment of the variation to Building Height Clause 4.3 WLEP 2011, Ceiling Height Clause 40(4)(a) SEPP HSPD and Maximum Room Size Clause 30 (1)(b) SEPP ARH development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

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.

Comment:

Building Height Clause 4.3 WLEP 2011, Ceiling Height Clause 40(4)(a) SEPP HSPD and Maximum Room Size Clause 30 (1)(b) SEPP ARH development standard is not 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.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request for a variation to the Maximum Room Size Clause 30 (1)(b) SEPP ARH has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

However, the Applicant's written request for Building Height Clause 4.3 WLEP 2011 and Ceiling Height Clause 40(4)(a) SEPP HSPD has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In this regard, the Applicant's written request for Building Height Clause 4.3 WLEP 2011 and Ceiling Height Clause 40(4)(a) SEPP HSPD has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) *to promote the social and economic welfare of the community and a better environment by the*

proper management, development and conservation of the State's natural and other resources,
 (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
 (c) to promote the orderly and economic use and development of land,
 (d) to promote the delivery and maintenance of affordable housing,
 (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
 (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
 (g) to promote good design and amenity of the built environment,
 (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
 (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
 (j) to provide increased opportunity for community participation in environmental planning and assessment.

Building Height Clause 4.3 WLEP 2011 and Ceiling Height Clause 40(4)(a) SEPP HSPD

The applicants written request for both Building Height Clause 4.3 WLEP 2011 and Ceiling Height Clause 50 (a) SEPP HSPD argues, in part:

There are three primary environmental planning grounds which support the contravention to the height of building standard. These relate to the fact that that equitable and lawful access is enabled throughout the site, that the existing structure is non-compliant with the maximum building height, and that there will be no impacts to surrounding properties in terms of view loss, overshadowing or privacy impacts.

The need to provide access to each level of the site as per the Seniors Housing SEPP results in the lift overrun height exceedance, while the additional roof height is a response to existing arrangements that result in the poor and outdated ability of the site to manage stormwater.

The proposed development has been designed as an adaptive reuse of an existing building which has effectively dictated its height. The reuse of the existing building has the benefit of maintaining and updating a building that has been a part of the character of the area, and contributed to the wellbeing of the community, for decades. The importance and value of pursuing an adaptive reuse development option is explained in detail with the statement of environmental effects accompanying the subject development application. The reuse of the building also has substantial waste minimisation savings.

The exceedance is a consequence of a carefully considered design approach that is site responsive and comprises an adaptive re-use of the existing building that maximises the inherent strengths of the site while modernising the built form to ensure compliance the ARH SEPP and Seniors Housing SEPP to result in a liveable and sustainable development.

The higher building form allows for the concentration of floorspace at the at the eastern end of the site, away from existing residences to the west. Furthermore, as indicated at Figure 8 over the page, the position and orientation of the site ensures that there will be no additional shadow impacts to the living areas or private open space of surrounding properties, while the use of screening, orientation to the street and generous setbacks will ensure that privacy impacts can be mitigated.

In addition to the above, there are negligible material negative impacts resulting from the proposed variation from the height of building standard.

Council Comment:

The applicant's environmental planning grounds are not considered sufficient to warrant departure from

the standard, in particular the extent of the building breach at the upper level 2 northern extent of the building.

The planning ground in relation to disabled access is only considered relevant to the breach of the lift overrun, with additional height at the northern edge in addition to that of the lift overrun.

The planning ground that the adaptive reuse of the building has determined the building height is also not accepted, as there is only a minor existing portion of Level 2 that is in breach of the height that is to be reused. The additional floor area is a new element comprising of approximately 629m² of new floor area in breach of the height limit.

Whilst Council is supportive of the adaptive reuse of this building, the breach of the building height control is not considered warranted or caused by the adaptive reuse of the building, given a significant portion of Level 2 is new and in particular has a reduced setback and increased height presenting to the northern future lots. The adaptive reuse of the building can be achieved whilst retaining a building form that is compatible with the two storey scale and character of buildings in the R2 Zone and is consistent height of the existing building on the site.

Council has considered the proposal against the planning principal for adaptive re-use established in Michael Hesse v Parramatta City Council [2003] NSWLEC 313 and does not consider there to be sufficient public benefit to warrant a full additional storey to be placed on top of the existing building and this would make the building more incompatible with the R2 Low Density context. The proposed building being for new affordable housing, whilst supported in principle, is not considered to introduce superior public benefit when compared to the existing use as a community health centre and therefore be relied on up as an environmental planning ground to warrant additional building level being introduced.

The absence of impact is not considered to be a sufficient environmental planning ground, as this is a requirement of new development to demonstrate no unreasonable impacts.

Council has considered the more recent SEPP (Housing) 2021 is now in force since following of the DA. The controls for Seniors Living in the SEPP (Housing) 2021 allow a height limit of 9.5m to the top of the building, which in effect allows a three storey building under the new SEPP. It is considered that if the application were to be lodged now, the building height and three storey presentation fronting the street and the portion of the building facing the western boundary would be largely compliant with the 9.5m control. However, the new SEPP (Housing) 2021 controls require that the third storey be setback within a 45 degree plane where adjoining a side or rear boundary. The intent of this control being to mitigate the height and scale of walls facing a common boundary in the R2 Low Density Zone. Whilst the western façade would comply with this requirement (having a setback of between 10m and 20m to the facade) the northern facade would be grossly non-compliant with the control, with the upper-level facade being setback only 3.8m (the required setback being the equivalent to the wall height i.e approx 9m).

Accordingly, Council's assessment has found that the height and scale of the northern portion of the L2 Façade is in consistent with the envisaged bulk/scale and character of the R2 Low Density Residential Zone under the planning controls applicable under the SEPP HSPD and the controls that would be applicable under the SEP (Housing) 2021 if the application were to be lodged today.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the

matters required to be demonstrated by cl 4.6(3) in relation to Building Height Clause 4.3 WLEP 2011 and Ceiling Height Clause 40(4)(a) SEPP HSPD.

Maximum Room Size Clause 30 (1)(b) SEPP ARH

The applicants written request for a variation to the Maximum Room Size Clause 30 (1)(b) SEPP ARH argues, in part:

There are at least two main environmental planning grounds to support the contravention to the development standard. These relate to the fact that the development is an adaptive re-use project and secondly that there will be no impacts to borders or surrounding properties as a result of the variation.

As an adaptive re-use project, the boarding rooms are constrained in the way that they can be configured. The reuse of the existing building has the benefit of maintaining and updating a building that has been a part of the character of the area, and contributed to the wellbeing of the community, for decades. The importance and value of pursuing an adaptive reuse development option is explained in detail with the statement of environmental effects accompanying the subject development application. The reuse of the building also has substantial waste minimisation savings.

Alternative solutions that achieved compliance with the development standard would likely leave surplus unused or tokenistic non-boarding room space, given the unique orientation and design of the built form. The exceedance is not associated with an attempt to exceed the permitted floor space of the site or provide for additional accommodation.

There will also be no negative environmental impacts to tenants or surrounding properties, given that the increased GFA will not increase the density or number of tenants within the boarding house.

Council Comment:

The ground floor boarding house is contained within the footprint of the original building. Council agrees with the statement that "Alternative solutions that achieved compliance with the development standard would likely leave surplus unused or tokenistic non-boarding room space, given the unique orientation and design of the built form. The exceedance is not associated with an attempt to exceed the permitted floor space of the site or provide for additional accommodation." The boarding house maintains the maximum room limit of 12 rooms and the exceedance is a direct result of the adaptive reuse of the ground floor and the existing building geometry.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) in relation to Clause Maximum Room Size Clause 30 (1)(b) SEPP ARH.

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the developments standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standards

The SEPP HSPD does not provide explicit objectives in regard to the relevant height standards. However the following is provided as a note to subclause 40(4)(b):

Note—

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

While contained within a separate environmental planning instrument, the objectives of Clause 4.3 of WLEP, relating to building height, are also considered relevant to the assessment of the standard. The applicant's Clause 4.6 Request for a variation to the SEPP standard also draws from the WLEP objectives for building height and states the objectives of Clause 4.3 "are relied on for the purposes of understanding the implicit objectives of the height provisions in SEPP HSPD, to the fullest extent."

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The proposal makes use of the existing building footprint and introduces a new upper level to create a three storey building character. Having regard to the deep central recess of the building facing the street and generous setback to the western boundary, the proposal at the street frontage and western length of the façade responds to the site context in a satisfactory way. However, Council is not satisfied regarding the height and length of the northern façade given its close proximity to the future northern lots. The minimal facade setback of 3.8m and three storey wall does not provide a suitable transition in low density residential character between the development and proposed low density subdivision to the north.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

The proposal does not result in unreasonable amenity impacts in terms of solar access or view loss. The northern facade is treated with privacy screening and obscure glazed windows to address privacy. A superior outcome however would be to increase the spatial separation to the northern lots.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and

bush environments,

Comment:

The proposal maintains mature tree planting around the development to maintain street character and also retains some mature trees along the northern boundary, however these trees are not considered sufficient to mitigate the height and scale of the wall facing the northern boundary.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

As discussed within this report and having regard to the new policy controls of the SEPP (Housing) 2021 which does allow a height of up to 9.5m for Seniors Living, the height at the street frontage is acceptable given the deep central building recess, maintenance of existing street setbacks and retention of mature trees in the front setback. Based on these factors the building as viewed from the road is acceptable.

There are no specific stated objectives for the development standard for the maximum room size under Clause 30 (1)(b) SEPP ARH of SEPP ARH. It is considered most relevant to consider the overall aims of the SEPP ARH which are:

- (a) to provide a consistent planning regime for the provision of affordable rental housing,*
- (b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
- (c) to facilitate the retention and mitigate the loss of existing affordable rental housing,*
- (d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*
- (e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*
- (f) to support local business centres by providing affordable rental housing for workers close to places of work,*
- (g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.*

Comment: Council is satisfied that the exceedance of the rooms size for three (3) rooms up to 3.2m² is not contrary to the aims of the SEPP ARH as stated above. The geometry of the rooms is a result of the adaptive re-use of the ground floor and is due to the existing floor plan geometry. The breach of the development standard is not considered contrary to the above objectives (a) to (g).

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment: The development attributes to the housing needs of the community through affordable housing and seniors living apartments. Consistent with this objective.

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

Comment: Not applicable to this application.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment: The proposal provides a suitable quantum of landscaping and retains mature vegetation which compliments the landscape setting of the R2 Low Density Zone.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard the concurrence of the Secretary for the variation to the Development Standards is assumed by the Local Planning Panel.

Clause 5.21 Flood planning WLEP 2011

The flood affection of the land and the nature of the land use is of primary concern to Council with regards to flood risk management and the introduction of a high number of persons into a flood affected area who are categorised as 'vulnerable and critical' within the Warringah DCP (Seniors Housing being a listed 'vulnerable and critical use in the WDCP'). The below extract shows the flood affectation of the subject site, surrounding properties and public road:



Sourced from Northern Beaches Council Mapping Portal on 12 December 2018

Figure 1 - Council's Flood Mapping (Red = High Risk and Blue = Medium Risk)

A flood risk management report has been presented to Council, along with a number of supporting documents from the applicant and their flood engineer in order to try and allow Council to be satisfied as to the compatibility of Housing for Seniors and People with a Disability in the flood affected area.

Council's flood engineers have considered the flood risk management plan provided by the application which relies on a 'shelter in place' on Level 1 of the building which is situated above the Flood Planning Level. However, Council is not satisfied that a shelter in place within the building is a suitable outcome for a Seniors Living Development as there is no means of practical medical evacuation from the site and trapped persons within the building could place further strain on emergency services during a flooding event.

The applicant has informed Council in writing as the site will be managed by a Community Housing Provider the management could restrict persons who are physically vulnerable from occupying the site via a plan of management. However, Council is not satisfied this is a reasonable way to deal with a development that gains permissibility via the state policy which encourages the delivery of housing for Seniors and People with a Disability, yet would restrict the occupancy of certain people from this group. It would be questioned how people would be dealt with if they became physically vulnerable whilst residing in the building i.e relocation of these people.

The conversion of the ground floor of the existing building into a 12 room boarding house introduces additional residential floor space below the flood planning level that ordinarily Council would not

ordinarily support. Council's flood engineers are not satisfied with the methodology the applicant has put forward to 'flood proof' the ground floor of the existing building from inundation of flood waters and the structural stability of the building in a flood event.

Overall, Council is not satisfied that the introduction of a Seniors and Disability Living Development onto the land is a suitable use of the site and is not a compatible land use given the flood behavior of the land. Council is not satisfied that the application meets the controls in the LEP and DCP for the conversion of the existing non-habitable ground floor (previously a community health centre) to a residential use (boarding house) below the flood planning level.

A detailed assessment is undertaken below against the LEP and replicates the responses provided by Council's Flood Engineers.

WLEP 2011 Clause 5.21

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

(a) is compatible with the flood function and behaviour on the land, and

Comment: Inconsistent - The proposed development is surrounded by high hazard flooding in the 1% AEP flood. The depth of flooding surrounding the building is greater than 1m. The flooding can occur very quickly after rain occurs and cause the land to be isolated and submerged for several hours.

Introducing vulnerable landuse (Senior's Living) to the area is not considered compatible with the flood behaviour status of the land. The proposed change of use of the ground floor from community health centre to an unsupervised habitable use (including 12 boarding house units – two of which must be accessible units) is also not consider compatible with the flood behaviour status.

(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and

Comment: Consistent - Council is satisfied the development will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties as the footprint of the existing building remains unchanged.

(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and

Comment: Inconsistent - The intended design and scale of buildings resulting from the development must be considered by the flood referral body, as per Clause 5.21 Flood Planning (3) of the Warringah LEP 2013. It is deemed that the change of use to the ground floor, the introduction of Seniors Living to the floodplain and the scale of additional residences on the floodplain may adversely affect safe occupation and efficient evacuation of people in the event of a flood. This is because the ability to reliably predict flash flooding is not currently possible, therefore in reality the flood plan provided is not expected to be followed by residents independently of emergency services (SES) intervention and prior to the site becoming isolated. This means that the emergency will likely require additional resources to efficiently evacuate people and there are significant concerns for vulnerable people to shelter in place at the site. There is also deemed not to be an efficient means of medical evacuation (Prescriptive Control E2 of E11 Flood Prone Land in the Warringah DCP).

(d) incorporates appropriate measures to manage risk to life in the event of a flood, and

Comment: Inconsistent - The intended scale of the building has been considered in assessing the appropriateness of the measures. Although the development incorporates some measures to manage flood-related risk to life, the flood referral body is not satisfied that the risk to life will be appropriately managed in the event of a flood. The inadequacies of measures resulting in risks to life in the event of a flood include but are not limited to:

- the introduction of a vulnerable community to a floodplain with a practical means of medical evacuation (Prescriptive Control E2 of E11 Flood Prone Land in the Warringah DCP)
- the shelter in place must be intrinsically accessible to all people on the site ... without the reliance on an elevator [i.e lift] (Prescriptive Control E1 of E11 Flood Prone Land in the Warringah DCP). In order for seniors and for the inhabitants of accessibility boarding house units to get to the first floor (to shelter above the Probable Maximum Flood level) they would need to use the lift, stair lift or stairs. During flood emergencies it is common for power and back-up power sources to fail, the lifts may not have power and stairs may not be possible for vulnerable people to reach the shelter in place refuge without a ramp.
- the applicant has not provided sufficient information as to alleviate concerns of structural integrity of the building during a flood greater than a FPL (Prescriptive Control B2 of E11 Flood Prone Land in the Warringah DCP). Specific details required to satisfy Council of this will be compiled and requested separately via written correspondence.
- the applicant has not provided sufficient information, to confirm how the ground floor will be protected from flooding via potential water entry points up to the FPL (flood-proofing requirement of Prescriptive Control C6 of E11 Flood Prone Land in the Warringah DCP). Specific details required to satisfy Council of this will be compiled and requested separately via written correspondence.

The suitability of the development under the Seniors Living SEPP (2004) is also questioned. Although the identified flood risk is not mapped in an Environmental Planning Instrument, the natural hazard and high flood hazard on the site is mapped in the adopted Manly Lagoon Flood Study (2013) and Manly Lagoon Floodplain Risk Management (2018). Mapping of the hazard in an adopted study has been deemed in case law to be sufficient for the SEPP to either not apply or for flood risks to be considered with greater emphasis).

(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

Comment: Consistent - Council is satisfied that the proposal will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of riverbanks or watercourses.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Comment: Council is not satisfied the in relation to matter (c) with regard to the development minimising

the risk to life and ensuring the safe evacuation of people in a flood event for the reasons described above.

Given Council is not satisfied that the pre-conditions of the LEP in relation to flooding have been met, the application is recommended for refusal.

6.1 Acid sulfate soils

Under Clause 6.1 (6), development consent is not required if:

- (a) the works involve the disturbance of less than 1 tonne of soil, and
- (b) the works are not likely to lower the watertable.

Comment:

The proposed development does not involve the disturbance of at least 1 tonne of soil and is not likely to lower the water table. The land is identified as Acid Sulphate Soils Class 4 and a Preliminary Assessment of Acid Sulphate Soils is only required when the proposal involves works more than 2m below the natural ground level or works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.

The subdivision does not involve excavations of more than 2m and as such, a preliminary ASS assessment is not required.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining

properties.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. *(f) the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	North 8.9m West - 8.4m- 8.8m	25%	No
B3 Side Boundary Envelope	4m	North - Outside	N/A	No
	4m	West - Within	N/A	Yes
B5 Side Boundary Setbacks	0.9m	North - 2.3m to 3.8m	N/A	Yes
	0.9m	West - 8m to 20m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	5m to 7.6m	N/A	No - However some encroachments existing building
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	838sqm/ 31.4%	N/A	No - However SEPP overrides

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	No	No
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B7 Front Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	No	No

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The wall height control is applied for the walls facing side boundaries (in this case, the north and west boundary). The wall height along the western façade is up to 8.8m, however has a setback of between 10m and 20m to the next residential property. This setback is considered sufficient distance to mitigate bulk and scale and visual impact from the adjoining site.

The northern facade has wall height of up to 8.9m facing the northern boundary (which will consist of three (3) future residential lots). The setback to this wall is 3.8m to the upper level, a much lesser setback than the western boundary.

The wall height extends for a length of 40m along the northern boundary.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The development is not considered to have minimised visual impact from the future adjoining residential properties to the north. The height and length of the northern wall, combined with the 3.8m setback, is considered excessive for the R2 Low Density Residential zone and inconsistent with what could reasonably be expected to be developed on the site in accordance with the planning controls. The facade is in breach of a number of controls including building height under the LEP, ceiling height under the SEPP HSPD, building separation under the Apartment Design Guidelines and the DCP envelope controls. The number of controls which the northern facade breaches leads Council to the conclusion that the upper floor element adjoining the northern facade is excessive for the site and adds unreasonable bulk and scale presenting to the future residential allotments.

Whilst the applicant has suggested mitigation strategies such as increased setbacks to the residential dwellings, landscaping zones to be managed under a covenant on the future residential lots and orientating window of the future dwellings away from the shared boundary, these strategies do not remedy Council's concerns with the height, length, and minimal setback to the third storey of the development.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

There are established canopy trees, including along the northern boundary, to be retained. This does assist minimising visual impact but does not fully address the visual bulk and scale of the facade.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

There will be no unreasonable view impacts.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

As discussed above, the visual impact on the future residential dwellings to the north will be unreasonable given the scale, length and proximity of the facade to the common boundary. No solar access impacts will arise due to favorable orientation of the site. Visual privacy has been mitigated by treatment of windows on the upper floor northern facade.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The site is relatively level, no excavation proposed.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

There is no scope for a traditional roof above the building given the third floor is already above the 8.5m LEP height limit.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

Non-compliance with the wall height control forms part of a recommended reason for refusal of the application.

B3 Side Boundary Envelope

Description of non-compliance

The northern elevation of the building encroaches the side boundary envelope. The Level 2 floor is a new element introduced to the building as a result of the development. The below figure shows the extent of non-compliance:



Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The length of the top storey is over 40m long and encroaches the envelope for the full length of the façade, with no real attempt to step back the newly introduced upper most level. Although a different material is used to provide architectural interest, the length and height of the wall is

considered too visually dominant for the R2 Low Density Residential zone. The future residential dwellings to the north will experience a three storey wall adjoining the rear boundary from their backyards, the majority of which setback between 3m and 3.8m. This is not consistent with what would reasonably be expected in the R2 Low Density Residential Zone in accordance with the planning controls.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The encroachment will not impact solar access as a result of the orientation of the site. Privacy is mitigated for the top floor by the use of translucent glazing up to 1.6m above the ground level.

- *To ensure that development responds to the topography of the site.*

Comment:

The site is relatively flat and there is no real site constraint that makes compliance unreasonable or hard to achieve.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

The non-compliance with the building envelope control forms part of the reason for refusal of the application.

B7 Front Boundary Setbacks

The DCP requires a 6.5m front boundary setback. The existing footprint of the building has varied setbacks between 5m (corner of unit 1.12 and balcony of Unit 2.12) and 7.6m (Palm Avenue frontage). The building footprint is retained and not proposed any closer to the boundary, with the new portions of the upper level sitting directly above. The new portions of the upper level are setback a minimum of 6.5m from the front boundary, with the existing non-compliant portion of the building retained in the same form (Unit 1.12 and 2.12).

The existing front setbacks are maintained and the new upper-level portions complies with the minimum 6.5m setback, with the proposal maintaining the existing spatial proportions and setbacks to the street, therefore maintaining the existing landscaping setbacks character. As the proposal does not further encroach the front setback, the front setbacks proposed are satisfactory and consistent with the numerical controls.

D1 Landscaped Open Space and Bushland Setting

The DCP requires that 40% of the site comprise of landscaped area in the R2 Zone. However, as the application is made pursuant to the SEPP HSPD and SPP ARH, these Environmental Planning Instruments (EPI) contain their own controls with regards to landscape requirements which take precedence over Council's DCP.

Therefore, see discussion previously in this report about landscaping under each EPI.

D8 Privacy

The western façade of the building has a generous setback of between 10m and 20m, with 8m to the balcony of Unit 1.07, 2.07, 1.04 and 2.04. Given the generous spatial separation provided, visual privacy has been mitigated between the existing residential properties to the west. The separation distances exceed that of the requirements of the Apartment Design Guidelines.

The northern elevation has a lesser setback of between 3m and 3.8m to the façade and 2.3m to the Juliette balconies on Level 1. The applicant has proposed architectural screening devices including splayed screening of the Juliette balconies maximise visual privacy to the future residential lots to the north. The balconies demonstrate design innovation to mitigate privacy between properties and despite the lesser setback result in a visual separation distance of 12m to the rear façade of a future dwelling (future dwelling requiring a 6m setback) as demonstrated in the below figure. Raised sill heights of 1.6m to the north facing windows mitigate views to the future residential lots, whilst allowing light and ventilation to the rooms.

Given the use of these architectural treatments, visual privacy between the development and the future residential allotments to the north has been mitigated in a reasonable and innovative way.

It is considered a superior outcome would be increased spatial separation to the northern boundary for the newly introduced upper floor, however the screening devices have mitigated views in a satisfactory way in order for Council to not include privacy as a reason for refusal.



Source: Integrated Design Group Pty Ltd., 2022



Source: Integrated Design Group Pty Ltd., 2022

D9 Building Bulk

The DCP contains two controls which assist in guiding Building Bulk, along with the other built form controls including height, setback and envelope.

The relevant controls contained in D9 are:

1. *Side and rear setbacks are to be progressively increased as wall height increases.*
2. *Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*

Comment: The majority of the proposed development is considered suitable with regards to bulk and scale by virtue of the compliant setbacks to the street and generous setback to the western boundary, despite non-compliance with the LEP height. However, the northern elevation of the building, in particular the Level 2 addition at the northern extent of the building, has a lesser setback to the next residential properties of (future three lots to the north) which will experience the visual bulk and scale from within the properties.

The Level 2 addition along the northern façade has a length of 40m and is in breach of a number of Council's built form controls which aim to mitigate bulk and scale within the R2 Zone. The setbacks to the upper floor are only varied by a minor amount and there is not sufficient articulation to mitigate the visual bulk and scale of the northern elevation presenting to the future residential lots.

The setbacks are not increased as the wall height increases, with three storey presentation without any upper level setback to the top floor. The northern façade is not consistent with this control.

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

Whilst it is considered that the majority of the building provides good and innovative design, the visual bulk and scale of the northern façade is considered too much and at odds with the R2 Low Density Residential Context, which promotes a lower scale of building that is visually recessive.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The development is not considered to have minimised visual impact from the future adjoining residential properties to the north. The height and length of the northern wall, combined with the 3.8m setback, is considered excessive for the R2 Low Density Residential zone and inconsistent with what could reasonably be expected to be developed on the site in accordance with the planning controls. The facade is in breach of a number of controls including building height under the LEP, ceiling height under the SEPP HSPD, building separation under the Apartment Design Guidelines, the DCP envelope controls and wall height controls. The number of controls which the northern façade breaches leads Council to the conclusion that the upper floor element adjoining the northern façade is excessive for the site and adds unreasonable bulk and scale presenting to the future residential allotments.

Whilst the applicant has suggested mitigation strategies such as increased setbacks to the residential dwellings, landscaping zones to be managed under a covenant on the future residential lots and orientating window of the future dwellings aware from the shared boundary, these strategies do not remedy Council's concerns with the height, length and minimal setback to the third storey of the development. The applicant has presented a concept plan for a dwelling on Lot 3 which as an 8.5m rear setback, however the visual bulk and scale of the northern façade will still be experienced from the rear yard and private open space of the proposed lot. The proposal to burden a adjoining private allotment with a landscape zone in the rear yard in order to screen the non-compliant northern façade would prevent restrict development in an already small lot and would be an unreasonable restriction on the future lot, especially as the purpose of the restriction is to screen a non-compliant building.

The applicant has presented a 3D drawing of what the façade would look like from the rear yard of the proposed lots (both with and without the trees to be retained) and it is clear from this, the additional view of the skyline and visual outlook will be diminished as a result of the proposed upper level.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

The non-compliance with the control forms part of a recommended reason for refusal of the application.

E11 Flood Prone Land

See detailed comments under Clause 5.21 of the Warringah LEP 2011 with relation to flood planning for the site. Council's flood engineers have also provided a detailed assessment within the referrals section of this report.

In summary, the proposal fails to meet the overarching aims and objectives of the flood planning controls within the Warringah LEP 2011 and the supporting technical controls within the Warringah DCP, as discussed in detail in the referral provided by the Flood Engineers.

For this reason the application is recommended for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$109,230 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$10,923,000.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP

- Consistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 40(4)(a) SEPP HSPD has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard.

PLANNING CONCLUSION

This proposal, for the adaptive re-use of the former Queenscliff Community Health Centre to become a mixed housing development containing a boarding house comprising 12 rooms on the ground floor and seniors housing with 25 self-contained dwellings on the upper floors is referred to the SNPP as the proposal is recommended for refusal and is a Crown Development Application.

The concerns raised in the objections have been addressed in this assessment report and some of the issues stated within the submissions including the flood affectation of the land and the building height form reasons for refusal of the application.

The critical assessment issues are in relation to the building height (particularly along the northern edge of the building) and the suitability of the land use comprising of Seniors and People with a Disability due to the flood affectation of the land, noting that the development proposes to introduce a high number of occupants into an existing flood affected site. Council is not satisfied that flood risk has been adequately mitigated and Council's engineers are not satisfied as to the structural elements of the building in response to the site flooding. The height, scale and length of the proposed upper-level northern façade is not reflective of the R2 Low Density Residential setting due to the minimal setback to the boundary of the proposed subdivision which seeks to create additional residential lots to the north (proposed under DA2021/1914). Council is not satisfied that the request to vary the height limit for this portion of the building is well justified via the Clause 4.6 Variation request.

Overall, whilst the principles in relation to adaptive reuse of an existing building and the provision of housing diversity/affordability are acknowledged and generally concepts that Council can support, the scale of the development and compatibility of the land use in relation to flooding are reasons that Council is unable to support the application.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Sydney North Planning Panel, as the consent authority REFUSE Development Consent to Development Application No DA2021/1912 for the Alterations and additions to an existing building for a mixed use development including seniors housing and boarding house on land at Lot 1 DP 544341,2 -

4 Lakeside Crescent, NORTH MANLY, Lot 46 DP 12578,2 - 4 Lakeside Crescent, NORTH MANLY, Lot 47 DP 12578,2 - 4 Lakeside Crescent, NORTH MANLY, Lot 48 DP 12578,2 - 4 Lakeside Crescent, NORTH MANLY, Lot 45 DP 12578,8 Palm Avenue, NORTH MANLY, Lot 22 DP 865211,389 Pittwater Road, NORTH MANLY, for the reasons outlined in Attachment 1.

ATTACHMENT 1

1. Flooding

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 5.21 Flood Planning of Warringah LEP 2011 and Clause E11 Flood Prone Land Warringah DCP 2011.

Council is not satisfied that the preconditions within Clause 5.21(2) (a), (c) and (d) WLEP have been met in order to grant consent.

The requirements of control B2, C6, E1 and E2 of Clause E11 Flood Prone Land of Warringah DCP 2011 have not been addressed to the satisfaction of Council.

2. Site Suitability

Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the site is not suitable for the proposed land use of housing for Seniors or People with a Disability due to the flood affectation of the land.

3. Aims of Warringah LEP 2011

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.

4. Clause 4.6 Variation Request for Building Height and Ceiling Height

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011 in relation to the request to vary Clause 4.3 Height of Buildings WLEP 2011 and Clause 40(4)(a) Ceiling Height SEPP HSPD. Council is not satisfied that the written request demonstrates that compliance is unreasonable and unnecessary in the circumstances of the case or there are sufficient environmental planning grounds as required by Clause 4.6 (3) and Clause 4.6(4)(a)(i).

Council is not satisfied the proposal will be in the public interest as the objectives of the development standard relating to building height have not been satisfied as required by Clause 4.6(4)(ii).

5. Built form, bulk and scale

Pursuant to Section 4.15(1)(a)(i) and 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the built form controls with the following planning instruments, particularly due to the design of Level 2 façade adjoining the northern boundary:

- a) Warringah Local Environmental Plan 2011 Clause 4.3 Height of Buildings;
- b) State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 Clause 33 (c)(i) building setbacks to mitigate bulk and (iv) impacts of boundary walls on neighbours;
- c) State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 Clause 40(4)(a) Ceiling Height;
- d) State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

Clause 50 (b) Density and Scale;

e) State Environmental Planning Policy 65 - Design Quality of Residential Flat Development - Apartment Design Guidelines Control 2F Building Separation;

f) State Environmental Planning Policy 65 - Design Quality of Residential Flat Development - Schedule 1 Design Quality Principles - Principle 1 Context context and Neighbourhood Character and Principle 2 Built Form and Scale;

g) Warringah Development Control Plan Clause B1 Wall Heights

h) Warringah Development Control Plan Clause B3 Side Boundary Envelope

i) Warringah Development Control Plan Clause D9 Building Bulk

6. **Cross Ventilation**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Control 4B Natural ventilation within the Apartment Design Guidelines as referenced within State Environmental Planning Policy 65 - Design Quality of Residential Flat Development.

7. **Public Interest**

Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest due to the built form non-compliances and inconsistencies with Council's Flood Planning Controls.