

SOUTHERN REGIONAL PLANNING PANEL

(Southern Region)

SRPP No	PPSSTH-143
DA Number	DA-2022/136
Local Government Area	Wollongong City
Proposed Development	Construction of a mixed-use seniors living complex including various ancillary uses such as a gym, wellness centre, club house, café, chapel, Seniors Day Care and flooding/ stormwater infrastructure, demolition of existing structures and tree removals
Street Address	7-9 Bellevue Road, FIGTREE NSW 2525 - Lot 10 DP 1034856 11 Bellevue Road, FIGTREE NSW 2525 - Lot 77 DP 17037 13 Bellevue Road, FIGTREE NSW 2525 - Lot 76 DP 17037 38-40 Princes Highway, FIGTREE NSW 2525 - Lot 2 DP 210588, Lot 100 DP 614698
Applicant/Owner	Applicant – Mr Andrew Connor
Number of Submissions	Thirteen (13) submissions received including two (2) petitions containing 360 signatures
Regional Development Criteria (Section 4.5(b) of the Act and SEPP (Planning Systems) 2021)	The proposal has been referred to the Southern Regional Planning Panel as the consent authority under Section 4.5(b) of the Environmental Planning & Assessment Act 1979 as the proposal is for general development over \$30 million which is defined as Regionally significant development under the SEPP (Planning Systems) 2021 Schedule 6 Section 2. The applicant's CIV estimate for the project is \$44,600,000.
Relevant s4.15(1)(a) Matters	<ul style="list-style-type: none"> List all of the relevant environmental planning instruments: s4.15(1)(a)(1) – <p><u>State Environmental Planning Policies (SEPPs):</u></p> <ul style="list-style-type: none"> State Environmental Planning Policy (Hazards and Resilience) 2021 State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 <p><u>Local Environmental Planning Policies:</u></p> <ul style="list-style-type: none"> Wollongong Local Environmental Plan 2009 <p><u>Other policies</u></p> <ul style="list-style-type: none"> NSW Apartment Design Guide Wollongong City-Wide Development Contributions Plan

	<ul style="list-style-type: none"> Proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s4.15(1)(a)(ii) <ul style="list-style-type: none"> Nil Relevant development control plan: s4.15(1)(a)(iii) Wollongong Development Control Plan 2009 Relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: s4.15(1)(a)(iiia) <ul style="list-style-type: none"> Nil Regulations: s4.15(1)(a)(iv) eg. Regs 6, 61, 62, 63 AS 2601 in respect of any demolition. Coastal zone management plan: s4.15(1)(a)(v) There is no Coastal Zone Management Plan currently applicable to the land.
Documents submitted with this report for the panel's consideration	<ol style="list-style-type: none"> Plans SEPP 65 Design Verification Report- Applicant Site photographs Apartment Design Guide Assessment Wollongong Design Review Panel Meeting 30 March 2022 minutes and recommendations Clause 4.6 Exception to Development Standard Statement – Building Height - Applicant Assessment compliance table -Wollongong Development Control Plan 2009
Recommendation	DA-2022/136 be refused
Report by	Rodney Thew, Senior Development Project Officer

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 Sections requiring consent authority satisfaction

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

Section 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

Conditions

Have draft conditions been provided to the applicant for comment? **N/A**

Assessment Report and Recommendation Cover Sheet

Executive Summary

Reason for consideration by Southern Regional Planning Panel

The proposal has been referred to the Joint Regional Planning Panel as the consent authority pursuant to Section 4.5(b) of the Environmental Planning and Assessment Act 1979 as it involves general development with a capital investment value of more than \$30 million which is defined as Regionally significant development under State Environmental Planning Policy (Planning Systems) 2021 Schedule 6 Section 2. The proposal has a value of \$44,600,000.

Proposal

The proposal comprises demolition of the existing structures and mixed-use seniors living complex including a residential aged care facility, independent living units and various ancillary uses such as a gym, wellness centre, club house, café, chapel, Seniors Day Care and flooding/ stormwater infrastructure.

Permissibility

The site is zoned R2 Low Density Residential pursuant to Wollongong Local Environmental Plan (WLEP) 2009. The proposal is categorised as *seniors housing* and is permissible in the zone with development consent.

Consultation

The proposal was exhibited in accordance with Council's Community Participation Plan . There were thirteen (13) submissions of non-support including two (2) petitions totalling 360 signatures.

Main Issues

The main issues arising from the assessment are:-

- Critical Utility (senior housing) within high and medium flood risk precincts
- Exception to a development standard - Maximum Building Height pursuant to Section 87(c) and 107(2)(b)(iii) of SEPP (Housing) 2021 and Section 4.3 of WLEP 2009;
- Exception to a development standard – FSR as interpreted for Section 87(2)(b)(iii) of SEPP (Housing) 2021 and Section 4.4 of WLEP 2009;
- Bulk and scale;
- Built form and character;
- Context Variation to communal open space;
- Variation to landscaped area;
- Variation to deep soil zone;
- Variation to retaining wall height;
- Apartment Design Guide (ADG) variations with regard to site analysis, orientation, overshadowing of neighbouring properties, the provision of communal and public open space, the provision of deep soil zones, visual privacy, daylight access to development, apartment size and layout and sustainability features on roof design;
- Amenity impacts on adjoining low and medium density residential development;
- Overdevelopment of the site.

Matters raised in relation to elements of the proposal during the assessment of this application remain outstanding as outlined within the report.

Additional information was requested on the 18 July 2022. The recommendation has been made on the basis of information submitted to date.

Conclusion

The proposed development has been assessed with regard to the relevant prescribed matters for consideration outlined in Section 4.15 of the Environmental Planning & Assessment Act 1979.

The development proposes an exception to the height of buildings development standard pursuant to Section 87(c), 107(2)(b)(iii) and 108(2)(b)(iii) of SEPP (Housing) 2021 and Section 4.3 of WLEP 2009. The proposed exception is not supported as detailed in this report.

There is also an exception to the FSR development standard pursuant to Section 87(2)(b)(iii) of SEPP (Housing) 2021 and Section 4.4 of WLEP 2009. SEPP Housing) 2021.

Section 107(c) allows for a greater FSR subject to an application submission demonstrating adequate consideration of the design principles set out in SEPP (Housing) 2021 Part 5 Division 6. The application submission does not demonstrate that adequate consideration has been given to the principles set out in the SEPP and as such, the exception is not supported as detailed in this report. An exception to a development standard request statement for the proposed FSR has not been provided by the applicant addressing Section 4.6 of the WLEP 2009.

The applicant has also not provided justification statements for the variations sought to WDCP 2009 as relates to floodplain management, stormwater management, character of the area, contaminated land management, water sensitive urban design, built form, privacy, solar access, landscaping, communal open space, landscaped area, deep soil zone, retaining wall height, basement car parking and bicycle parking. The applicant has also not provided adequate justification for the variations sought to ADG as relates to site analysis, orientation, overshadowing of neighbouring properties, the provision of communal and public open space, the provision of deep soil zones, visual privacy, daylight access to development, apartment size and layout and sustainability features on roof design.

Council's Stormwater, Landscape, Strategic planning, Traffic, Environment and Design Officers have provided unsatisfactory referral advice. Council's Building, Community Services and SCAT Officers have provided conditionally satisfactory referral advice.

Several matters including those identified within public submissions received also remain unresolved.

The proposed development has not been designed appropriately given the constraints and characteristics of the site and has the potential to result in significant adverse impacts on the amenity of the surrounding area. The development as proposed would set an undesirable precedent and approval is not in the public interest.

RECOMMENDATION

DA-2022/136 be Refused.

1. APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the development:

State Environmental Planning Policies:

- State Environmental Planning Policy (Hazards and Resilience) 2021
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan 2009

Other policies

- NSW Apartment Design Guide
- Wollongong City Wide Development Contributions Plan

1.2 PROPOSAL

The proposal comprises the following:

- Demolition of existing structures on Nos. 11 and 13 Bellevue Road;
- Demolition of existing structures at the rear of the church;
- Demolition of existing structures at the rear of the hall;
- Removal of surface car parking area to the rear of church and hall;
- Tree removal throughout site
- Construction of Residential Aged Care Facility (RACF) consisting of:
 - 102 one bedroom units;
 - Three to Four Storeys;
 - One level of basement parking containing 51 spaces accessed off Benney Avenue
 - Ancillary services including gym, café, chapel, seniors day care centre, club house, Mens Shed, multipurpose cinema room and wellness centre.
- Construction of an Independent Living Unit (ILU) consisting of:
 - 22 units (11 one bedroom units, 9 two bedroom units and 8 three bedroom units);
 - Four storeys
 - Basement parking containing 50 spaces over two (2) levels accessed off Bellevue Road; and
- 41 uncovered parking spaces at grade.
- Associated infrastructure works; and
- Landscaping

1.3 BACKGROUND

A history of the development site is as follows:

Application Number	Description (Application)	Decision	Determined
NO-2018/214	An amount of soil, rocks and building waste have been deposited at the stated location.	COMPLIED	25-Jul-18
BA-1982/1285	Church and Hill	APPROVED	19-Jul-82
BA-1993/2360	Relocate And Extend Dwelling	WITHDRAW	17-Aug-95
BA-1958/1692	Dwelling	APPROVED	10-Sep-58
BA-1961/1076	Garage	APPROVED	31-May-61
BA-1963/1606	Additions To Dwelling	APPROVED	12-Aug-63
BA-1969/2127	Additions to Dwelling	APPROVED	10-Oct-69
BA-1977/93	Carport & Storage Shed	APPROVED	27-Jan-77
BA-1967/497	Garage	APPROVED	03-Apr-67
BA-1959/2927	2 Garages, Office & Toilet	APPROVED	21-Dec-59
BA-1960/1738	Additions	APPROVED	03-Aug-60
BA-1963/395	Carport & Verandah	APPROVED	11-Mar-63
BA-1963/276	Storeroom	APPROVED	08-Apr-63

CC-2013/245	Place of public worship - minor alterations and additions to the hall/function centre	APPROVED	14-Feb-14
CC-2013/245/A	Place of public worship - minor alterations and additions to the hall/function centre - Modification A - minor internal and external	APPROVED	11-Jun-15
DA-2013/304	Place of public worship - minor alterations and additions to the hall/function centre	APPROVED	28-Jun-13
DA-1972/565	Part Lot 16 - Erect four two storey residential flat buildings containing a total of 28 flats	REJECTED	02-Jul-73
DA-2008/1788	Use of hall as place of public entertainment	WITHDRAWN	24-Jul-09
DA-1981/369	Approved Conditionally	APPROVED	24-Nov-81
DA-1981/369	Consent Extended To 29.7.84 - Letter	OTHER	09-Feb-83
DA-1981/710	Church, Hall & Residence	APPROVED	17-Dec-81
DA-1979/976	13 Townhouses	REFUSED	29-Jan-80
DA-1998/197	Physiotherapy Practice	APPROVED	25-May-98
DA-2018/1312	Office premises - proposed separate occupation and use of the existing meeting room/office facilities	APPROVED	15-Nov-18
DA-2013/304/A	Place of public worship - minor alterations and additions to the hall/function centre	APPROVED	05-Jun-15
	Modification A - minor internal and external changes		
PL-2021/36 Pre-lodgement Meeting	Senior Living, Residential Care Facility - 99 one bedroom unit, ancillary services and 28 independent living units	COMPLETED	06-May-21
DE-2021/84 Voluntary Design Review Panel Meeting	TEAMS MEETING - 13/4/21 - 10 AM Seniors Living Development and Residential Care Facility consisting of 99 one-bedroom units and ancillary services and an Independent Living Unit Building comprising of 28 units	COMPLETED	19-Jul-21
ES-2014/25 Fire Safety Licence	Place of public worship - Assembly Building/Church Hall (Duplicate refer to ES-2002/40010-Same Building)	APPROVED	24-May-19
ES-2002/40010 Fire Safety Licence	Church Hall	REPORTREC	06-Jun-23

1 Application History

The subject development application, DA-2022/136, was lodged on 31 January 2022 and exhibited from 21 February – 9 March 2022. The applicant was invited to withdraw the application on 18 July 2022. The letter of 18 July 2022 highlighted Development Assessment Planning, Flooding/Stormwater, Strategic Planning, Apartment Design Guide, Landscape and Traffic matters to be addressed in any future application.

The Applicant had a briefing with the Southern Regional Planning Panel (SRPP) Panel on 29 November 2022 with an amended proposal to the architectural plans presented. The Panel noted concern regarding bulk and scale with the original proposal and that both the panel and Council had not had the opportunity to assess the proposed amendments. The Panel, however, also noted that changes to the original plans and the flooding issue would need to be fully canvassed with Council so that a merit assessment of the proposal could be completed. Further discussions were held between Council and the Applicant regarding flooding matters and architectural design matters to be addressed.

The matters raised in Council's letter of 18 July 2022 remain unresolved and the applicant was sent correspondence on the 3 and 12 April 2023 recommending the application to be withdrawn or it would be referred to the SRPP for determination.

Pre-lodgement meetings

PL-2021/36, Senior Living, Residential Care Facility - 99 one bedroom unit, ancillary services and 28 independent living units

Design Review Panel (DRP) meetings

DE-2021/84, Seniors Living Development and Residential Care Facility consisting of 99 one-bedroom units and ancillary services and an Independent Living Unit Building comprising of 28 units was reviewed by the DRP on 7 July 2021 prior to formal lodgement. For DRP comments see **Attachment 5**.

DA-2022/136 was reviewed by the DRP 30 March 2022. Following submission of amended plans and documentation the application was again reviewed by the DRP on 26 June 2018. For DRP comments see **Attachment 5**.

Customer service actions

There are no outstanding customer service requests of relevance to the development.

1.4 SITE DESCRIPTION

The site consisting of five separate lots is located at 7-9 Bellevue Road, FIGTREE - Lot 10 DP 1034856, 11 Bellevue Road, FIGTREE - Lot 77 DP 17037, 13 Bellevue Road, FIGTREE - Lot 76 DP 17037 and 38-40 Princes Highway, FIGTREE - Lot 2 DP 210588 and Lot 100 DP 614698.



Figure 1: Aerial photograph (2023)



Figure 2: WLEP 2009 zoning map

The site currently contains a place of public worship, hall and ancillary structures on 7-9 Bellevue Road and two single dwellings on Nos. 11 and 13 Bellevue Road. 38-40 Princes Highway and 2 Benney Avenue are currently vacant. Vehicular access to the site is currently gained from Bellevue Road.

The land is irregular in shape with an overall area of approximately 13577.1m² (1.36 Ha). The site is slightly convex falling from both the front and rear boundaries towards a water course with a cross fall South east towards the Princes Highway.

The street scape on Bellevue Road consists of a mix of land uses including commercial and retail development located within the adjoining B1 zoned land, as well low and medium density residential development of single and double storey construction.

The streetscape on the Princes Highway in the immediate vicinity consists of commercial and retail development, as well low density residential development.

The streetscape on Benney Avenue consists of low density residential development of both single and double storey construction.

Adjoining development consists of single storey medium density residential development to the North west of No.13 Bellevue Road, low density residential development of single and double storey construction to the rear, South west, commercial, retail development to the South east of 7-9 Bellevue Road.

Property constraints

- High and Medium Flood Risk Precincts
- Easement:
 - Drainage easement

1.5 SUBMISSIONS

The proposal was exhibited in accordance with Council's Community Participation Plan. There were thirteen (13) submissions of non- support including two (2) petitions containing 360 signatures.

Table 1: Submissions

Concern	Comment
1. Traffic impacts	<p>Details of the application have been reviewed by Transport for NSW (TfNSW). Advice received from TfNSW is that the proposal is considered conditionally satisfactory as relates to potential network impacts.</p> <p>Council's Traffic Officer has also assessed the application submission and considered the proposal satisfactory with regard to , vehicular access and egress and the provision of onsite car and motor cycle parking.</p>
2. Height and scale out of character for the area	<p>Chapter D1 of WDCP2009 indicates the desired future character of Figtree will remain a relatively low density leafy residential suburb with only some limited potential for medium density housing in the form of villas or townhouses upon larger amalgamated sites, particularly near the Princes Highway.</p> <p>The existing character of Bellevue Road is low scale (predominately 1-2 storey development) characterised by an active retail shopping strip (Figtree Plaza and Figtree Square), shop top housing and other single storey villas and dwelling houses situated further west along Bellevue Road. Further West, Bellevue Road transitions to a suburban character defined by detached housing.</p> <p>The subject site is zoned R2 Low Density Residential. Seniors living is a land use that is permissible with</p>

Concern	Comment
	<p>consent in the R2 Low Density Residential zone via WLEP2009.</p> <p>However, the development as proposed, has not been designed appropriately given the constraints and characteristics of the site and context of the area when the objectives of the R2 zone and matters for consideration regarding maximum building heights, floor space ratio and flooding as detailed under the SEPP (Housing) 2021 and WLEP2009 along with the number of WDCP2009 variations sought are taken into account.</p> <p>The development as proposed is not compatible with the site's context and desired future character of the area and is therefore not within the public interest.</p>
3. Tree removal	<p>Advice received from Council's Landscape and Environmental Officers indicate the proposal is unsatisfactory noting the following:</p> <ul style="list-style-type: none"> • Submitted plans do not detail all existing trees accurately plotted on the site; • Arboriculture Impact Assessment Report is required which may result in a redesign of the proposal in order to accommodate trees that are to be retained; • The Landscape Plan has not detailed all retaining walls; • A minimum 1.5m wide landscaped area is required for the full length of the boundaries; • Landscaping and Deep Soil Zone do not comply with the requirements of SEPP (Housing) 2021.
4. Overlooking and Intrusion	<p>Insufficient information has been provided to demonstrate that privacy impacts on adjoining residential properties will not be adverse.</p> <p>Council's DRP highlighted concerns with privacy impacts on adjoining neighbours and recommended that all balconies oriented to the North west and South west boundaries be removed to reduce potential privacy issues. Greater setbacks were recommended so as to reduce the density closer to the boundaries as per the advice of the ADG.</p> <p>A design response has not been forthcoming from the applicant due to unresolved flooding matters which influence building form and location</p>
5. Flooding	<p>Council's Stormwater Officer has provided referral advice with the proposal unsatisfactory noting the following:</p> <ul style="list-style-type: none"> • The proposal is contrary to the controls in Schedule 4: Prescriptive Controls – Allans Creek Floodplain, of Appendix C of Chapter E13 of the WDCP 2009, which stipulate that 'Critical Utilities' such as seniors housing are an unsuitable land use within the High and Medium Flood Risk Precincts; • The proposal does not comply with the floor levels and evacuation controls for critical utilities in Schedule 4 of Appendix C of Chapter E13 of the WDCP 2009;

Concern	Comment
	<ul style="list-style-type: none"> The proposal will result in significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels; The proposal includes filling and a car park located within an existing floodway and High Flood Risk Precinct area, which is considered contrary to the controls, objectives, performance criteria in WLEP 2009 Section 5.21 and WDCP 2009 Chapter E13; The proposal includes piping and modification of a natural watercourse, contrary to Section 5.5 of Chapter E13 of the WDCP2009; The proposed driveway passes through parts of the floodplain where flood depths and velocities are outside safe criteria; The proposal includes car parking areas where flood depths and velocities are outside safe criteria; The proposal will result in an increase in the frequency and duration of surface water flows being conveyed onto and across the downslope land; Concerns with the data used and finding of the submitted flood study. The proposed basement car parks are not protected from inundation during a 1 % AEP flood level. <p>Insufficient information has been submitted by the applicant to demonstrate that the development satisfies Council's floodplain management criteria and as such the site is unsuitable</p>

Table 2: Number of concerns raised in submissions

Concern	1	2	3	4	5
Frequency	13	10	2	1	4

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Stormwater Engineer

Council's Stormwater Officer has assessed the application and provided unsatisfactory referral advice noting the following:

- The proposal is contrary to the controls in Schedule 4: Prescriptive Controls – Allans Creek Floodplain, of Appendix C of Chapter E13 of the WDCP 2009, which stipulate that 'Critical Utilities' such as seniors housing are an unsuitable land use within the High and Medium Flood Risk Precincts;
- The proposal does not comply with the floor levels and evacuation controls for critical utilities in Schedule 4 of Appendix C of Chapter E13 of the WDCP 2009;
- The proposal will result in significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels;
- The proposal includes filling and a car park located within an existing floodway and High Flood Risk Precinct area, which is considered contrary to the controls, objectives, performance criteria in WLEP 2009 Section 5.21 and WDCP 2009 Chapter E13;
- The proposal includes piping and modification of a natural watercourse, contrary to Section 5.5 of Chapter E13 of the Wollongong DCP2009;
- The proposed driveway passes through parts of the floodplain where flood depths and velocities are outside safe criteria;

- The proposal includes car parking areas where flood depths and velocities are outside safe criteria;
- The proposal will result in an increase in the frequency and duration of surface water flows being conveyed onto and across the downslope land;
- Concerns with the submitted flood study as follows:
 - Is inconsistent with Council's adopted flood study, with the flood levels predicted by Rienco being up to 200mm lower at the subject site than those predicted by Council's adopted model;
 - Uses Manning's n values that are inconsistent with Council's adopted study;
 - Does not include certain structures/obstructions on the site that are likely to have a significant influence on flood flow behaviour such as an existing building and car port structure (which has an enclosed eastern wall) over the piped watercourse and landscaping/vegetation on the site and adjoining property where Rienco has applied Manning's n values of 0.03 and 0.02, reflecting 'short maintained grass' and 'road pavement'.
 - Indicates significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels that exceed the 'Permissible Flood Impacts' stipulated in Table 2 of Chapter E13 of the Wollongong DCP2009 and do not satisfy the controls, objectives, and performance criteria in Chapter E13 and Clause 5.21 of the Wollongong LEP2009.
 - Appears to contain the incorrect plan in Figure C5.3 (it appears that the post-development 1 % AEP flood velocity map has been provided as Figure C5.3, which is intended to be the pre-development 20% AEP flood velocity map).
- The proposed basement car parks are not protected from inundation during a 1 % AEP flood level;
- A stormwater concept plan has not been provided that satisfies the requirements of Chapter E14 of the Wollongong DCP2009, including the provision of On-site Stormwater Detention (OSD);
- The proposal does not satisfy the requirements of Section 9.3.17 of Chapter E14, with respect to local overland flow from the adjoining land that naturally falls towards the development site, including localised overland flows contributing to the site along the north-western and south-western property boundaries.

Environment Officer

Council's Environment Officer has provided unsatisfactory referral advice with regard to site contamination noting the following:

- A review of historical aerial photos and site history indicate there was uncontrolled fill material was brought on to site to fill the water courses on number lots. In addition, there was a vehicles sales yard with garage/workshop on Lot 100 DP 614698. The uncontrolled fill material may have potentially caused land and/or groundwater contamination.

The development will involve in extensive cut and fill below ground level. A Detailed Site Investigation (DSI) Report that identifies the exact nature, degree and extent of any contamination within the soil and/or groundwater table (if any) is required. Based on the findings of the DSI a Remediation Action Plan must be prepared so that the site can be made suitable for the proposed development.

Council's Environment Officer has also reviewed the submitted Acoustic Report. Advice received is that the proposal is satisfactory in this regard.

Landscape Architect

Council's Landscape Officer has provided unsatisfactory referral advice noting the following:

- Submitted plans do not detail all existing trees accurately plotted on the site;
- Arboriculture Impact Assessment Report is required which may result in a redesign of the proposal in order to accommodate trees that are to be retained;
- The Landscape Plan has not detailed all retaining walls;
- A minimum 1.5m wide landscaped area is required for the full length of the boundaries;
- Landscaping and Deep Soil Zone complying with the requirements of SEPP (Housing) 2021 is required;

Traffic Engineer

Council's Traffic Officer has provided conditionally satisfactory referral advice in relation to impacts on the local road network, vehicular access and egress and the provision onsite car and motor cycle parking.

It was, however noted that the proposal was unsatisfactory with regard to the provision of bicycle spaces.

Strategic Land Use Planning Officer

Council's Strategic Officer has provided unsatisfactory referral advice noting that any increased height and/or FSR of this scale be further investigated as part of strategic planning / rezoning process. A draft Planning Proposal request would need to demonstrate strategic and site specific merit.

Community Services Officer

Council's Community Services Officer has provided conditionally satisfactory referral advice.

Safer Community Action Team (SCAT) Officer

Council's SCAT officer has provided conditionally satisfactory referral advice.

Building Officer

Council's Building Officer has provided conditionally satisfactory referral advice.

1.6.2 EXTERNAL CONSULTATION

Design Review Panel (DRP) (*Post-lodgement*)

The proposal was formally reviewed by the Panel on 30 March 2022. There were a number of design amendments recommended by the DRP at the time – see **Attachment 5**. Given flooding and drainage matters remain unresolved an overall redesign response has not been forthcoming by the proponent.

Endeavour Energy

Details of the application submission were referred to Endeavour Energy for comment in accordance with Section 2.48 of SEPP (Transport and Infrastructure) 2021. Advice received indicates the proposal is conditionally satisfactory.

Sydney Water

Details of the application submission were referred to Sydney Water for s78 comments. Advice received indicates the proposal is conditionally satisfactory.

Transport for NSW (TfNSW)

Details of the application submission were referred to TfNSW for comment in accordance with Section 2.118 of SEPP (Transport and Infrastructure) 2021. Advice received indicates the proposal is conditionally satisfactory.

Department of Planning and Environment (DPE) – Water

The application submission included advice from DPE – Water, previously known as Natural Resources Access Regulator (NRAR), indicating that the watercourse is not considered a river and as such the application did not require referral to DPE – Water as Integrated Development that would require a Controlled Activity permit.

2. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

SECTION 4.15 ASSESSMENT

2.1 SECTION 4.15 1(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

1.7 Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment.

NSW BIODIVERSITY CONSERVATION ACT 2016

Section 1.7 of the Environmental Planning and Assessment Act 1979 (EP&A Act) provides that Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 (BC Act).

Part 7 of the BC Act relates to Biodiversity assessment and approvals under the EP&A Act where it contains additional requirements with respect to assessments, consents and approvals under this Act.

Clause 7.2 of the Biodiversity Conservation Regulation 2017 provides the minimum lot size and area threshold criteria for when the clearing of native vegetation triggers entry of a proposed development into the NSW Biodiversity offsets scheme. For the subject site, entry into the offset scheme would be triggered by clearing of an area greater than 0.5 hectares based upon the minimum lot size of the WLEP 2009 C4 zoned land being 39.99ha.

An approximate area of 0.1 hectares of vegetation is proposed to be cleared for the development. The minimum subdivision lot size for the land under WLEP 2009 is 449m². Therefore the proposal does not trigger the requirement for a biodiversity offset scheme.

The site is not identified as being of high biodiversity value on the Biodiversity Values Map.

None of the trees on the site were identified as containing hollows.

The development would therefore not be considered to result in adverse impacts on biodiversity and is consistent with the provisions of the Biodiversity Conservation Act 2016.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

4.6 Contamination and remediation to be considered in determining development application

- (1) A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) it has considered whether the land is contaminated, and*
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subSection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) The applicant for development consent must carry out the investigation required by subSection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) The land concerned is:*
 - (a) land that is within an investigation area,*
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:*
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

Council's Environmental Officer has reviewed the history of the site. Advice received identifies there was uncontrolled fill material brought on to the site to fill the water courses on a number of lots. In

addition, there was a vehicle sales yard with garage/workshop on Lot 100 DP 614698. The uncontrolled fill material may have potentially caused land and/or groundwater contamination.

A Detailed Site Investigation (DSI) Report that identifies the exact nature, degree and extent of any contamination within the soil and/or groundwater table (if any) is required. Based on the findings of the DSI a Remediation Action Plan must be prepared so that the site can be made suitable for the proposed development.

This information has not been provided with the application submission and as such the determining authority cannot be satisfied that relevant matters identified in cl 4.6 are satisfied.

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY NO 65—DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

The provisions of the SEPP apply as the development includes an independent living unit (ILU) development, which is more than 3 storeys in height and comprise more than 4 dwellings.

The application is accompanied by a design quality statement by a qualified designer in accordance with Sections 29(1) & 29(2) of the Environmental Planning and Environment Regulation 2000. See **Attachment 2**.

Section 28 provides that the application must be referred to the relevant design review panel (if any) for advice concerning the design quality of the development while Section 28(2) provides that 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.

The proposal was considered by the Design Review Panel on 30 March 2022. There were a number of design amendments recommended by the DRP at the time. A design response to the recommendations of the DRP has not been submitted to Council to date due to the influence of unresolved flooding and drainage issues. An assessment of the application against the SEPP's companion document - Apartment Design Guide (ADG) is contained within **Attachment 4**.

Schedule 1 of SEPP 65 sets out the design quality principles for residential apartment development. These must be considered in the assessment of the proposal pursuant to Section 28(2)(a) of the Policy and are discussed below.

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.

The site consisting of five separate lots currently contains a place of public worship, hall and ancillary structures on 7-9 Bellevue Road and two single dwellings on Nos. 11 and 13 Bellevue Road. 38-40 Princes Highway and 2 Benney Avenue are currently vacant. The site is zoned R2 Low Density Residential and sits outside of the Figtree Town Centre as at Figure 2 below.

The desired future character is that Figtree will remain a relatively low density leafy residential suburb with only some limited potential for medium density housing in the form of villas or townhouses upon larger amalgamated sites, particularly near the Princes Highway.

The existing character of Bellevue Road is low scale (predominately 1-2 storey development) characterised by an active retail shopping strip (Figtree Plaza and Figtree Square), shop top housing and other single storey villas and dwelling houses situated further west along Bellevue Road. Further west, Bellevue Road transitions to a suburban character defined by detached housing.

The tallest element along the street is established by the parapet of the church building (which is proposed to be retained on the Site, along with the existing community hall building) and appears to sit above the maximum 9m WLEP2009 height limit.

While the ILU presents as three (3) storeys to Bellevue Road and is generally in keeping with the height of the parapet of the place of public worship (Church) the residential aged care facility (RACF) by extension set behind the church protrudes well above the existing street frontage height. The heights of both the ILU and RACF also significantly exceed the non-discretionary development standards as detailed at SEPP (Housing) 2021 Section 107 and Section 108.

As such the proposal is not consistent with the existing streetscape pattern or desired future character along Bellevue Road or Benney Avenue.

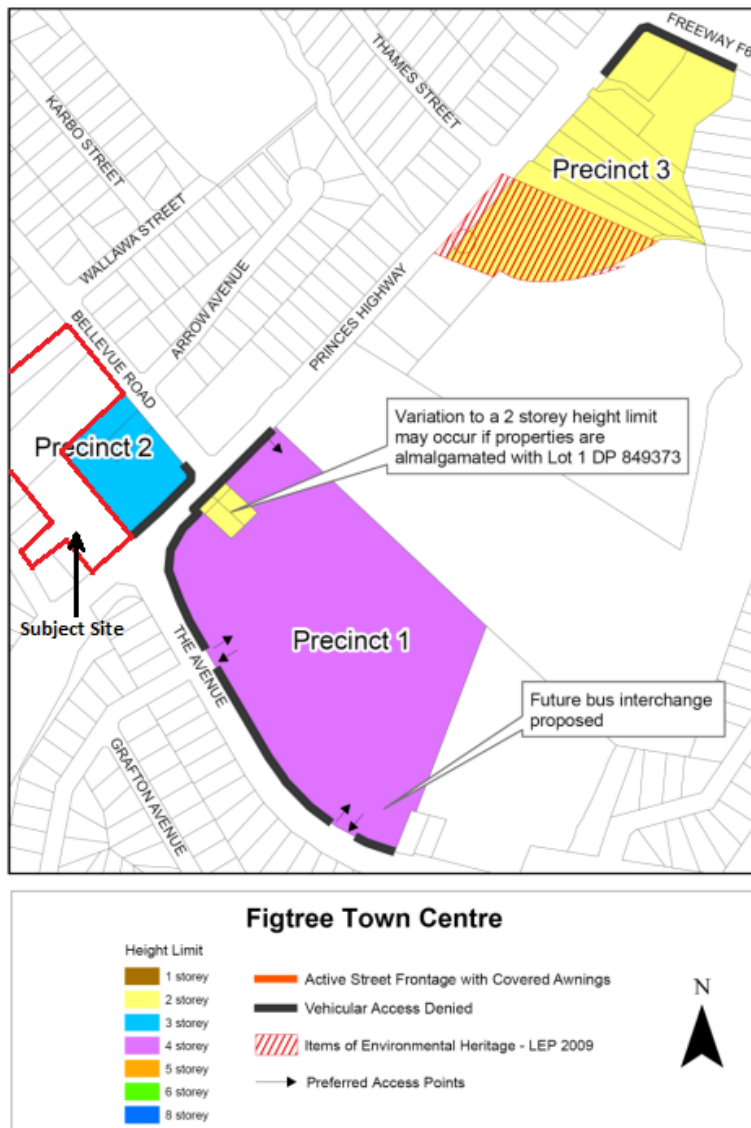


Figure 3: Figtree Town Centre

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.

The site is zoned R2 Low Density Residential. The desired future character is for Figtree to remain a relatively low density leafy residential suburb with some limited potential for medium density housing in the form of villas or townhouses upon larger amalgamated sites, particularly near the Princes Highway.

Both buildings exceed the maximum 9m height limit and 0.5:1 FSR development standards, set by WLEP 2009. It is noted that there are greater height and FSR controls that may be achieved through the SEPP (Housing) 2021. However, the proposed heights for both the ILU and RACF significantly exceed the non-discretionary development standards as detailed at SEPP (Housing) 2021 Section 107 and Section 108.

The bulk and scale of the development is not consistent with the existing streetscape along Bellevue Road or Benney Avenue when the applicable planning controls for the area inclusive of building height, floor space ratio, street frontage heights, building setbacks and other built form controls are taken into consideration.

The scale of the development is likely to give rise to visual impacts on the surrounding low density residential development and streetscape. The bulk and scale of the development is not considered to positively contribute to the public domain. The development is out of context the desired future character of the area.

The DRP was concerned with the bulk and scale of proposal's interfaces with the low-density residential neighbourhood adjoining the sites northwest and southwestern boundaries.

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.

With an FSR of 0.926:1 the density of the development does not comply with the maximum FSR of 0.5:1 permitted for the land under WLEP 2009. The building height significantly exceeds 9m maximum building height permitted for the site under WLEP 2009. It is noted that there are greater height and FSR controls that may be achieved through the SEPP (Housing) 2021. However, the proposed heights for both the ILU and RACF significantly exceed the non-discretionary development standards for building heights as detailed at SEPP (Housing) 2021 Section 107 and Section 108.

The development's size and scale contrasts markedly with the sites current context and is inconsistent with the desired future neighbourhood character.

The DRP advised that the proposal presents as a significant over development of the site. The Panel were particularly concerned with the proposal's interface with its low-density residential neighbours to the South and West.

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.

It is noted that the following has been provided with the application submission with regard to sustainable design:

- A BASIX Certificate has been provided indicating minimum requirements with regard to energy and water efficiency and thermal comfort are met;
- A Site Waste Management and Minimisation Plan has been provided indicating appropriate management and disposal of any excavated materials;
- The proposal will not have an unreasonable impact on environmentally sensitive areas;
- A water sensitive urban design strategy has been designed into the scheme; and
- The proposal is in a location that is close to services and public open space.

There were a number of design amendments recommended by the DRP with regard to sustainability including:

- The use of solar power and water heating is strongly encouraged, particularly to service communal areas;
- Opportunities to harvest rainwater for use in maintaining any plantings established on the building or the site should be explored. Other water minimization measures (reuse of rainwater for toilet flushing and washing machines) should also be considered;
- Landscape plantings should address aims for biodiversity protection, weed minimisation and low water use.

Given flooding and drainage matters remain unresolved an overall redesign response has not been forthcoming by the proponent.

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 useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

The application proposes variations to the landscaped area, deep soil zone and communal open space requirements of the SEPP (Housing) 2021, ADG and WDCP 2009.

There were a number of design amendments recommended by the DRP with regard to landscaping whilst noting general compliance with deep soil zone, communal open space and general landscape area needed to be clearly demonstrated.

Given flooding and drainage matters remain unresolved an overall redesign and response has not been forthcoming by the proponent.

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.

Variations to the ADG were noted with regard to visual privacy, solar access and apartment size and layout. There were a number of design amendments recommended by the DRP to achieve ADG amenity objectives and to minimise privacy impacts on adjoining residential development.

With regard to privacy the DRP highlighted concerns with privacy impacts on adjoining neighbours and recommended that all balconies oriented to the North west and South west boundaries be removed. Greater setbacks were recommended so as to reduce the density closer to the boundaries as per the advice of the ADG.

In terms of solar access and overshadowing impacts, the DRP noted concerns with access to natural lighting for several units. Advice from Council's Design expert identified the private open space of neighbouring properties in particular those to the South west are impacted by overshadowing from the proposed development which is result of the additional height and bulk of the development. Separately the ILU overshadows the proposed internal court/ piazza for almost the entire day reducing utility the in winter months by future occupants.

Given flooding and drainage matters remain unresolved an overall redesign and response has not been forthcoming by the proponent.

An assessment of the application against the Apartment Design Guide (ADG) is contained within **Attachment 3** to this report.

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.

Advice received from the DRP is that further detail is required to reduce potential conflicts between vehicles and pedestrians within the central square. The DRP were particularly concerned with the safety issues relating to providing a communal open space for residents of the independent living units within a public square that is also a shared zone for vehicular drop off and parking.

Given flooding and drainage matters remain unresolved an overall redesign and response has not been forthcoming by the proponent.

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 and providing opportunities for social interaction among residents.

The proposal does provide a mix of unit sizes and layouts appropriate. Provision has also been made for adaptable units as per the requirements of the ADG and WDCP 2009. There are opportunities for informal social interaction within common areas including the communal open space, lobbies and the like.

The DRP whilst indicating that the site may be suitably located but the built form needed to be better developed to respond to the immediate context of the site if the development is to provide a positive contribution to the neighbourhood.

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

The proposal is considered to be of a high quality with regard to aesthetics. A mixture of materials and finishes is provided.

Concerns, however, were raised by the DRP that the proposal presents an excessive, contextually inappropriate mass to the adjoining low density residential neighbours.

2.1.4 STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

The development proposes seniors housing in the form of a residential aged care facility (RACF) and an independent living unit (ILU) development as such the provisions of Chapter 3 Part 5 of the SEPP apply.

seniors housing means a building or place that is—

- (a) a residential care facility, or
- (b) a hostel within the meaning of [State Environmental Planning Policy \(Housing\) 2021](#), Chapter 3, Part 5, or
- (c) a group of independent living units, or
- (d) a combination of any of the buildings or places referred to in paragraphs (a)–(c), and that is, or is intended to be, used permanently for—
- (e) seniors or people who have a disability, or

- (f) people who live in the same household with seniors or people who have a disability, or
 - (g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place,
- but does not include a hospital.

Part 5 Housing for Seniors and people with a disability

Division 1 Land to which Part applies

79 Land to which Part applies

The site is zoned R2 Low Density Residential and as such Part 5 applies to the subject site.

81 Seniors housing permitted with consent

Development for the purposes of seniors housing may be carried out with development consent—

- (a) on land to which this Part applies, or*
- (b) on land on which development for the purposes of seniors housing is permitted under another environmental planning instrument.*

The proposal is for Seniors housing and the land is zoned R2 as such the development may be carried out with development consent.

Division 3 Development standards

84 Development standards—general

(1) This section applies to development for the purposes of seniors housing involving the erection of a building.

(2) Development consent must not be granted for development to which this section applies unless—

- (a) the site area of the development is at least 1,000m², and*

Comment:

The subject site has an area of 13577.1m² (1.36 Ha).

- (b) the frontage of the site area of the development is at least 20m measured at the building line, and*

Comment:

Site has frontages of 71m to Bellevue Road, 44.475m to the Princes Highway and 17m to Benney Avenue.

(c) for development on land in a residential zone where residential flat buildings are not permitted—

- (i) the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and*
- (ii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and*
- (iii) if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.*

Comment:

Not Applicable. The site is Zoned R2 Low Density Residential however residential flat buildings are permissible in the zone.

(3) The servicing equipment must—

- (a) be fully integrated into the design of the roof or contained and suitably screened from view from public places, and*

Comment:

Servicing equipment considered integrated into roof design.

(b) be limited to an area of no more than 20% of the surface area of the roof, and

Comment:

The plant area is less than 20% of the surface area of the roof.

(c) not result in the building having a height of more than 11.5m.

Comment:

The maximum building heights of 17.39m for the RACF and 14.93m for the ILU exceed 11.5m. An exception to a development departure request statement has been provided by the applicant addressing Section 4.6 of WLEP2009. A copy is provided at **Attachment 5**. This request is not supported.

(4) Subsection (2)(a) and (b) do not apply to development the subject of a development application made by the following—

(a) the Aboriginal Housing Office or the Land and Housing Corporation,

(b) another social housing provider.

Comment:

Not Applicable

85 Development standards for hostels and independent living units

(1) Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4.

(2) An independent living unit, or part of an independent living unit, located above the ground floor in a multi-storey building need not comply with the requirements in Schedule 4, sections 2, 7–13 and 15–20 if the development application is made by, or by a person jointly with, a social housing provider.

Comment:

An access report has been included in the application submission. Council's Building Officer has reviewed the application submission including the Access Consultant's Report and returned a satisfactory referral response.

87 Additional floor space ratios

(1) This section applies to development for the purposes of seniors housing on land to which this Part applies if—

(a) development for the purposes of a residential flat building or shop top housing is permitted on the land under another environmental planning instrument, or

(b) the development is carried out on land in Zone E2 Commercial Centre or Zone B3 Commercial Core.

(2) Development consent may be granted for development to which this section applies if—

(a) the site area of the development is at least 1,500m², and

(b) the development will result in a building with the maximum permissible floor space ratio plus—

(i) for development involving independent living units—an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or

(ii) for development involving a residential care facility—an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or

(iii) for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and

(c) the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.

Comment:

Residential flat buildings are permissible on the site, however, the proposal does not satisfy the requirements for additional floor space ratios under this Section as the development proposes maximum building heights of 17.39m for the RACF and 14.93m for the ILU exceeding 12.8m. It is noted that a greater floor space ratio of 1:1 is permitted under Division 7 Non-discretionary development standards Sections 107 and 108.

An exception to a development standard departure request statement has been provided by the applicant addressing Section 4.6 of WLEP2009. A copy is provided at **Attachment 6**. This request is not supported.

88 Restrictions on occupation of seniors housing

(1) Development permitted under this Part may be carried out for the accommodation of only the following—

- (a) seniors or people who have a disability,*
- (b) people who live in the same household with seniors or people who have a disability,*
- (c) staff employed to assist in the administration and provision of services to housing provided under this Part.*

(2) Development consent must not be granted under this Part unless the consent authority is satisfied that only the kinds of people referred to in subsection (1) will occupy accommodation to which the development relates.

Comment:

The proposed would be considered satisfactory with regard to the above Section.

90 Subdivision

(1) Development consent may be granted for the subdivision of land on which development has been carried out under this Part.

(2) Development consent must not be granted for the subdivision of a building resulting from development carried out under this Part on land in Zone E2 Commercial Centre or Zone B3 Commercial Core.

Comment:

No subdivision is proposed.

91 Fire sprinkler systems in residential care facilities

(1) A consent authority must not grant consent for development for the purposes of a residential care facility unless the facility will include a fire sprinkler system.

(2) Development for the purposes of the installation of a fire sprinkler system in a residential care facility may be carried out with development consent.

Comment:

Details of the application were referred to Council's Building Officer for comment in regard to fire safety. Advice received is that the proposal is conditionally satisfactory.

Division 4 Site Related Requirements

93 Location and access to facilities and services—independent living units

(1) Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services—

- (a) by a transport service that complies with subsection (2), or*
- (b) on-site.*

(2) The transport service must—

- (a) take the residents to a place that has adequate access to facilities and services, and*
- (b) for development on land within the Greater Sydney region—*
 - (i) not be an on-demand booking service for the transport of passengers for a fare, and*
 - (ii) be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day, and*
- (c) for development on land that is not within the Greater Sydney region—be available both to and from the site during daylight hours at least once each weekday.*

(3) For the purposes of subsections (1) and (2), access is adequate if—

- (a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and*
- (b) the distance is accessible by means of a suitable access pathway, and*
- (c) the gradient along the pathway complies with subsection (4)(c).*

(4) In subsection (3)—

- (a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and*
- (b) the distance is to be measured by reference to the length of the pathway, and*
- (c) the overall average gradient must be not more than 1:14 and the gradients along the pathway must be not more than—*
 - (i) 1:12 for a maximum length of 15m at a time, or*
 - (ii) 1:10 for a maximum length of 5m at a time, or*
 - (iii) 1:8 for a maximum length of 1.5m at a time.*

(5) In this section—

facilities and services means—

- (a) shops and other retail and commercial services that residents may reasonably require, and*
- (b) community services and recreation facilities, and*
- (c) the practice of a general medical practitioner.*

provide a booking service has the same meaning as in the [Point to Point Transport \(Taxis and Hire Vehicles\) Act 2016](#), section 7.

Note—

Provide a booking service is defined as carrying on a business taking bookings for taxis or hire vehicles to provide passenger services, whether immediately or at a later time, and communicating the bookings to drivers for passenger services or providers of passenger services.

Comment:

The proposed development satisfies the control having direct access to transport services, and is less than 400m from services, shops and general practitioners via a sealed level pathway.

94 Location and access to facilities and services—residential care facilities

(1) Development consent must not be granted for development for the purposes of a residential care facility unless the consent authority is satisfied that residents of the facility will have access to facilities and services—

- (a) on-site, or*
- (b) by a transport service other than a passenger service.*

(2) In this section—

facilities and services—see section 93.

passenger service has the same meaning as in the [Point to Point Transport \(Taxis and Hire Vehicles\) Act 2016](#).

Note—

A passenger service is defined as the transport, by a motor vehicle other than a bus, of passengers within, or partly within, this State for a fare.

Comment:

The proposed development would satisfy the above control having direct access to transport services, is less than 400m from services, shops and general practitioners via sealed level pathway.

95 Water and sewer

(1) A consent authority must not consent to development under this Part unless the consent authority is satisfied the seniors housing will—

(a) be connected to a reticulated water system, and

(b) have adequate facilities for the removal or disposal of sewage.

(2) If the water and sewerage services will be provided by a person other than the consent authority, the consent authority—

(a) must consider the suitability of the site in relation to the availability of reticulated water and sewerage infrastructure, or

(b) if reticulated services are not available—must satisfy the relevant authority that the provision of water and sewerage infrastructure, including environmental and operational considerations, is satisfactory for the development.

(3) In this section—

relevant authority means the public authority responsible for water and sewerage services in the area in which the seniors housing is located.

Comment:

Details of the application submission were referred to Sydney Water for s78 comments with conditionally satisfactory referral advice received.

96 Bush fire prone land

(1) A consent authority must not consent to development under this Part on bush fire prone land unless the consent authority is satisfied the development complies with the requirements of Planning for Bushfire Protection.

Comment:

The subject site is not mapped bush fire prone land.

Division 5 Design requirements

98 Design of seniors housing

A consent authority must not consent to development for the purposes of seniors housing unless the consent authority is satisfied that the design of the seniors housing demonstrates adequate consideration has been given to the principles set out in Division 6.

Comment:

The application submission fails to demonstrate that adequate consideration has been given to the principles set out in Division 6. The proposed development has not been designed appropriately given the constraints and characteristics of the site and has the potential to result in significant adverse impacts on the amenity of the surrounding area. The development as proposed would set an undesirable precedent and approval would not be in the public interest.

Division 6 Design Principles

99 Neighbourhood amenity and streetscape

Seniors housing should be designed to—

- (a) recognise the operational, functional and economic requirements of residential care facilities, which typically require a different building shape from other residential accommodation, and*
- (b) recognise the desirable elements of—*
 - (i) the location's current character, or*
 - (ii) for precincts undergoing a transition—the future character of the location so new buildings contribute to the quality and identity of the area, and*
- (c) complement heritage conservation areas and heritage items in the area, and*
- (d) maintain reasonable neighbourhood amenity and appropriate residential character by—*
 - (i) providing building setbacks to reduce bulk and overshadowing, and*
 - (ii) using building form and siting that relates to the site's land form, and*
 - (iii) adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and*
 - (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and*
- (e) set back the front building on the site generally in line with the existing building line, and*
- (f) include plants reasonably similar to other plants in the street, and*
- (g) retain, wherever reasonable, significant trees, and*
- (h) prevent the construction of a building in a riparian zone.*

Comment:

The site is zoned R2 Low Density Residential and sits outside of the Figtree Town Centre. The desired future character is that Figtree will remain a relatively low density leafy residential suburb with only some limited potential for medium density housing in the form of villas or townhouses upon larger amalgamated sites, particularly near the Princes Highway.

The existing character of Bellevue Road is low scale (predominately 1-2 storey development) characterised by an active retail shopping strip (Figtree Plaza and Figtree Square), shop top housing and other single storey villas and dwelling houses situated further west along Bellevue Road. Further West, Bellevue Road transitions to a suburban character defined by detached housing.

The tallest element along the street is established by the parapet of the church building (which is proposed to be retained on the Site, along with the existing community hall building) and appears to sit above the maximum 9m LEP height limit.

While the ILU presents as three (3) storeys to Bellevue Road and is generally in keeping with the height of the parapet of the place of public worship (church) the residential aged care facility (RACF) by extension set behind the church protrudes well above the existing street frontage height. The heights of both the ILU and RACF significantly exceed the non-discretionary development standards.

Advice from Council's Design expert is that the private open space of neighbouring properties in particular those to the South west are impacted by overshadowing from the proposed development which is result of the additional height and bulk of the development.

The development's size and scale contrasts markedly with the site's current context, and is inconsistent with the current and desired future neighbourhood character.

It is considered the proposed development has not been designed appropriately given the constraints and characteristics of the site and has the potential to result in significant adverse impacts on the amenity of the surrounding area.

100 Visual and acoustic privacy

Seniors housing should be designed to consider the visual and acoustic privacy of adjacent neighbours and residents by—

- (a) using appropriate site planning, including considering 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 areas and paths.

Comment:

Variations to the ADG are noted with regard to visual privacy. There were a number of design amendments recommended by the DRP at the time to achieve ADG amenity objectives for proposed units and to minimise privacy impacts on adjoining residential development.

With regard to privacy the DRP highlighted concerns with privacy impacts on adjoining neighbours and recommended that all balconies oriented to the North west and South west boundaries be removed to reduce potential privacy issues with adjoining residential neighbours. Greater setbacks were recommended so as to reduce the density closer to the boundaries as per the advice of the ADG.

Council's Environment Officer has reviewed the submitted Acoustic Report. Advice received is that the proposal is conditionally satisfactory in this regard.

101 Solar access and design for climate

The design of seniors housing should—

(a) for development involving the erection of a new building—provide residents of the building with adequate daylight in a way that does not adversely impact the amount of daylight in neighbouring buildings, 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.

Comment

The DRP noted concerns with access to natural lighting for several units. Advice from Council's Design expert is that the private open space of neighbouring properties in particular those to the South west are impacted by overshadowing from the proposed development which is result of the additional height and bulk of the development. The ILU overshadows the internal court/ piazza for almost the entire day reducing utility in the winter months by future occupants.

102 Stormwater

The design of seniors housing should aim to—

(a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and

(b) include, where practical, on-site stormwater detention or re-use for second quality water uses.

Comment:

Council's Stormwater Officer has assessed the application and provided unsatisfactory referral advice noting the following:

- The proposal will result in significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels;
- The proposal includes filling and a car park located within an existing floodway and High Flood Risk Precinct area, which is considered contrary to the controls, objectives, performance criteria in WLEP 2009 Section 5.21 and WDCP 2009 Chapter E13;
- The proposal includes piping and modification of a natural watercourse, contrary to Section 5.5 of Chapter E13 of the Wollongong DCP2009;
- The proposal will result in an increase in the frequency and duration of surface water flows being conveyed onto and across the downslope land;
- A stormwater concept plan has not been provided that satisfies the requirements of Chapter E14 of the Wollongong DCP2009, including the provision of On-site Stormwater Detention (OSD);
- The proposal does not satisfy the requirements of Section 9.3.17 of Chapter E14, with respect to local overland flow from the adjoining land that naturally falls towards the development site,

including localised overland flows contributing to the site along the north-western and south-western property boundaries.

103 Crime prevention

Seniors housing should—

- (a) be designed in accordance with environmental design principles relating to crime prevention, and*
- (b) provide personal property security for residents and visitors, and*
- (c) encourage crime prevention by—*
 - (i) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins the area, driveway or street, and*
 - (ii) providing shared entries, if required, that serve a small number of dwellings and that are able to be locked, and*
 - (iii) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.*

Comment Council's Safer Communities (SCAT) Officer provided conditionally satisfactory referral advice.

104 Accessibility

Seniors housing should—

- (a) have obvious and safe pedestrian links from the site that provide access to transport services or local facilities, and*

Comment:

The proposed development satisfies the above control having direct access to transport services, is less than 400m from services, shops and general practitioners via sealed level pathway.

Council's Building Officer has reviewed the application submission including the Access Consultant's Report and returned a conditionally satisfactory referral response.

- (b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.*

Comment:

Advice received from the DRP is that further detail is required to reduce potential conflicts between vehicles and pedestrians within the central square/ piazza. The DRP were particularly concerned with the safety issues relating to providing a communal open space for residents of the independent living units within a public square that is also a shared zoned for vehicular drop off and parking.

105 Waste management

Seniors housing should include waste facilities that maximise recycling by the provision of appropriate facilities.

Comment:

Council's Traffic Officer has provided conditionally satisfactory advice.

Division 7 Non-discretionary development standards

106 Interrelationship of Division with design principles in Division 6

Nothing in this Division permits the granting of consent to development under this Part if the consent authority is satisfied that the design of the seniors housing does not demonstrate that adequate consideration has been given to the principles set out in Division 6.

107 Non-discretionary development standards for hostels and residential care facilities—the Act, s 4.15

- (1) The object of this section is to identify development standards for particular matters relating to development for the purposes of hostels and residential care facilities that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

(2) The following are non-discretionary development standards in relation to development for the purposes of hostels or residential care facilities—

(a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,

Comment:

The development proposes a maximum building heights of 17.39m for the RACF.

An exception to a development departure request statement has been provided by the applicant addressing Section 4.6 of WLEP2009. A copy is provided at **Attachment 5**. This request is not supported.

(b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—

(i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and

(ii) is limited to an area of no more than 20% of the surface area of the roof, and

(iii) does not result in the building having a height of more than 11.5m,

Comment

The development proposes a maximum building heights of 17.39m for the RACF.

An exception to a development departure request statement has been provided by the applicant addressing Section 4.6 of WLEP2009. A copy is provided at **Attachment 5**. This request is not supported.

(c) the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,

Comment:

The proposed development with a FSR of 0.92:1 would appear to satisfy this standard.

However, State Environmental Planning Policy (Housing) 2021 Section 106 indicates that nothing in this Division permits the granting of consent to development under this Part if the consent authority is satisfied that the design of the seniors housing does not demonstrate that adequate consideration has been given to the principles set out in Division 6.

The proposal does not demonstrate that adequate consideration has been given to the principles set out in Division 6 as follows:

- The developments size and scale contrasts markedly with the sites current context, and is inconsistent with the current and desired future neighbourhood character.
- Advice from Council's Design expert is that the private open space of neighbouring properties in particular those to the South west are impacted by overshadowing from the proposed development which is result of the additional height and bulk of the development.
- Variations to the ADG were noted with regard to visual privacy. There were a number of design amendments recommended by the DRP to achieve ADG amenity objectives for proposed units and to minimise privacy impacts on adjoining residential development. Given flooding and drainage matters remain unresolved an overall redesign and response has not been forthcoming by the proponent.
- The proposed development has not been designed appropriately given the constraints and characteristics of the site and has the potential to result in significant adverse impacts on the amenity of the surrounding area.

The bulk and scale of the development as proposed is inconsistent with the bulk and scale of development in the locality and does not satisfy WLEP 2009 Section 4.4(1)(c) and the application fails to demonstrate that adequate consideration has been given to the principles set out in Division 6 of State Environmental Planning Policy (Housing) 2021. As such the proposed floor space ratio is unsatisfactory .

(d) internal and external communal open spaces with a total area of at least—

- (i) for a hostel—8m² for every bed, or*
- (ii) for a residential care facility—10m² for every bed,*

Comment:

The proposed development includes RACF consisting of 102 beds as such the minimum area of communal open space required would be 1020m². The development provides 656.7m² of dedicated roof communal open space. Planted areas do not count towards COS. The shared plaza is a public area and does not meet this requirement. Therefore, the development does not satisfy this development standard.

- (e) at least 15m² of landscaped area for every bed,*
- (f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 6m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,*

Comment:

The proposed development includes RACF consisting of 102 beds as such the minimum landscaped area required would be 1530m². Insufficient information has been provided with the application to demonstrate t the landscaped area for the proposed RACF satisfies the minimum requirements of the development standard.

Insufficient information has been provided with the application to demonstrate that deep soil zone provided for the development is 15% of the site area.

- (g) for a hostel—at least 1 parking space for every 10 beds in the hostel,*
- (h) for a residential care facility—at least 1 parking space for every 15 beds in the facility,*
- (i) at least 1 parking space for every 2 employees who are on duty at the same time,*
- (j) at least 1 parking space for the purpose of ambulance parking.*

Comment:

- 51 Spaces provided as basement parking for RACF;
- 50 Spaces provided as basement parking for ILU; and
- Additional 41 uncovered parking spaces at grade provided.

The proposal complies with the minimum parking requirements. 108 Non-discretionary development standards for independent living units—the Act, s 4.15

(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

(2) The following are non-discretionary development standards in relation to development for the purposes of independent living units—

- (a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,*
- (b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—*
 - (i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and*
 - (ii) is limited to an area of no more than 20% of the surface area of the roof, and*
 - (iii) does not result in the building having a height of more than 11.5m,*

Comment:

The development proposes a maximum building height of 14.93m for the ILU.

An exception to a development departure request statement has been provided by the applicant addressing Section 4.6 of WLEP2009. A copy is provided at **Attachment 6**. This request is not supported.

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

Comment:

Development proposes a FSR of 0.92:1.

However, State Environmental Planning Policy (Housing) 2021 Section 106 indicates that nothing in this Division permits the granting of consent to development under this Part if the consent authority is satisfied that the design of the seniors housing does not demonstrate that adequate consideration has been given to the principles set out in Division 6.

The proposal does not demonstrate that adequate consideration has been given to the principles set out in Division 6 as follows:

- The developments size and scale contrasts markedly with the sites current context, and is inconsistent with the current and desired future neighbourhood character.
- Advice from Council's Design expert is that the private open space of neighbouring properties in particular those to the South west are impacted by overshadowing from the proposed development which is result of the additional height and bulk of the development.
- The application has been reviewed by the DRP and Council's Design expert . Variations to the ADG were noted with regard to visual privacy. There were a number of design amendments recommended by the DRP at the time to achieve ADG amenity objectives for proposed units and to minimise privacy impacts on adjoining residential development. Given flooding and drainage matters remain unresolved an overall redesign and response has not been forthcoming by the proponent.
- The proposed development has not been designed appropriately given the constraints and characteristics of the site and has the potential to result in significant adverse impacts on the amenity of the surrounding area.

The bulk and scale of the development as proposed is inconsistent with the bulk and scale of development in the locality and does not satisfy WLEP 2009 Section 4.3(1)(c) and the application fails to demonstrate that adequate consideration has been given to the principles set out in Division 6 of State Environmental Planning Policy (Housing) 2021. As such the proposed floor space ratio as proposed is considered unsatisfactory in this circumstance.

(d) for a development application made by a social housing provider—at least 35m² of landscaped area per dwelling,

Comment:

Not applicable

(e) if paragraph (d) does not apply—at least 30% of the site area is landscaped,

(f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,

Comment:

The proposed development provides a landscaped area of less than 30% and does not comply with this control.

Insufficient information has been provided with the application to demonstrate that deep soil zone provided for the development is 15% of the site area.

(g) at least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces,

Comment:

ILU floor plan appears capable of achieving solar access requirements. It is noted that insufficient information has been provided to demonstrate this though.

(h) for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building—

(i) at least 15m² of private open space per dwelling, and

(ii) at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor,

Note—

The open space needs to be accessible only by a continuous accessible path of travel, within the meaning of AS 1428.1, if the dwelling itself is an accessible one—see Schedule 4, section 2.

(i) for a dwelling in a multi-storey building not located on the ground floor—a balcony accessible from a living area with minimum dimensions of 2m and—

(i) an area of at least 10m², or

(ii) for each dwelling containing 1 bedroom—an area of at least 6m²,

Comment:

Generally private open space is compliant for proposed units.

(j) for a development application made by, or made by a person jointly with, a social housing provider—at least 1 parking space for every 5 dwellings,

(k) if paragraph (j) does not apply—at least 0.5 parking spaces for each bedroom.

Comment:

- 51 Spaces provided as basement parking for RACF;
- 50 Spaces provided as basement parking for ILU; and
- Additional 41 uncovered parking spaces at grade provided.

The proposal complies with the minimum parking requirements. Council's Traffic Officer has provided conditionally satisfactory referral advice

2.1.5 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY & CONSERVATION) 2021

The State Environmental Planning Policy (Biodiversity) 2021 applies to the Wollongong Local Government Area, identified as being in the South Coast koala management area.

4.10 Development assessment process—other land

Consent can be issued for development on the subject land if Council is satisfied that the land is *not* core koala habitat.

core koala habitat means—

- (a) an area of land which has been assessed by a suitably qualified and experienced person as being highly suitable koala habitat and where koalas are recorded as being present at the time of assessment of the land as highly suitable koala habitat, or
- (b) an area of land which has been assessed by a suitably qualified and experienced person as being highly suitable koala habitat and where koalas have been recorded as being present in the previous 18 years.

Details of the application were referred to Council's Environment Officer for comment and no issues were raised with regard to Koala habitat protection. The site is not considered to contain species of tree belonging to the koala use tree species listed under South Coast Koala Management Area in Schedule 3 of SEPP (Biodiversity and Conservation) 2021. Therefore the proposed development would have no impact on koalas or koala habitat.

2.1.6 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT & INFRASTRUCTURE) 2021

Section 2.119 Development with frontage to a classified road

The application was referred to TfNSW under Section 2.119 of State Environmental Planning Policy (Transport & Infrastructure) 2021 as the subject site has frontage to the Princes Highway, a classified road.

Advice received from TfNSW is that the proposal is considered conditionally satisfactory.

2.1.7 STATE ENVIRONMENTAL PLANNING POLICY (PLANNING SYSTEMS) 2021 SCHEDULE 6 SECTION 2

The development has a capital investment value of more than \$30 million and accordingly the application is required to be determined by the Southern Regional Planning Panel pursuant to Section 4.5(b) of the Environmental Planning & Assessment Act, 1979.

2.1.8 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

The proposed development is BASIX affected development to which this policy applies. In accordance with Section 27 Division 1 Part 3 of the Environmental Planning and Assessment Regulation 2021, a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets.

2.1.9 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 1 Preliminary

Section 1.2 Aims of the Plan

Section 1.2(2) of WLEP 2009 indicates that the aims of the plans are as follows:

(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,

(a) to provide a framework for land use management,

(b) to encourage economic and business development to increase employment opportunities,

(c) to encourage a range of housing choices consistent with the capacity of the land,

(d) to improve the quality of life and the social well-being and amenity of residents, business operators, workers and visitors,

(e) to conserve and enhance remnant terrestrial, aquatic and riparian habitats, native vegetation and fauna species,

(f) to conserve and enhance heritage,

(g) to ensure that development is consistent with the constraints of the land and can be appropriately serviced by infrastructure,

(h) to ensure that significant landscapes are conserved, including the Illawarra Escarpment, Lake Illawarra, the drinking water catchment and the coastline.

Comment:

With respect to aim 2(c) and (g), the proposal does not ensure that the development is consistent with the capacity of the land and is consistent with the constraints of the land, as demonstrated by:

- The developments size and scale contrasts markedly with the site's current context, and is inconsistent with the current and desired future neighbourhood character.
- It is considered the proposed development has not been designed appropriately given the constraints and characteristics of the site and has the potential to result in significant adverse impacts on the amenity of the surrounding area.
- The application proposes 'Critical Utilities', seniors housing, within the High and Medium Flood Risk Precincts.
- The proposal will result in significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels;

With respect to aim 2(d) the development fails to demonstrate that the development will improve the quality of life and social well-being and amenity of residents, business operators, workers and visitors as:

- Insufficient information has been provided with regard to visual privacy, solar access and apartment size and layout to demonstrate that the proposal can achieve ADG amenity objectives.

Section 1.4 Definitions

Demolition: In relation to a building means wholly or partly destroy, dismantle or deface the building.

Independent living unit means a dwelling or part of a building, whether or not attached to another dwelling—

- (a) used to house seniors or people with a disability, and
 - (b) containing private facilities for cooking, sleeping and bathing, and
 - (c) where clothes washing facilities or other facilities for use in connection with the dwelling or part of a building may be provided on a shared basis,
- but does not include a hostel.

Note—

Independent living units are a type of **seniors housing**—see the definition of that term in this Dictionary.

Residential care facility means accommodation for seniors or people with a disability that includes—

- (a) meals and cleaning services, and
- (b) personal care or nursing care, or both, and
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,

but does not include a dwelling, hostel, hospital or psychiatric facility.

Note—

Residential care facilities are a type of **seniors housing**—see the definition of that term in this Dictionary.

Seniors housing means a building or place that is—

- (a) a residential care facility, or
 - (b) a hostel within the meaning of [State Environmental Planning Policy \(Housing\) 2021](#), Chapter 3, Part 5, or
 - (c) a group of independent living units, or
 - (d) a combination of any of the buildings or places referred to in paragraphs (a)–(c),
- and that is, or is intended to be, used permanently for—
- (e) seniors or people who have a disability, or
 - (f) people who live in the same household with seniors or people who have a disability, or
 - (g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place,

but does not include a hospital.

Part 2 Permitted or prohibited development

Section 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned R2 Low Density Residential.

Section 2.3 – Zone objectives and land use table

The objectives of the zone R2 Low Density Residential are as follows:

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

As a land use, a seniors living development would be considered generally satisfactory with regard to the above objectives as it is a permissible use in the R2 Low Density Residential zone with development consent. However, the application submission fails to demonstrate that the development as proposed provides for a low density residential environment and is consistent with existing and desired future character of the area.

The land use table permits the following uses in the zone.

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Child care centres; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Exhibition homes; Exhibition villages; Group homes; Health consulting rooms; Hospitals; Hostels; Information and education facilities; Jetties; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Roads; Semi-detached dwellings; **Seniors housing**; Shop top housing; Signage; Veterinary hospitals*

The proposal is categorised as a seniors living as described above and are permissible in the R2 zone with development consent. Demolition is ancillary works to facilitate the proposal and as such is also permissible.

Section 2.7 Demolition requires development consent

Demolition of a building may be carried out only with development consent. Demolition of the existing structures on the subject sites is proposed.

Part 4 Principal development standards

Section 4.3 Height of buildings

This Section prescribes a maximum height of 9 metres for the Site, as shown on the Height of Buildings Map. It is noted that the non-discretionary standards in State Environmental Planning Policy (Housing) 2021 Section 107(2)(b)(iii) and Section 108(2)(b)(iii) allow for a maximum building height of 11.5m.

The proposed RACF has a maximum overall height of 17.39m.

The ILU has a maximum overall height of 14.93m.

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

- (a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

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

The proposed development does not comply with WLEP 2009 Section 4.3(2) or State Environmental Planning Policy (Housing) 2021 Section 107(2)(b)(iii) and Section 108(2)(b)(iii).

An exception to a development departure request statement has been provided by the applicant addressing Section 4.6 of WLEP2009. A copy is provided at **Attachment 6**. This request is not supported.

Percentage Exceedance of each element is as follows:

RACF:

WLEP 2009 Section 4.3(2): 93%

SEPP (Housing) 2021 Section 107(2)(b)(iii): 51.2%

ILU:

WLEP 2009 Section 4.3(2): 66%

SEPP (Housing) 2021 Section 108(2)(b)(iii): 29.8%

Section 4.4 Floor space ratio

Maximum FSR permitted for the site: 0.5:1

FSR proposed: $12578.12\text{m}^2/13577.4\text{m}^2 = 0.926:1$

Whilst the proposed floor space ratio does exceed the maximum permissible for the site under WLEP 2009 the non-discretionary standard in State Environmental Planning Policy (Housing) 2021 Section 107(c) allows for a maximum floor space ratio of 1:1. The proposed development would appear to satisfy this standard.

However, State Environmental Planning Policy (Housing) 2021 Section 106 indicates *“that nothing in this Division permits the granting of consent to development under this Part if the consent authority is satisfied that the design of the seniors housing does not demonstrate that adequate consideration has been given to the principles set out in Division 6”*.

The proposal does not demonstrate that adequate consideration has been given to the principles set out in Division 6 as follows:

- The site is zoned R2 Low Density Residential and sits outside of the Figtree Town Centre. The desired future character is that Figtree will remain a relatively low density leafy residential suburb with only some limited potential for medium density housing in the form of villas or townhouses upon larger amalgamated sites, particularly near the Princes Highway.

The existing character of Bellevue Road is low scale (predominately 1-2 storey development) characterised by an active retail shopping strip (Figtree Plaza and Figtree Square), shop top housing and other single storey villas and dwelling houses situated further west along Bellevue Road. Further West, Bellevue Road transitions to a suburban character defined by detached housing.

The developments size and scale contrasts markedly with the sites current context, and is inconsistent with the current and desired future neighbourhood character.

- Advice from Council's Design expert is that the private open space of neighbouring properties in particular those to the South west are impacted by overshadowing from the proposed development which is result of the additional height and bulk of the development.
- Variations to the ADG were noted with regard to visual privacy. There were a number of design amendments recommended by the DRP at the time to achieve ADG amenity objectives for proposed units and to minimise privacy impacts on adjoining residential development. Given flooding and drainage matters remain unresolved an overall redesign and response has not been forthcoming by the proponent.
- The proposed development has not been designed appropriately given the constraints and characteristics of the site and has the potential to result in significant adverse impacts on the amenity of the surrounding area.

The bulk and scale of the development as proposed is inconsistent with the bulk and scale of development in the locality and does not satisfy WLEP 2009 Section 4.3(1)(c) and the application fails to demonstrate that adequate consideration has been given to the principles set out in Division 6 of State Environmental Planning Policy (Housing) 2021. As such the proposed floor space ratio as proposed is considered unsatisfactory in this circumstance.

It is noted that an exception to a development standard request statement has not been provided by the applicant addressing Section 4.6 of the LEP.

Section 4.6 Exceptions to development standards

Section 4.6 of the Wollongong LEP “Exceptions to development standards” provides that development consent may, subject to this Section, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument, where certain matters are met.

In this instance, a departure is sought in respect of Section 4.3 Height of Buildings.

An exception to a development departure request statement has been provided by the applicant addressing Section 4.6 of WLEP2009. A copy is provided at **Attachment 5**.

The development departure is dealt with as follows.

WLEP 2009 Section 4.6 proposed development departure assessment

Development departure	<p>State Environmental Planning Policy (Housing) 2021 Section 107(2)(b)(iii) and 108(b)(iii)</p> <p>State Environmental Planning Policy (Housing) 2021 Section 107(b)(iii) and Section 108(2)(b)(iii) requires the maximum height of a RACF or ILU on any land is not to exceed 11.5m inclusive of servicing equipment on the roof.</p> <p>WLEP 2009 Section 4.3 Height of buildings</p> <p>Section 4.3(2) requires the maximum height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. For the subject site, a maximum height of buildings of 9m applies.</p> <p>It is noted that the applicants Section 4.6 references State Environmental Planning Policy (Housing) 2021 Section 87(2)(c) as the development standard the departure is sought for. State Environmental Planning Policy (Housing) 2021 Section 87 provides standards to be satisfied to allow for additional floor space ratios. State Environmental Planning Policy (Housing) 2021 Section 87(2)(c) permits a maximum building height of 12.8m.</p> <p>The proposal, however, does not satisfy the requirements for additional floor space ratios under Section 87 as the development proposes maximum building heights of 17.39m for the RACF and 14.93m for the ILU exceeding 12.8m.</p>
Is the planning control in question a development standard	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	A Section 4.6 variation has been submitted.
that there are sufficient environmental planning grounds to justify contravening the development standard.	Yes
4.6 (4) (a) Consent authority is satisfied that:	
the applicant's written request has adequately addressed the matters required to be demonstrated by sub Section (3), and	<p>The applicant's written request seeks to justify that compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of this case as:</p> <p><i>The augmented building height control of 12.8m under clause 87 of the Housing SEPP does not have objectives and references the LEP control. Therefore, the LEP building height control objectives are assessed.</i></p> <p><i>Objective (a) seeks an optimal relationship between site building height and floor space. In this instance the site's floor space control is a Non-Discretionary control of 0.87:1 that is a facilitative provision, and its purpose is to set a maximum for a particular attribute of a development whereby that scheme cannot be refused on that issue if it complies. It is not a limiting control and, in this instance, a density above the Non-Discretionary FSR control of 0.87:1 does not require a clause 4.6 Request process but rather a merit assessment of site floor space (density). In this instance a floor space just above the control of 0.9:1 is proposed.</i></p>

	<p><i>All additional floor space is for the purpose of Seniors Housing. The new buildings have a 4-storey scale and 6m+ setbacks to all boundaries with adjoining properties.</i></p> <p><i>Looking specifically to impacts on adjoining properties, and with reference to the submitted shadow diagrams (see DA-0-910 attached Appendix 1), we note the following:</i></p> <ul style="list-style-type: none"> <i>Any overshadowing impacts of adjoining residences are limited to the Winter Solstice between 9am and 10am ensuring a minimum of 5 hours of uncompromised solar access; and</i> <i>Any overshadowing impacts of the adjoining residence garden areas are limited in the Winter Solstice between 9 am – and approximately 1pm noting that each received more than 50% solar access between 11.30 and 3pm on what are substantial rear garden areas where the shadow quickly pulls away from the immediate residence area.</i> <p><i>The development is well serviced with ancillary uses and has excess parking to that required. Much of the activity generated by the proposed site density will be serviced internally or via walking to adjoining commercial uses.</i></p> <p><i>The distribution of floor space on the site is reasonable and facilitated by the building height sought.</i></p> <p><i>The bulk and scale of the proposed building is also not unreasonable, as 2-3-storey buildings would be achievable under the 9m building height control for general development and the proposed 3-4-storeys buildings are consistent with the preferential approach in the Housing SEPP for Seniors Housing. An additional 1-2 storeys are not a dramatic or overbearing change in scale.</i></p> <p><i>The proposal complies with objective (a).</i></p> <p><i>In terms of objective (b), the proposal is for a comprehensive site redevelopment that has been through a master-planning process, detailed consultation with the officers of Wollongong Council and reviewed by Council's Design Review Panel</i></p> <p><i>The site is also adjoining and functionally part of the Figtree commercial centre where higher building forms are allowed and expected.</i></p> <p><i>The building form has also been well informed by the client, the Croatian community. The new buildings are dramatic, well-articulated and varied in form and materials and seek to create an intimate European 'old-city' feel to this space.</i></p> <p><i>These various interests have been documented by well-regarded architects and a high-quality urban form is provided.</i></p> <p><i>The proposal satisfies objective (b).</i></p> <p><i>In terms of objective (c), the proposal provides for minimum 6m setbacks from all site boundaries, separation between the 2 new building forms and a large public square behind the existing Croatian Church and Community Hall.</i></p> <p><i>The Independent Living Building will address Bellevue Road and a street setback of 8.2m is provided. The existing Croatian Church and Community Hall will maintain their current open forecourt areas to Bellevue Road.</i></p> <p><i>The new buildings have acceptable shadow impacts on neighbours and also importantly allows for continuous mid-winter sun to the new public square.</i></p> <p><i>Public areas will continue to have views of the sky and receive exposure to sunlight; indeed, the proposal will provide for a significant up-grade of an under-used urban site.</i></p> <p><i>The proposal satisfies objective (c).</i></p>
--	---

	<p><i>The proposal is consistent with the objectives of the local building height control.</i></p> <p>A copy of the applicant's Section 4.6 Statement is provided at Attachment 6. The written request has not adequately addressed the matters required to be addressed under Subsection (3).</p> <p>Comment:</p> <p>The application submission fails to demonstrate that the development as proposed is consistent with the objectives of WLEP 2009 Section 4.3 and as such compliance with the standard is unreasonable and unnecessary in the circumstances of this case as:</p> <ul style="list-style-type: none"> • The bulk and scale of the development as proposed is inconsistent with the bulk and scale of development in the locality. <p>The site is zoned R2 Low Density Residential. The desired future character is for Figtree to remain a relatively low density leafy residential suburb with some limited potential for medium density housing in the form of villas or townhouses upon larger amalgamated sites, particularly near the Princes Highway.</p> <p>The existing character of Bellevue Road is low scale (predominately 1-2 storey development) characterised by an active retail shopping strip (Figtree Plaza and Figtree Square), shop top housing and other single storey villas and dwelling houses situated further west along Bellevue Road. Further west, Bellevue Road transitions to a suburban character defined by detached housing.</p> <p>Contextual streetscape elevations provided with the application submission show the neighbouring properties along Bellevue road as being 3 storeys, where in reality they are one storey detached dwellings. These dwelling are subject to a DCP control for a two storey maximum development height. Furthermore, the developments at 15 and 17-19 Bellevue Road, are also new developments, one of which was recently completed by the state government and another which is strata titled and unlikely to be redeveloped in the near future. As such the proposed development should respond to this low-scale development context.</p> <p>Both buildings exceed the maximum 9m height limit and the maximum height limit as set in the non-discretionary development standards as detailed at SEPP (Housing) 2021 Section 107 and Section 108. With an FSR of 0.926:1 the density of the development does not comply with the maximum FSR of 0.5:1 permitted for the land under WLEP 2009. The non-discretionary development standards (at SEPP (Housing) 2021 Section 107) do allow for a greater FSR. However, use of the greater FSR and building heights under the non-discretionary development standards is reliant upon the application adequately demonstrating that consideration has been given to the design principles as set out in the SEPP.</p> <p>The application fails to demonstrate that adequate consideration has been given to the design principles set out in Part 5 Division 6 of State Environmental Planning Policy (Housing) 2021, in particular, with regard to neighbourhood amenity and streetscape, visual and acoustic privacy, solar access and design for climate and stormwater design principles.</p> <p>As such the proposed floor space ratio as proposed is considered excessive in this circumstance.</p> <ul style="list-style-type: none"> • The application submission does not demonstrate that the building heights as proposed provides for high quality urban form. <p>Th provisions of the design quality principles of SEPP 65 – Design Quality of Residential Apartment Development and the SEPP's companion</p>
--	---

	<p>document the ADG apply to the development. The SEPP aims to improve the design quality of residential apartment development.</p> <p>The proposal is not consistent with the design principles of the SEPP in particularly regarding the context and neighbourhood streetscape, built form and scale, density, sustainability, landscape, amenity, safety and aesthetics.</p> <p>The proposal has been formally considered by a Design Review Panel on 30 March 2022 as required by Section 28 of the SEPP. There were several design amendments recommended by the DRP at the time. A design response to the recommendations of the DRP has not been submitted to Council to date due to the influence of unresolved flooding and drainage issues.</p> <p>The flooding and drainage issues when combined with the applications proposed yield result in a poor design outcome and the heights in excess of the development standard cannot be supported.</p> <ul style="list-style-type: none"> • The development as proposed does not ensure that adjoining residential development can achieve reasonable solar access. The private open space of neighbouring properties to the South west are impacted by overshadowing from the proposed development which is a direct result of the additional height and bulk of the development.
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	<p>WLEP2009 Section 4.3 provides the following objectives for the Height of buildings development standard:</p> <p>(1) <i>The objectives of this Section are as follows:</i></p> <p>(a) <i>to establish the maximum height limit in which buildings can be designed and floor space can be achieved,</i></p> <p>(b) <i>to permit building heights that encourage high quality urban form,</i></p> <p>(c) <i>to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.</i></p> <p>(2) <i>The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</i></p> <p>The statement attempts to demonstrate that the proposed development will be in the public interest because it is consistent with the objectives of the height of buildings development standard as above and of the zone as follows:</p> <p><i>In terms of the first zone objectives, there is a demonstrable need for Seniors Housing on the State, Regional and Local level.</i></p> <p><i>The purpose of the Housing SEPP is to recognise this need and promote actual Seniors Housing projects.</i></p> <p><i>At the Wollongong LGA and Figtree local level the existing population is growing and aging.</i></p> <p><i>The suburb of Figtree (see 2016 ABS locality) has an older population than the average for NSW and Australia and a high percentage (relatively) of its population is born in the former Yugoslav Republic of Macedonia. This housing and residential care project is responding to an existing community need.</i></p> <p><i>Most notably though is the extreme mismatch of the current housing stock to this aging population. In general, an aging population requires smaller dwellings, whereas as of the 2016 census in the Figtree locality 3.8% of the housing stock comprised bedsit or one-bedroom dwellings whereas 20.4% of households were lone person households. Not all old people living alone want to live in a bedsit or 1 bedroom dwelling; however, many do want or need this</i></p>

	<p><i>type of accommodation for affordability and convenience reasons. Now there is limited housing stock in the Figtree locality to service this demand.</i></p> <p><i>This mismatch would likely create underutilisation of existing housing stock or force elderly people that do want to downsize to move away from their community.</i></p> <p><i>The strongest area of household growth is in the lone person household to 2041 (42%) then couple only (41%). Given the current demographics of the Figtree locality with strong current populations in the 40-to-60-year cohorts, this will translate to strong demand for unit living for seniors into the future.</i></p> <p><i>This observation is also well known to the Council as stated in their recent housing review, see summary of key issues concerning Seniors Housing provided below:</i></p> <p><i>"The population of Wollongong LGA is ageing. The projected number of residents in Wollongong LGA aged 70 years plus is projected to increase from 25,586 in 2016 to 31,845 by 2026. In 2016, the Illawarra Aged Care Planning Region had a total of 5881 total operational aged care places consisting of a mixture of low care, high care, home care, restorative care places. The ratio the Illawarra achieved in 2016 was 104.7 meaning the Illawarra region has a total of 104.7 places for every 1000 people aged 70 years plus. Assuming the current ratio of 104.7 places per 1000 people remains constant through to 2026, there will be a projected shortfall of 656 places in the Wollongong LGA alone, to achieve the Australian Government National target of 125 per 1000 persons."</i>¹</p> <p><i>Additional to the above current (2016) need identified by Council research, there is also a growing and aging population that will exacerbate this need.</i></p> <p><i>This proposal is responding to existing and emerging demand for Seniors Housing in the Figtree locality and LGA from.</i></p> <p><i>There is demonstrable need for the type of housing proposed. The proposal directory addresses the core objective of the R2 zone – housing need.</i></p> <p><i>In terms of the second objective of the R2 zone, the housing proposed is also accompanied by an array of facilities or services to meet the day to day needs of residents, in particular the existing Croatian Church and community Hall is to be retained, a large public square is to be provided behind the existing church and Hall (where there is currently an at-grade car park), and around this square a café, wellness centre, Seniors Day Care, Men's Shed and community meeting rooms are to be provided – see plan of community uses below.</i></p> <p><i>The proposal will purposefully enable other land uses that provide facilities and services to meet the day to day needs of residents of this complex and the broader community.</i></p> <p><i>The proposed development will become a community resource and is an ideal development in terms of the objectives of the R2 zone.</i></p> <p><i>The proposal is consistent with the objectives of the R2 zone and in the public interest.</i></p> <p><i>The proposal is for seniors living which is a land use that is permissible with consent in the zone. However, when the number of variations to the relevant SEPP's, LEP, DCP and ADG are taken into consideration, this proposal is considered likely to result in negative impacts on the environment and the amenity of the locality. The proposal is considered inappropriate with consideration to site constraints, contrary to the relevant planning controls and in the current form, approval would not to be in the public interest.</i></p>
the concurrence of the Secretary has been obtained.	<p>In accordance with Planning Circular PS 18-003 dated 21 February 2018 <i>Variations to development standards</i>, a regional planning panel may assume the concurrence of the Secretary where development standards will be</p>

	contravened, except where it is proposed to vary lot size standards for dwelling in rural areas.
--	--

Council comment:

The departure to the development standard for building height is not supported.

Part 5 Miscellaneous provisions

Section 5.21 Flood Planning

The subject land is identified as being flood hazard affected. Council's Stormwater Officer has provided commentary against the submitted flood assessment report noting the following:

- The proposal is contrary to the controls in Schedule 4: Prescriptive Controls – Allans Creek Floodplain, of Appendix C of Chapter E13 of the WDCP 2009, which stipulate that 'Critical Utilities' such as seniors housing are an unsuitable land use within the High and Medium Flood Risk Precincts;
- The proposal does not comply with the floor levels and evacuation controls for critical utilities in Schedule 4 of Appendix C of Chapter E13 of the WDCP 2009;
- The proposal will result in significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels;
- The proposal includes filling and a car park located within an existing floodway and High Flood Risk Precinct area, which is considered contrary to the controls, objectives, performance criteria in WLEP 2009 Section 5.21 and WDCP2009 Chapter E13;
- The proposal includes piping and modification of a natural watercourse, contrary to Section 5.5 of Chapter E13 of the WDCP2009;
- The proposed driveway passes through parts of the floodplain where flood depths and velocities are outside safe criteria;
- The proposal includes car parking areas where flood depths and velocities are outside safe criteria;
- The proposal will result in an increase in the frequency and duration of surface water flows being conveyed onto and across the downslope land;
- Concerns with the submitted flood study as follows:
 - Is inconsistent with Council's adopted flood study, with the flood levels predicted by Rienco being up to 200mm lower at the subject site than those predicted by Council's adopted model;
 - Uses manning's n values that are inconsistent with Council's adopted study;
 - Does not include certain structures/obstructions on the site that are likely to have a significant influence on flood flow behaviour such as an existing building and car port structure (which has an enclosed eastern wall) over the piped watercourse and landscaping/vegetation on the site and adjoining property where Rienco has applied manning's n values of 0.03 and 0.02, reflecting 'short maintained grass' and 'road pavement'.
 - Indicates significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels that exceed the 'Permissible Flood Impacts' stipulated in Table 2 of Chapter E13 of the Wollongong DCP2009 and do not satisfy the controls, objectives, and performance criteria in chapter E13 and Clause 5.21 of the Wollongong LEP2009.
 - Appears to contain the incorrect plan in Figure C5.3 (it appears that the post-development 1 % AEP flood velocity map has been provided as Figure C5.3, which is intended to be the pre-development 20% AEP flood velocity map).
- The proposed basement car parks are not protected from inundation during a 1 % AEP flood level;

Part 7 Local provisions – general

Section 7.1 Public utility infrastructure

The subject site is already serviced by public utilities which can be augmented to service the new proposal.

Advice received from Sydney Water and Endeavour Energy indicates the proposal is conditionally satisfactory.

Clause 7.4 Riparian lands

The Riparian Land Map indicates the site contains riparian land. The application submission was referred to Council's Environment Officer for comment. Advice received indicates there are no issues.

The application submission included advice from DPE – Water, previously known as Natural Resources Access Regulator (NRAR), indicating that the watercourse is not considered as a river and as such the application did not require referral to DPE – Water as Integrated development requiring a Controlled Activity Permit.

Section 7.6 Earthworks

The objectives of this clause are:

(a) to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land,

(b) to allow earth works of a minor nature without separate development consent.

Clause 7.6(3) of WLEP 2009 states that before granting development consent for earthworks, the consent authority must consider the following matters;

(a) the likely disruption of, or any detrimental effect on, 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,

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

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

(e) the source of any fill material or the destination of any excavated material,

(f) the likelihood of disturbing Aboriginal objects or other relics,

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

Council's Stormwater Officer has provided unsatisfactory referral advice noting the following issues:

- The proposal will result in significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels;
- The proposal includes filling and a car park located within an existing floodway and High Flood Risk Precinct area, which is considered contrary to the controls, objectives, performance criteria in WLEP 2009 Section 5.21 and WDCP 2009 Chapter E13;
- The proposal includes piping and modification of a natural watercourse, contrary to Section 5.5 of Chapter E13 of the Wollongong DCP2009;
- The proposal will result in an increase in the frequency and duration of surface water flows being conveyed onto and across the downslope land;

The extent of landform modification to facilitate the proposal is not considered to be site responsive and insufficient information has been lodged to determine whether the proposed development will not disrupt or have detrimental effect on existing drainage patterns and will not impact on the amenity of adjoining properties so as to satisfy Section 7.6 (1)(a), Section 7.6(3)(a) and Section 7.6(3)(d).

Section 7.14 Minimum site width

This Section prescribes a minimum site width of 24m for residential flat buildings. The subject site has frontages of 71m to Bellevue Road, 44.475m to the Princes Highway and 17m to Benney Avenue.

2.2 SECTION 4.15(A)(II) ANY PROPOSED INSTRUMENT

None applicable to the site or proposed development.

2.3 SECTION 4.15 1(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

The development has been assessed against the relevant chapters of WDCP2009 and found to be unsatisfactory with regards to floodplain management, stormwater management, character of the area, contaminated land management, water sensitive urban design, built form, privacy, solar access, landscaping, communal open space, landscaped area, deep soil zone, retaining wall height, basement car parking and bicycle parking. It is noted that no variation request statements have been submitted.

A full compliance table is provided at **Attachment 6** to this report.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN

Advice received from Council's Development Contributions Officer is that the development is exempt from the Plan due to ministerial direction 'Revocation of Direction in force under section 94E and Direction under section 94E' dated 14 September 2007.

<https://www.planning.nsw.gov.au/sites/default/files/2023-03/epaa-act-1979-revocation-of-direction-in-force-under-section-94e-and-direction-under-section-94e.pdf>

2.4 SECTION 4.15 1(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

2.5 SECTION 4.15 1(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

2 Savings

Any act, matter or thing that, immediately before the repeal of the 2000 Regulation, had effect under the 2000 Regulation continues to have effect under this Regulation.

2000 Regulation means the Environmental Planning and Assessment Regulation 2000 as in force immediately before its repeal on 1 March 2022.

6 Determination of BASIX development

Not Applicable.

61 Additional matters that consent authority must consider

Condition(s) could be recommended with regard to demolition works.

62 Consideration of fire safety

Council's Building Officer has assessed the application submission which included a BCA Report with regards to Fire Safety and returned a conditionally satisfactory referral response

63 Considerations for erection of temporary structures

Not Applicable

2.6 SECTION 4.15 1(B) THE LIKELY IMPACTS OF DEVELOPMENT

Context and Setting:

Seniors living would normally be considered to be in context with the setting of the area as the area is characterised by residential development.

In regard to the matter of context, the planning principle in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 is relevant in that it provides guidance in the assessment of compatibility. The two major aspects of compatibility are physical impact and visual impact. In assessing each of these the following questions should be asked:

- Are the proposals physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
- Is the proposals appearance in harmony with the buildings around it and the character of the street?

In this circumstance the departure to the maximum height of buildings and floor space ratio development standards and bulk and scale along with other Development Control Plan non-compliances and issues identified throughout the report indicate that the development as proposed is inappropriate for the subject site. The proposal is not considered to be consistent with the context and setting of the surrounding area or future desired character.

Access, Transport and Traffic:

The application was referred to TfNSW under Section 2.119 of State Environmental Planning Policy (Transport & Infrastructure) 2021 as the subject site has frontage to the Princes Highway, a classified road. Advice received from TfNSW is that the proposal is considered conditionally satisfactory.

Council's Traffic Officer has assessed the application submission and considered the proposal conditionally satisfactory with regard to impacts on the local road network, vehicular access and egress and the provision onsite car and motor cycle parking.

It was, however noted that the application was unsatisfactory with regard to the provision of bicycle spaces.

Public Domain:

The proposal is not conducive to the site constraints or locality as identified throughout the report and would set an undesirable precedent.

Utilities:

The proposal would not be envisaged to place an unreasonable demand on utilities supply. Existing utilities are capable of augmentation to service the proposal.

Heritage:

No nearby heritage items are expected to be affected by the proposed development

Other land resources:

The proposal would not be envisaged to impact upon other land resources.

Water:

The site is presently serviced by Sydney Water, which could be readily extended to meet the requirements of the proposed development.

The proposal would not be envisaged to have unreasonable water consumption.

Soils:

The soil profile could be acceptable for the construction of the proposed development.

Air and Microclimate:

The proposal would not be expected to result in negative impact on air or microclimate.

Flora and Fauna:

Council's Landscape Officer is unable to support the application in its current form as Insufficient information has been submitted with the application submission to demonstrate compliance with Council development control plans, insufficient landscaped area and deep soil planting has been provided to demonstrate compliance with the SEPP (Housing) 2021 and no detail of streetscape treatment has been provided.

It is considered that the proposal will have minimal impact on significant native fauna.

Waste:

The proposal is not expected to generate significant waste.

The application submission was referred to Council's Traffic Officer for comment and no issues were raised in this regard.

Energy:

The proposal would not be expected to have unreasonable energy consumption.

A BASIX certificate has been provided for the proposal.

<p><u>Noise and vibration:</u></p> <p>Conditions could be imposed to minimise nuisance during any construction, demolition, or works.</p>
<p><u>Natural hazards:</u></p> <p>Council's Stormwater Officer has indicated that insufficient information has been provided for Council to assess and be satisfied that the development as proposed satisfies Council's Floodplain Management controls.</p>
<p><u>Technological hazards:</u></p> <p>Council's Environment Officer has indicated that insufficient information has been provided with the application to demonstrate that the proposal will be satisfactory with regard to SEPP (Hazards and Resilience) 2021 matters.</p>
<p><u>Safety, Security and Crime Prevention:</u></p> <p>The proposal would not be envisaged to result in any opportunities for criminal or antisocial behaviour.</p> <p>Council's Safer Communities (SCAT) Officer. indicates the proposal is conditionally satisfactory.</p>
<p><u>Social Impact:</u></p> <p>The proposal may create negative social impacts. Insufficient information has been submitted to demonstrate the proposal will not have an adverse impact on the amenity of the neighbourhood and the surrounding development.</p>
<p><u>Economic Impact:</u></p> <p>The proposal would not be envisaged to result in negative economic impacts.</p>
<p><u>Site Design and Internal Design:</u></p> <p>The application submission requests an exception to the height of buildings development standard pursuant to Section 87(c), 107(2)(b)(iii) and 108(2)(b)(iii) of SEPP (Housing) 2021 and Section 4.3 of WLEP 2009. This request is not supported.</p> <p>Council interprets the application submission also requires consideration to an exception to the Floor Space Ratio development standard pursuant to Section 87(2)(b)(iii) of SEPP (Housing) 2021 and Section 4.4 of WLEP 2009. The exception is not supported. An exception to a development standard request statement for the proposed FSR has not been provided by the applicant addressing Section 4.6 of the WLEP 2009.</p> <p>The application submission requests variations to Council's floodplain management, stormwater management, landscaping, communal open space, landscaped area, deep soil zone, retaining wall height and bicycle parking development control plans. .</p>
<p><u>Cumulative Impacts:</u></p> <p>Considering the matters outlined throughout this report, the proposal is likely to result in adverse cumulative impacts.</p>

2.7 SECTION 4.15 1(C) THE SUITABILITY OF THE SITE FOR DEVELOPMENT

Does the proposal fit in the locality?

The development as proposed will set an undesirable precedent given the issues raised in this report. and is not appropriate for the locality.

Are the site attributes conducive to development?

The application as submitted has not responded to the inherent site constraints and is therefore unsatisfactory. Insufficient information has been submitted to demonstrate the site is suitable for the proposed development.

2.8 SECTION 4.15 1(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

See Section 1.5 of this report.

2.9 SECTION 4.15 1(E) THE PUBLIC INTEREST

The application Proposal as submitted is likely to result in negative impacts on the environment and the amenity of the locality. The proposal is considered inappropriate with consideration to site constraints, contrary to the relevant planning controls and in the current form, approval would not be in the public interest.

3. CONCLUSION

The proposed development has been assessed with regard to the relevant prescribed matters for consideration outlined in Section 4.15 of the Environmental Planning & Assessment Act 1979.

The development proposes an exception to the height of buildings development standard pursuant to Section 87(c), 107(2)(b)(iii) and 108(2)(b)(iii) of SEPP (Housing) 2021 and Section 4.3 of WLEP 2009. The proposed exception is not supported.

Council interprets that there is also an exception to the FSR development standard pursuant to Section 87(2)(b)(iii) of SEPP (Housing) 2021 and Section 4.4 of WLEP 2009. SEPP (Housing) 2021 Section 107(c) allows for a greater FSR subject to an application submission demonstrating adequate consideration of the design principles set out in SEPP (Housing) 2021 Part 5 Division 6. The application submission does not demonstrate that adequate consideration has been given to the principles set out in SEPP (Housing) 2021 Part 5 Division 6 as such the exception is not supported as detailed in this report. An exception to a development standard request statement for the proposed FSR has not been provided by the applicant addressing Section 4.6 of the WLEP 2009.

The applicant has also not provided justification statements for the variations sought to WDCP 2009 as relates to floodplain management, stormwater management, character of the area, contaminated land management, water sensitive urban design, built form, privacy, solar access, landscaping, communal open space, landscaped area, deep soil zone, retaining wall height, basement car parking and bicycle parking. The applicant has also not provided adequate justification for the variations sought to ADG as relates to site analysis, orientation, overshadowing of neighbouring properties, the provision of communal and public open space, the provision of deep soil zones, visual privacy, daylight access to development, apartment size and layout and sustainability features on roof design.

Council's Stormwater, Landscape, Strategic planning, Traffic, Environment and Design Officers have provided unsatisfactory referral advice. Council's Building, Community Services and SCAT Officers have provided conditionally satisfactory referral advice.

Several matters including those identified within public submissions received remain unresolved.

The proposed development has not been designed appropriately given the constraints and characteristics of the site and has the potential to result in significant adverse impacts on the amenity of the surrounding area. The development as proposed would set an undesirable precedent and approval is not in the public interest.

4. RECOMMENDATION

DA-2022/136 be Refused for the following reasons:

- 1 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the application submission fails to demonstrate the development as proposed is consistent with State Environmental Planning Policy (Housing) 2021 with respect to:
 - a. Section 84 Development Standards - General;
 - b. Section 87 Additional Floor Space Ratios;
 - c. Section 98 Design of seniors housing;
 - d. Section 99 Neighbourhood amenity and streetscape;
 - e. Section 100 Visual and acoustic privacy;
 - f. Section 101 Solar access and design for climate;
 - g. Section 102 Stormwater;
 - h. Section 107 Non-discretionary development standards for hostels and residential care facilities;
 - i. Height of building;

- ii. Density and scale;
 - iii. Communal open space;
 - iv. Deep soil zone
 - i. Section 108 Non-discretionary development standards for independent living units.
 - i. Height of building;
 - ii. Density and scale;
 - iii. Landscaped area;
 - iv. Deep soil zone
- 2 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, insufficient information has been provided with the application submission for the consent authority to assess and be satisfied with the requirements of State Environmental Planning Policy (Hazards and Resilience) 2021 with respect to:
- a. Section 4.6 Contamination and remediation to be considered in determining development application.
- 3 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the application submission fails to demonstrate the development is consistent with State Environmental Planning Policy No.65 Design Quality of Residential Apartment Development with respect to the principles of the Apartment Design Guide.
- 4 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposal is contrary to Section 1.2 (2)(c), (2)(d) and (2)(g) the aims of the Wollongong Local Environmental Plan 2009, as:
- i. The developments bulk and scale contrasts markedly with the sites current context, and is inconsistent with the current and desired future neighbourhood character;
 - ii. the proposed development has not been designed appropriately given the constraints and characteristics of the site and has the potential to result in significant adverse impacts on the amenity of the surrounding area;
 - iii. The application proposes 'Critical Utilities', seniors housing, within the High and Medium Flood Risk Precincts; and
 - iv. The proposal will result in significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels.
- 5 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposal is not consistent with the objectives of the R2 zone of WLEP2009 as the application submission fails to demonstrate the development provides for a low density residential environment and is consistent with existing and desired future character of the area.
- 6 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the application submission fails to demonstrate consistency with Wollongong Local Environmental Plan 2009 with respect to:
- a. Section 4.3 Height of buildings
 - b. Section 4.4 Floor space ratio
 - i. The bulk and scale of the development as proposed is inconsistent with the bulk and scale of development in the locality and does not satisfy WLEP 2009 Section 4.3(1)(c) and the application fails to demonstrate that adequate consideration has been given to the principles set out in Division 6 of State Environmental Planning Policy (Housing) 2021.
 - c. Section 4.6 Exception to development standards
 - i. A written request has not been provided to the consent authority for the exception to the floor space ratio development standard as required under Section 4.6(3).

- d. Section 5.21 Flood planning
 - i. Unsuitable land use for high and medium flood risk precinct
 - ii. Proposal will result in significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels;
 - iii. Proposal includes filling and a car park located within an existing floodway and High Flood Risk Precinct area, which is considered contrary to the controls, objectives, performance criteria in WLEP 2009;
 - iv. The proposal will result in an increase in the frequency and duration of surface water flows being conveyed onto and across the downslope land;
 - v. Driveway passes through parts of floodplain where flood depths and velocities are outside safe criteria;
 - vi. Proposal includes car parking areas where flood depths and velocities are outside safe criteria.
 - e. Section 7.6 Earthworks
 - i. proposal will result in significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels;
 - ii. proposal includes filling and a car park located within an existing floodway and High Flood Risk Precinct area, which is considered contrary to the controls, objectives, performance criteria in WLEP 2009 Section 5.21
 - iii. The proposal includes piping and modification of a natural watercourse;
 - iv. The proposal will result in an increase in the frequency and duration of surface water flows being conveyed onto and across the downslope land.
- 7 Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal fails to demonstrate consistency with the provisions of the Wollongong Development Control Plan 2009 with respect to the following chapters:
 - Chapter A2 - Ecologically Sustainable Development
 - Chapter B1 - Residential Development;
 - Chapter D1 - Character Statements;
 - Chapter E3 - Car Parking, Access, Servicing/ Loading Facilities and Traffic Management;
 - Chapter E6 - Landscaping;
 - Chapter E13 - Floodplain Management;
 - Chapter E14 - Stormwater Management;
 - Chapter E15 – Water Sensitive Urban Design;
 - Chapter E17 – Preservation and Management of Trees and Vegetation;
 - Chapter E19 - Earthworks (Land Reshaping Works);
 - Chapter E20 – Contaminated Land Management
 - 8 Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act, 1979, the application submission fails to demonstrate the likely impacts of the proposed development's bulk and scale on the amenity and character of the area will not be adverse.
 - 9 Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act, 1979, the application submission fails to demonstrate the likely impacts of flooding on the amenity of the locality will not be adverse.
 - 10 Pursuant to the provisions of Section 4.15 (1)(c) of the Environmental Planning and Assessment Act, 1979, the application submission fails to demonstrate the site is suitable for the development proposed.
 - 11 Pursuant to the provisions of Section 4.15 (1)(d) of the Environmental Planning and Assessment Act 1979, it is considered that having regard for public submissions, the development proposal is unsuitable with respect to:

- Flooding;
- Character of the area;
- Tree removal; and
- Overlooking impacts.

- 12 Pursuant to the provisions of Section 4.15 (1)(e) of the Environmental Planning and Assessment Act, 1979, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore, not in the public interest.

5. ATTACHMENTS

- 1 Plans
- 2 SEPP 65 Design Verification Report- Applicant
- 3 Site photographs
- 4 Apartment Design Guide Assessment
- 5 Wollongong Design Review Panel Meeting 30 March 2022 minutes and recommendations
- 6 Clause 4.6 Exception to Development Standard Statement – Building Height - Applicant
- 7 Assessment compliance table -Wollongong Development Control Plan 2009