

SYDNEY WESTERN CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSWC-173.
DA Number	DA-42/2021
LGA	Liverpool City Council
Proposed Development	Proposed demolition of existing buildings and structures, construction and operation of a seniors housing development involving 116 room residential care facility in a three-storey building over a basement, together with associated facilities, access, and landscaping under State Environmental planning Policy (Housing for Seniors or People with a Disability) 2004
Street Address	173 Elizabeth Drive and 18 Woodlands Road, Liverpool Lot 3 DP 651870 and Lot E DP 36731
Applicant/Owner	Higgins Planning Pty Ltd / Wohl Investments Pty Ltd
Date of DA lodgement	13/01/2021
Number of Submissions	2
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development))	The development has a CIV of \$30,821,598.00 (excluding GST), pursuant to Clause 2 of Schedule 6 State Environmental Planning Policy (Planning Systems) 2021.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>List all of the relevant environmental planning instruments: s4.15(1)(a)(i):</i> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) 2021 • SEPP (Transport and Infrastructure) 2021 • Seniors SEPP (Housing) 2021 • SEPP (Biodiversity and Conservation) 2021 ○ Liverpool Local Environmental Plan 2008 • <i>List any relevant development control plans: s4.15(1)(a)(iii):</i> <ul style="list-style-type: none"> ○ Liverpool Development Control Plan 2008 <ul style="list-style-type: none"> - Part 1 – General Controls for all Development • <i>List any 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)(iv):</i> <ul style="list-style-type: none"> ○ No planning agreement relates to the site or proposed development. • <i>List any relevant regulations: s4.15(1)(a)(iv):</i> <ul style="list-style-type: none"> ○ Consideration of the provisions of the Building Code of Australia and National Construction Code (NCC).

List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> 1. Architectural plans 2. Traffic Report and Parking Assessment 3. Waste Management Plan 4. Landscape plans and Landscape Report 5. BCA Report and Section J 6. Accessibility Assessment 7. QS Report 8. Bulk Earthworks, Stormwater Management drawings and Sedimentation and Erosion Control Plan, Stormwater and Water Quality Report 9. Preliminary Site Investigation Report 10. Geotechnical Report 11. Infrastructure Report 12. Social Impact 13. Acoustic Report 14. Arborist Report 15. Crime Prevention Through Environmental Design Report 16. Compliance with Clause 26 of SEPP- Housing for Seniors or People with a Disability – 2004) 17. Clause 4.6 Variation Request 18. Needs Assessment 19. Plan of Management
Clause 4.6 requests	The applicant has provided an assessment under Clause 4.6 to vary the maximum height limit under Clause 4.3 of the LLEP 2008.
Summary of key submissions	<p>Two (2) submissions were received that raised the following concerns:</p> <p>Issues on relocation of existing bus stop, historical carparking use of the site and suitability of seniors housing on the site.</p>
Report prepared by	Emmanuel Torres – Senior Development Assessment Planner
Report date	27 May 2022

Summary of s4.15 matters Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	No

1. EXECUTIVE SUMMARY

1.1 Reasons for the report

The Sydney Western City Planning Panel (SWCPP) is the determining authority as the development has a Capital Investment Value over \$30 million, pursuant to Clause 2 of Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021.

1.2 The proposal

Proposed demolition of existing buildings and structures, construction and operation of a seniors housing development involving 116 room residential care facility in a three-storey building over a basement, together with associated facilities, access, and landscaping under State Environmental planning Policy (Housing for Seniors or People with a Disability) 2004.

1.3 The site

The subject site is identified as Lot 3 DP 651870 and Lot E DP36731, being 173 Elizabeth Drive and 18 Woodlands Road, Liverpool

1.4 The issues

The main issues of the application relate to the following:

- The proposal was presented to Council's Design Excellence Panel (DEP) on 3 occasions the most recent on 10 March 2022 where significant issues were identified and remain unresolved. While the applicant provided additional information on 18 & 19 of May 2022, there was not enough time to schedule another DEP meeting in time for the scheduled SWCPP determination meeting of 23 May 2022. Therefore, an assessment of the application based on the information provided by the applicant to date has been conducted.
- Concurrence from Transport for NSW (TfNSW) for the proposed driveway access to Elizabeth is a critical factor in the assessment of the application but has not progressed, as such the certainty of the final design remains unresolved. The applicant has made direct representation TfNSW and has obtained in principle approval subject to the submission of requirements. However, TfNSW matters have not yet been satisfied by the development.
- The documents submitted on 18 & 19 of May 2022 and loaded on the planning portal on 22 May 2022 have been re-referred to respective internal Council officers including Urban Design, Environmental Health and Engineering for assessment. The additional information recently provided by the applicant are as follows:
 - DA11 - Sections - Rev D.pdf
 - DA10 - Elevations & Sections - Rev E.pdf
 - DA09 - Elevations - Rev D.pdf
 - DA05 - Ground Floor Plan - Rev E.pdf
 - DA04 - Basement Floor Plan - Rev E.pdf
 - DA03A - Landscaping Zone Areas
 - 173ELI – Post DEP meeting matters summary

- 173 – Detailed Site Investigation.pdf
- 173ELI- Addendum SEE

At this stage, the additional information is not considered satisfactory.

The main issues identified in the assessment relate to the following:

- The proposed development is inconsistent with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 (repealed SEPP No. 55 – Remediation of Land) in that unsatisfactory evidence has been submitted to satisfy the consent authority that the land is free from contamination and will be suitable for the proposal, pursuant to Sections 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979;
- The proposed development does not comply with the Environmental Planning & Assessment Act 1979 – Division 4.8 – Integrated Development, Section 4.46 in that Transport for NSW do not support the proposed development in its current form and therefore do not provide concurrence pursuant to Section 138 of the Roads Act 1993;
- The proposed development does not comply with the Housing SEPP development standards including Cl 33 Neighbourhood Amenity and Streetscape; cl 34 Visual and acoustic privacy; cl 35 Solar Access and Design for Climate; 36 Stormwater; 40 Minimum sizes and building height and Cl 48 Parking;
- The development application be refused as the proposed development does not comply with the development standard for maximum building height in Clause 40 of Seniors Housing SEPP. The proposed variation is not justified having regard to the matters in clause 4.6(3) and (4) of LLEP 2008.
- The proposed development is inconsistent with the objectives of the R3 – Medium Density Residential zone as per the Liverpool Local Environmental Plan 2008 as the development does not ensure that a high level of residential amenity is achieved and maintained pursuant to Section 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
- Insufficient information has been submitted with the proposed development that demonstrates consistency with the provisions of State Environmental Planning Policy (Transport and Infrastructure) 2021, 2.118 Development with frontage to classified road, 2.119 Impact of road noise or vibration on non-road development and 2.121 Traffic Generating development, pursuant to Section 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979;
- The proposed development does not achieve satisfactory compliance with the controls stipulated in the Liverpool Development Control Plan 2008, Part 1 – General Controls for all Development, pursuant to Section 4.15(1)(a)(iii), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, in terms of the following sections:
 - Section 6 – Water Cycle Management
 - Section 10 – Contaminated Land Risk

- Inconsistent and insufficient information has been submitted to allow Council to carry out a full assessment of the application. In this regard, an inadequate response has been received to Council's requests for additional information pursuant to Section 4.15(1)(a)(iv), 4.15(1)(b) and 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.
- The proposed development is not considered to be acceptable having regard to the concerns raised from internal referrals within Council, pursuant to the provisions of Clause 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.
- Insufficient information has been submitted with the proposed development in order to satisfy the provisions Chapter 11 (Georges River Catchment) of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 pursuant to Section 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
- It is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar non-compliant development in the locality and therefore the subject site is not considered suitable for the proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.

1.5 Exhibition of the proposal

In accordance with the Community Participation Plan 2019, the application was notified for a 14-day period, from 26 March 2021 to 13 April 2021. There were 2 submissions received in relation to the proposed development. Issues related to relocation of existing bus stop, historical carparking use of the site and suitability of seniors housing on the site. The issues raised within the submissions are discussed within the report.

1.6 Conclusion

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act 1979. Based on the assessment of the application and the amendments made to the original proposal by the applicant, it is recommended that the DA be **refused**.

2. SITE DESCRIPTION AND LOCALITY

2.1 The site

The subject site is identified as Lot 3 DP 651870 and Lot E DP36731, being 173 Elizabeth Drive and 18 Woodlands Road, Liverpool. The site has a frontage to Elizabeth Drive to the south of 23.12 metres, being the principal frontage of the site and 18.9 metres to Woodlands Road along its northern boundary. The current vehicular access to the site is via Elizabeth Drive to the south for at-grade parking and rubbish collection.

The existing site development is currently being operated as a nursing home at 173 Elizabeth Drive and 18 Woodlands Road, Liverpool with capacity for 93 beds.

An aerial photograph of the subject site is provided below.



Figure 1: Aerial Photograph

2.2 The locality

The site is located approximately 840 metres to the west of the Cumberland Highway (Copeland Street / Hume Highway) and 1.7 kilometre west of Liverpool Hospital and Westfield shops on Elizabeth Drive, as part of the Liverpool City Centre metropolitan cluster and 2 kilometres from the Liverpool City Centre.

The site is bounded by Woodlands Road to the north. Adjoining the north boundary are 16, 20 and 22 Woodlands Road and immediately opposite of the site is 27 Woodlands Road all comprising 1 and 2-storey dwelling houses. The majority of the site's eastern boundary is land which is part of Marsden Road Public School. The properties immediately to the east of the site are 167, 169 and 171 Elizabeth Drive have been developed for 1-storey buildings being used as dwelling houses, one being converted into a medical practice.

The properties to the south of the site's across Elizabeth Drive have been developed for 1 and 2-storey commercial premises, including a "Supercheap Auto" with at-grade car parking area.

The properties to the west of the site's western boundary, at 175 and 175A Elizabeth Drive have been developed for a 1 storey dwelling house and 2-storey building being used as a medical centre. The properties further west fronting Elizabeth Drive have been developed for 1 and 2 storey non-residential buildings.

3 BACKGROUND

The following list provides a history of the current development application:

- Application lodged 13 January 2021;
- Application Notification 26 March to 13 April 2021;
- 1st presentation to DEP 10 May 2021;
- 1st briefing to SWCPP on 30 August 2021;

- 2nd presentation to DEP on 14 October 2021;
- 2nd Briefing to SWCPP on 18 October 2021;
- 3rd presentation to DEP on 10 March 2022; and
- 3rd briefing to SWCPP on 23 May 2022

3.1 SWCPP Briefings

There have been 3 briefings to the SWCPP. The meeting dates and key issues discussed are as follows:

3.1.1 Initial briefing was conducted on 30 August 2021. The key issues outlined at the briefing to be addressed by Council are as follows:

- *Issues have arisen from the TfNSW referral in relation to whether Woodlands Road should be used for access. The Applicant sees that as undesirable because it would divert traffic towards the R2 zone and the nearby school. Clauses 100 and 101 of the Infrastructure SEPP will be relevant in that regard. Council currently has no opposition to the present orientation of the access subject to the views of TfNSW.*
- *The building has been updated significantly in response to the comments of Council's Design Review Panel.*
- *There is a significant height non-compliance which the Applicant aims to justify on the basis of the existing accommodation and the obstruction to solar access from the adjoining development. Given the extent of non-compliance, substantial justification will be needed.*

3.1.2 Second briefing was conducted on 18 October 2021. The key issues outlined at the briefing to be addressed by Council are as follows:

- *There have been significant improvements to the design, responsive to the feedback from Council's Design Review Committee and the Panel's kick-off briefing. In particular, the move to a basement carpark has allowed for a more generous design at ground level.*
- *The ceiling height and storey control non-compliance under the SEPP remains an issue which will require strong justification, noting that the proposed height is comparable to the height to the west, but the height to the north and the east remain two storeys.*
- *TfNSW is now reported to be considering access to Elizabeth Drive but the final response is still outstanding.*
- *A breach remains to the building separation requirement towards the west, noting Council's advice that the residential development recently approved in that direction was required to comply with the ADG requirement of 6 metres to the boundary (to result in a total of 12 metres). Given the size of the site and the strict application of that standard to the adjoining development, the Applicant would have to convince the Panel that the design is satisfactory in that regard. The Panel might be assisted by comment on that issue in the Design Review Panel reporting.*

3.1.3 Third briefing was conducted on 18 October 2021. The key issues outlined at the briefing to be addressed by Council are as follows:

- *The panel has provided directions for the DA to be determined based on information available for determination on 20 June 2022.*

Comment: The SWCPP issues noted above, including TfNSW concurrence, building/ceiling height and building setback to the west remains outstanding.

3.2 Design Excellence Panel Briefings

The proposal was presented to the DEP on 10 June 2021, 14 October 2021 and 10 March 2022. The following is a summary of the design and layout and issues and changes made.

- *The Panel notes the frontage and access to the main building is predominantly driveways and has minimal visual amenity. The Panel recommends consolidate the driveways to improve the entry sequence. Reconsider vehicular circulation through the site and explore alternatives, such as access to the rear street.*

Council Comment: The Panel further recommends that the administration and entry building be brought forward to reflect the street set back pattern and to reduce the impact of the driveway. This additional comment remains outstanding as the submitted plans do not show the building being brought forward

- *Context. Improve spatial planning to achieve a much better built form to its relationship with the open space of the site. Provide a siting strategy/spatial planning framework as functional diagrams to help clearly articulate the design strategy as part of the revised design and presentation to the DEP.*

Council Comment: Unresolved and DEP comment is required. The Panel regards that this comment has not been addressed. No siting strategy/ spatial planning framework has been provided. The relationships between the built form and the open space continue to be problematic. The open space is shown to have no winter sun, will have no cross ventilation in summer and in some places has a basement below meaning that there is no deep soil to support reasonable shade trees.

- *Improved traffic strategy for the site will result in a better siting strategy/spatial planning strategy which would eventuate in a better built form orientation, thereby maximising solar amenity for the residents. The Panel requires the applicant to sketch out alternative options (site strategy testing diagrams) for the site and present an evaluation of the final outcome in the next DEP meeting.*

Council Comment: Unresolved and DEP comment is required. The Panel agree that the traffic strategy has improved. However, no site strategy testing diagrams were provided. The Panel maintains that this work should be completed and presented to the panel.

- *Built Form and Scale. The Panel notes that the proposed built form has no coherent structure to the spatial planning and internal configuration to the site. The Panel questions the geometry of the built form and raises concern regarding the functional aspects of the planning considerations made for the design. The Panel recommends the applicant to incorporate hierarchical spatial planning to help organise a better planning outcome*

Council Comment: Unresolved and DEP comment is required. The Panel agree that the changes made were very minor and while they have made improvements have not responded to this comment's desire to see a coherent response to the site and context.

- *The Panel notes that the proposed built form can be improved to achieve a better solar access. The Panel requires the applicant to ensure maximum solar amenity and provide detailed sun eye diagrams (at hourly intervals) for winter, summer solstice and equinox time periods. The Panel recommends the applicant have a north-south aligned built form to maximise solar amenity to the habitable areas*

Council Comment: Unresolved and DEP comment is required. The Panel notes that the adjoining property (i.e., on the western side) has an approved DA for a 5 storied mixed-use building which has been included as part of the 3D models /views. Panel requires the applicant to indicate the solar impacts of the neighbouring DA on to the subject site and to make changes to the design that allow a minimum of 2 hours sunlight for some portion of all outdoor spaces available to inhabitants on June 21st. Updated shadow diagram cast by the adjoining site has been submitted.

- *Panel notes that the development is proposing an additional floor space over and above the permissible height limit. The Panel raises concern regarding the non-compliance with maximum building height and the overshadowing effect on the rest of the proposal as a result of this additional height being proposed as part of the development. Panel requires the applicant to demonstrate that there are no negative impacts of the increased height and provide evidence of a design excellence as part of the justification.*

Council Comment: Unresolved and DEP comment is required. Updated 4.6 will be required.

- *The Panel raises concerns regarding the proportion of the proposed roof form of the building. The Panel recommends the applicant to consider an appropriate roof form (i.e. with adequate hierarchy) as part of the revised scheme.*

Council Comment: Unresolved and DEP comment is required.

- *The Panel recommends the architect produce a series of diagrams testing Siting Strategy, Planning Strategy, Traffic and circulation strategy and effective solar access and open landscape area strategies when reconsidering the design for the site. The Panel believes this will help address issues raised in this DEP meeting.*

Council Comment: Unresolved and DEP comment is required.

- *The Panel highly recommends the applicant have the existing design peer reviewed by another architect (i.e. with substantial experience in designing aged care facilities) prior to the next presentation to the DEP and provide a summary of the recommendations made by the peer reviewer.*

Council Comment: Unresolved and DEP comment is required. It does not appear that the architect has responded to this recommendation. It is noted that a peer review was conducted by another architectural firm and the architect has significant experience with aged care facilities, however the site issues, response to context and general amenity for the inhabitants remain a concern for the Panel.

- *DEP comment: The Panel notes that the built form as it is currently presented appears quite substantial for the site and based on this design, does not support the overall density being proposed. The Panel requires the applicant to reconsider proposal and overall form for the site to justify the density being proposed on site.*

Council Comment: Unresolved and DEP comment is required. The Panel notes that the scale and density of the proposal has been reduced. However this has not had significant impact on the perception of density within the site. While the FSR is within the allowable maximum it is still felt that, given the poor performance of the outdoor spaces, cannot be supportable. Alternative designs should be presented to the DEP in diagram form that show alternative site strategies in order to prove the current proposal is the best possible outcome.

- *DEP comment: The Panel recommends the applicant to incorporate a full suite of sustainability measures like Photovoltaic Panels, water harvesting systems, site specific landscape design and any other initiatives that would improve the building's response to the local climate.*

Council Comment: Unresolved and DEP comment is required. The Panel remains concerned about the landscape proposal with regards to its suitability for the climate in Liverpool and ability to provide shade in summer. No updated landscape drawings were reviewed by the DEP as this was submitted after the last DEP meeting.

- *All basement spaces should be restricted to the within the footprint of the ground floor to maximise deep soil and water sensitive urban design.*

Council Comment: Unresolved and DEP comment is required. While the basement areas have been relocated to increase the potential for deep soil planting and resulting to deep soil of 1,955m² or 29.1% of the site. However there remains a portion of the basement surrounding the lift core that cannot be utilised as deep soil.

- *The Panel notes that the proposed landscape solution to the site can be improved significantly. The Panel raises concern that the narrow landscape strip along the driveways will result in a poor landscape outcome to the entry to the site and requires the applicant to reconsider the overall approach to landscaping for the development. The Panel requires the applicant to engage a qualified AILA registered landscape architect to detail a site and climate specific landscape proposal for the site. The Panel requires the applicant to have a holistic approach to landscape design and consider direct solar access, indirect access to light (i.e. light reflected through other surfaces) and visual access to landscaped areas and the sky to improve the overall experience of the biophilia.*

The Panel notes that the site could benefit from a landscaped lawn area where the residents could enjoy the outdoors when the weather is permitting

Council Comment: Unresolved and DEP comment is required. This material has been provided in the latest plans provided in on 18 & 19 May 2022 and has not yet been reviewed by the DEP.

- *The Panel notes that the solar amenity being provided within the site is very poor and highly deficient. The Panel requires the applicant to improve the level of solar amenity for the site/built form. The Panel requires the applicant to consider alternative built form orientation to improve the solar amenity for the site. The Panel also requires the applicant to indicate the level of solar access for the open spaces being proposed within the development.*

Council Comment: Unresolved and DEP comment is required. No alternative built form has been provided and improved solar access is not evident in the latest plans provided on 18 & 19 May 2022.

- *The Panel notes that that the adjoining mixed-use development will cast shadows on the proposed building which will affect the solar amenity for some of the rooms. Panel recommends the applicant to ensure maximum solar amenity for the residents (ADG compliance of 2 hours in mid-winter as a minimum).*

Council Comment: Unresolved and DEP comment is required. No updated shadow diagrams that incorporates shadows cast by the adjoining proposed (approved) 5 storey mixed use development to the west.

- *The Panel requires the applicant to provide details of the courtyards and areas earmarked for social interaction between the residents*

Council Comment: Unresolved and DEP comment is required. No details of the courtyards are provided in the latest plans submitted on 18 & 19 May 2022.

4. DETAILS OF THE PROPOSAL

The proposal seeks approval for the demolition of existing structures, construction and operation of a “seniors housing” development involving a 116-room residential aged care facility (RACF) over a basement level under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

More specifically development consent is sought for:

- Demolition, site preparation and bulk earthworks;
- Construction of 1 electrical sub-station;
- Construction and operation of a buildings for 116-room residential aged care facility over basement level, which will contain basement parking for a total of 29 cars inclusive of staff parking, disabled parking, ambulance and visitor parking;
- Basement level truck loading dock and bus parking bay with manoeuvring area accessed from Elizabeth Drive, and ancillary functions of the Residential Care Facility theatre, education room, and gym / physio room;
- On-site facilities for provision of catering with full commercial kitchen and refrigeration/storerooms;
- On-site linen services; and
- Plant areas.



Figure 2: Birds eye view

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

The following Environmental Planning Instruments, Development Control Plans and Codes or Policies are relevant to this application:

Environmental Planning Instruments (EPI's)

- SEPP (Resilience and Hazards) 2021
- SEPP (Transport and Infrastructure) 2021
- Seniors SEPP (Housing) 2021
- SEPP (Biodiversity and Conservation) 2021
- Liverpool Local Environmental Plan 2008

Development Control Plans

- Liverpool Development Control Plan 2008
 - Part 1 – Controls applying to all development

Other Relevant Guidance

- Apartment Design Guide 2015

6. ASSESSMENT

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.15 of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000, as follows:

6.1 Section 4.15(1)(a)(i) – Any Environmental Planning Instrument

(a) Liverpool Local Environmental Plan 2008

(i) Zoning

The site is comprised of 2 lots and is zoned accordingly under the LLEP. The 173 Elizabeth Drive is zoned R3 Medium Density Residential while 18 Woodlands Road is zoned R2 Low Density Residential, as shown in the extract from the LLEP Zoning Map as follows:

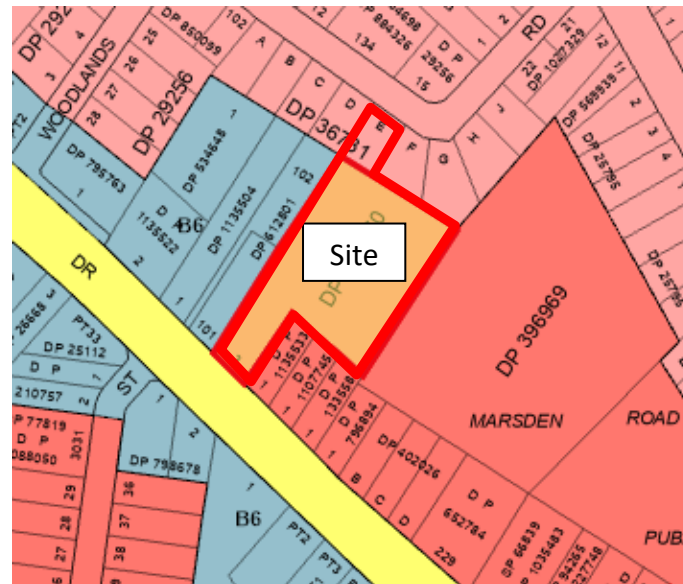


Figure 3: LLEP Land Zoning Map Extract (site outlined in red) Source: LCC Geocortex

5.3 Permissibility

The proposed development is best described under the LLEP dictionary as “seniors housing”

seniors housing means a building or place that is:

- (a) **a residential care facility**, or
- (b) a hostel within the meaning of clause 12 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, or
- (c) **a group of self-contained dwellings**, 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.

It is noted that “seniors housing” while permissible in the R3 Medium Density Residential zone is not listed as permitted development in the R2 Low Density Residential zone.

The proposed “seniors housing” and more specifically as *residential care facility* and a *group of self-contained dwellings* relies on the provisions of Seniors Housing SEPP for permissibility and consequently the development standards under the Seniors Housing SEPP, not the LLEP.

“seniors housing is residential accommodation that is, or is intended to be, used permanently for seniors or people with a disability consisting of:

- (a) a residential care facility, or*
- (b) a hostel, or*
- (c) a group of self-contained dwellings, or*
- (d) a combination of these,*

but does not include a hospital”.

A residential care-facility under the Seniors Housing SEPP is defined as;

“residential care facility is residential 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,*

not being a dwelling, hostel, hospital or psychiatric facility”.

The proposed development involves a “residential care facility”, will include all of the items at (a) to (c), and will be licensed in accordance with the *Aged Care Act 1997* (Cth) as administered by the Commonwealth when operational.

A residential care facility is a form of development that is covered by the Seniors Housing SEPP pursuant to Clause 4(1). Clause 4(1) of the Seniors Housing SEPP 2004 states the following:

This Policy applies to land within New South Wales that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if:

- (a) development for the purpose of any of the following is permitted on the land:*
 - (i) dwelling-houses,*
 - (ii) residential flat buildings,*
 - (iii) hospitals,*
 - (iv) development of a kind identified in respect of land zoned as special uses, including (but not limited to) churches, convents, educational establishments, schools and seminaries.*

Therefore, having regard to the above the proposed development is permissible under the Seniors Housing SEPP and is not required to address permissibility under the LLEP 2008.

6. ASSESSMENT

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.15 of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000* as follows:

6.1 Section 4.15(1)(a)(1) – Any Environmental Planning Instrument

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

The DA has been lodged pursuant to the SEPP (Housing for Seniors or People with a Disability) 2004 which was repealed on 26 November 2021, after lodgement of this application. The Seniors Housing SEPP contains saving provisions wherein the former provisions of the repealed instrument continue to apply if not yet determined on or before the commencement date.

The proposal demonstrates full compliance with the relevant provisions, as detailed below:

PROVISIONS	PROPOSAL	COMPLIANCE
26 Location and access to facilities 1) Site must have access shops, bank service providers and other retail and commercial services that residents may reasonably require, community services and recreation facilities and the practice of a general medical practitioner. 2) Access must be within 400m via a suitable access with gradient of no more than 1:14. 3) Bus services within 400m must be available to and from the site at least once between 8am to 12 noon per day and at least once between 12 noon and 6pm on weekdays.	<p>Bus stops in Elizabeth Drive provide access to Liverpool CBD and Liverpool Railway Station via services 804, 805, 806, 808 and 827.</p> <p>For the purposes of compliance with Clause 26, bus service 806 has been assessed. The bus service to Liverpool leaves from the east bound bus stop in Elizabeth Drive (ID 2170225) and travels to Liverpool CBD with services generally operating along Elizabeth Drive, but with some AM peak services using Moore Street. The service from Liverpool operates along Moore Street with drop off at the west bound bus stop in Elizabeth Drive (ID2170240).</p> <p>Service 806 operates twice hourly throughout the day and offers a disabled service. It complies with Clause 26(2)(b)(iii) of the SEPP, e.g. there is a weekday service to Westfield Liverpool (Elizabeth Drive) at 9.05 and 13.41, with a return service from Liverpool interchange at 11.58 and 16.57.</p>	<p>Complies subject to conditions on footpath gradient improvements.</p>

	The gradients of this route via the pathways within the streets comply with those detailed above or can be made to comply.	
27 Bush fire prone land Land in the vicinity of bush fire prone land or vegetation buffer to consider general location of development, means of access to and egress from the general location and matters listed in (a) to (i).	Site not bush fire affected.	N/A
28 Water and sewer Written evidence to demonstrate that housing will be connected to a reticulated water system and will have adequate facilities for sewage disposal.	Site is fully serviced for water and sewerage. An Infrastructure Report was submitted which indicates the existing site is connected to water and sewer which can suitably augmented to support the proposed development.	Complies
29 Site compatibility criteria A consent authority, in determining a development application to which this clause applies, must take into consideration the criteria referred to in clause 25 (5) (b) (i), (iii) and (v). Clause 25 (5) (b) (i), (iii) and (v) state the following; (i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development. (iii) the services and infrastructure that are or	(i) Land is not mapped as ESL, nor does it contain any threatened species or protected habitat. The land is zoned for residential development and is adjacent to residential development to the north, south, east and west. (iii) The accessibility to the appropriate services arising from this development as required by Clause 26 are detailed above. (v) The proposed development has considered the potential impacts of the development on the surrounding development. The proposed development does not inhibit the development potential of	Not Applicable

<p>will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision.</p> <p>(v) without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.</p>	<p>adjoining sites, which may be able to still development to the maximum potential permitted within the R3 and R2 zone that applies to their site and within the allowable FSR, heights that apply.</p>	
<p>30 Site analysis</p> <p>Submission of a site analysis and supporting statement identifying how the development has been designed having regard to site analysis required.</p>	<p>A site analysis has been included as part of the application.</p>	<p>Complies</p>
<p>31 Design of in-fill self-care housing</p> <p>In determining a development application made pursuant to this Chapter to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the provisions of the <i>Seniors Living Policy: Urban Design Guideline for Infill</i></p>	<p>The development does not involve any in-fill self-care housing. As such, the provisions of the “Seniors Living Policy: Urban Design Guidelines for infill Development” do not apply.</p>	<p>Not Applicable.</p>

<p><i>Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004.</i></p>		
<p>32 Design of residential development</p> <p>A consent authority must not consent to a DA unless it is satisfied that the development demonstrates adequate regard to the principles of Division 2 (Clauses 33 to 39).</p>	<p>Each element discussed below.</p>	<p>Complies</p>
<p>33 Neighbourhood amenity and streetscape</p> <p>Development should:</p> <p>a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and</p> <p><i>b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and</i></p> <p><i>(c) maintain reasonable neighbourhood amenity and appropriate residential character by:</i></p> <p><i>(i) providing building setbacks to reduce bulk and overshadowing, and</i></p> <p><i>(ii) using building form and siting that relates to the site's landform, and</i></p>	<p>The proposed building does not contribute to the quality and identity of the area as it results in an excessive breach of building height which has remained unresolved. Both Council's urban design unit, DEP and SWCPP require robust justification on this issue.</p> <p>The applicant has not provided new material to assist in the resolution of this matter relying on the 4.6 variation report lodged with the application.</p> <p>The existing character of adjoining properties are single to 2 storey structures</p>	<p>Does not Comply.</p> <p>See discussion on building height below.</p>

<p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and</p> <p>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</p> <p>d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and</p> <p>(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and</p> <p>(f) retain, wherever reasonable, major existing trees, and</p> <p>(g) be designed so that no building is constructed in a riparian zone.</p>	<p>The proposed setback is not in sympathy to adjoining buildings on Elizabeth Drive. The proposed building is setback to Elizabeth Drive by approximately 50m and disrupts the building alignment.</p>	
<p>34 Visual and acoustic privacy</p> <p>Appropriate site planning, location and design of windows and balconies, screening devices.</p> <p>Locating bedrooms away from driveways, parking areas and footpaths to ensure acceptable noise levels.</p>	<p>The amended DA architectural design is unclear on the treatment of windows with regard to screening for privacy between units facing each other and to the rear yards of adjoining development consisting of dwelling houses along Elizabeth Drive and Woodlands Road.</p> <p>Acoustic matters have not yet been satisfied by the development.</p>	<p>Does not Comply.</p>

<p>35 Solar access and design for climate</p> <p>Ensure adequate daylight to main living areas of neighbours and residents; and sunlight to private open space.</p> <p>Site planning to reduce energy and maximise use of solar energy and natural ventilation.</p>	<p>The neighbouring sites to the east and west have a north south orientation and obtain the required 3 hours of solar access between 9am-3pm on 21 June. As shown on the submitted shadow diagram.</p> <p>There is also a significant overshadowing of the proposed Landscaped Gardens located between building blocks that run is an east to west axis.</p> <p>What the DEP requested and has not been provided by the applicant is the shadow cast by the approved 5 storey mixed use building to the west particularly on the common areas of the proposed development.</p>	<p>Does not Comply.</p>
<p>36 Stormwater</p> <p>Control and minimise disturbance and impacts of stormwater runoff.</p> <p>Include on-site detention or re-use for second quality water uses.</p>	<p>Stormwater matters have not yet been satisfied by the development.</p>	<p>Does not comply.</p>
<p>37 Crime prevention</p> <p>Provide personal property security for residences and visitors and encourage crime prevention.</p>	<p>The proposed development has been designed to meet the standards of the CPTED principles. The development has been designed to promote active and passive surveillance, providing appropriate CCTV and access control devices to limit access to appropriate people.</p> <p>The proposed development has provided appropriate lighting and signage to distinguish between</p>	<p>Complies</p>

	public/private spaces.	
38 Accessibility Provide obvious and safe pedestrian links from the site that provide access to public transport services or local facilities. Provide attractive and safe pedestrian and motorist environments with convenient access and parking.	The Access Review report was submitted with application which provides recommendations to achieve access in accordance with DDA, NCC and Australian Standards.	Complies
39 Waste management Provide waste facilities that maximise recycling.	A Waste Management Plan was submitted and reviewed by Councils Waste Management unit. The proposal is deemed to be capable of being conditioned in such a way as to ensure that the planning objectives in respect to waste are achieved. The most recent plans maintains the waste bin rooms in the basement which has been designed to accommodate the requirements of the private contractor truck.	Complies
40 Development standards minimum sizes and building height (1) General. A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause. (2) Site size. The size of the site must be at least 1,000 square metres.	Noted Site is 6,944.2m ² Site has 23.12m frontage to	 Complies Complies

<p>(3) Site frontage The site frontage must be at least 20 metres wide measured at the building line.</p> <p>(4) Height in zones where residential flat buildings are not permitted If the development is proposed in a residential zone where residential flat buildings are not permitted—</p> <p>(a) the height of all buildings in the proposed development must be 8 metres or less, and Note—</p> <p>Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).</p> <p>(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and Note—</p> <p>The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.</p> <p>(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.</p> <p>Maximum 2-storeys</p>	<p>Elizabeth Drive</p> <p>Residential flat buildings are not permitted in the R3 and R2 zone. The maximum building height for the site is 8.5m. This is exceeded by the proposal</p> <p>As above.</p> <p>Portions of the proposed development exceed the 2-storey height limit and propose 3 storey elements.</p> <p>As above</p>	<p>Does not Comply. See discussed below.</p> <p>Does not Comply. See discussion below.</p>
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<p>48 Development standards that cannot be used to refuse development consent for residential care facilities</p> <p>Building height: if all buildings are 8m or less in height.</p> <p>Buildings exceed 8m in height but are satisfactory and comply.</p> <p>Density and scale: if density and scale when expressed as FSR is 1:1 or less.</p> <p>Landscaped area: if minimum 25m² of landscaped area per bed.</p> <p>Parking for residents and visitors: if at least:</p> <p>1 space per 10 beds</p> <p>1 space per 2 staff,</p> <p>1 ambulance space.</p>	<p>A maximum of 10.2m to the ceiling proposed and elements of is the development provides for 3 storeys.</p> <p>FSR 0.92:1</p> <p>Landscaped area proposed 3,372.9sqm (excluding area over basement) and 29.1m² per bed.</p> <p>131 beds = 13.1 spaces</p> <p>26 staff = 13 spaces</p> <p>Total required = 26.1 or 27 spaces</p> <p>Total provided = 25</p> <p>1 ambulance bay provided</p>	<p>Do not comply.</p> <p>See discussed below.</p> <p>Complies</p> <p>Complies</p> <p>Does not Comply.</p>
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Discussion on variation to Clause 40(4)(a)-(b) of Seniors Housing SEPP pursuant to Clause 4.6 of LLEP 2008

Variation to Clause 40(4)(a)-(b) Building Height

Clause 40(4)(a)-(b) state the following;

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

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

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

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

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

It is important to note that “height” under the Aged Care SEPP is defined as

“height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point”.

This definition under the SEPP is different to the interpretation of height under the standard instrument. As can be seen from the definition of height under the Aged Care SEPP, height is measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point. Under the standard instrument the height of building is taken from the existing ground level to the topmost point of the building and not from the ceiling on the topmost floor.

Clause 40(4)(a) -(b) of the Seniors Housing SEPP stipulates that the height of all buildings must be 8m or less buildings that is adjacent to a boundary of the site must not be more than 2 storeys in height.

The proposed development has been lodged with a maximum height to the ceiling of the topmost floor of 10.2m and with a maximum 3 storey element.

Note: State Environmental Planning Policy (Housing) 2021 cl 84 (2&3), the maximum building height of 9.5m and 11.5m with servicing equipment is also exceeded by the proposal.

Given the non-compliance to the development standard the applicant has provided a written request to vary 40(4)(a) - (b), pursuant to Clause 4.6 of the LLEP and it is summarised below;

The objectives and standards of Clause 4.6 of the Liverpool Local Environmental Plan (LEP) 2008 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

1) Circumstances of the development

This Application is seeking approval for the construction and operation of a 116 room residential care facility development, under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP)*.

2) Written request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the contravening of the development standard

The applicant has provided comments to addressing why compliance with the development standard is unreasonable or unnecessary. In response, Council has provided responses as to why the imposition of the applicable height control is not unreasonable and unnecessary in this instance. These are tabulation below.

Applicant reasons	Council Response
<i>To minimise impacts on adjoining properties views/outlooks;</i>	It is unclear how increasing the height will minimize impacts to adjoining properties as the result is the opposite including obstruction of views
<i>To create presentations to boundaries which are two-storey in wall height while still complying with the maximum permitted Floor Space Ratio (FSR);</i>	Again, presentation to boundaries is improved by lower ceiling/building height.
<i>To achieve a driveway access to the car parking area and loading dock suitable for gradients while at the same time permitting access for a truck to service the basement level</i>	Driveway to the basement can be achieved even with a raised ground level without contravening the ceiling height
<i>The development will not generate any adverse traffic impacts; and</i>	The development will have impact on the existing adjoining single storey dwellings immediately to the east fronting Elizabeth Drive. These properties have R3 Medium Density zoning with a maximum redevelopment potential of a 2 story multi dwelling. Likewise, to the north along Woodlands Road are one and two level dwellings. The proposed 3 story building will impact on the existing street character
<i>The desire to gain disabled access throughout the development and the landscaped garden areas to the Elizabeth Drive frontage is achieved</i>	It is unclear how breaching the ceiling height can facilitate disabled access particularly adding another level and raising the ground level. This objective can still be achieved without breaching the maximum ceiling height.
<i>For these reasons it is considered that strict application of the 8m ceiling height and 2 storey controls are unreasonable and unnecessary in this circumstance,</i>	As described above, it not unreasonable and unnecessary to impose the ceiling height to 8m and 2 storeys for the development.

particularly given that the non-compliance is minor and there are no impacts flowing from the non-compliance.

The full extent of the ceiling breach is shown on Figure 4 below. The proposed ceiling height of the top most floor is RL 25.9 being approximately 10.9m to the ceiling, a variation of 2.9m. This represents a variation of some 36% to the ceiling of the top most floor or an entire level adding another 18 units into the development.

The increased floor level and breach of the maximum ceiling height is confined to the western part of the building and relies on the adjoining approved 3 to 5 story mixed use development. However, the increased building height will impact on the amenity (overlooking) of the existing single storey dwellings along Elizabeth Drive. Likewise the dwellings to the north will be impacted on the increase ceiling height which is crafted for a two storey structure.

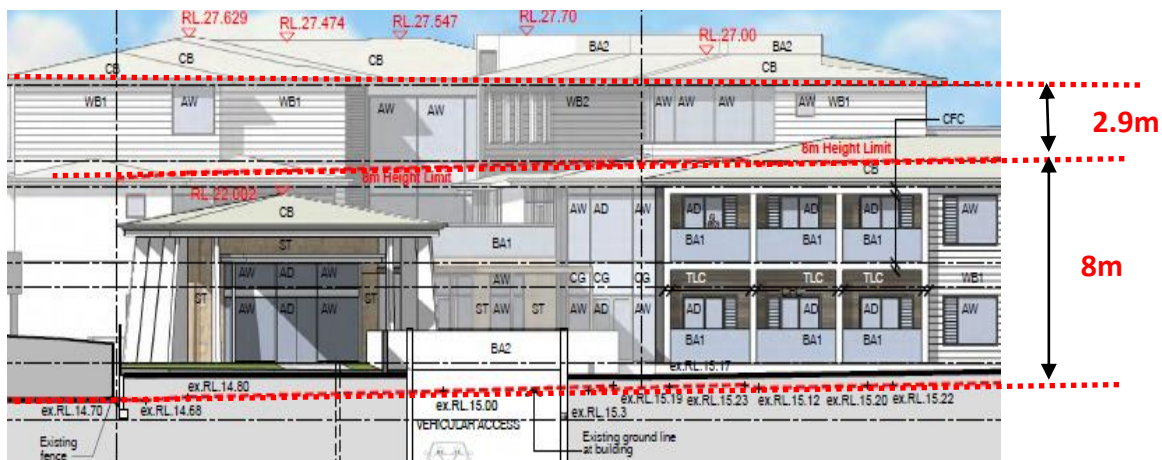


Figure 4: Part South Elevation fronting Elizabeth Drive

3) Consistency with objectives of the zone –

R3 Medium Density Zone.

The objectives of the R3 Medium Density zone are as follows;

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The applicant has provided the following comments with regard to the above objectives:

- *The building includes diversity to support a range of housing for the needs of seniors in a high care facility with ancillary uses as part of the overall support for the “seniors*

housing development” to meet the day to day needs of future residents and their visitors being consistent with the objective.

- *The proposed renewal of the existing seniors housing development at the site, will create new opportunities for members of the Liverpool community to have access to housing as a senior with 65 places being made available as affordable housing as well which is consistent with this objective and the LSPS priority to provide for diversity of housing in the R3 zone.*
- *The form of development is a type of “seniors housing” which is listed similar to the types of residential housing permitted within the R2 zone and is therefore consistent with the objective.*
- *As demonstrated in the Clause 26 Report included at Appendix Q, the site renewal of seniors housing has access to a range of services and facilities consistent with this objective.*
- *The renewal of the seniors housing in a new building provides for concentrating the 3rd storey in the centre of the building and 2 storeys at its edges as a transition to adjoining properties consistent with the objective.*
- *The existing building is not accessed from Woodlands Road but rather from the 173 Elizabeth Drive portion of the site. The proposed development will create a better connection with the inclusion of new access pathways and landscaping improvements to integrate more formally with the proposed RACF.*

R2 Low Density Zone.

The objectives of the R2 Medium Density zone 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.*
- *To provide a suitable low scale residential character commensurate with a low dwelling density.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The applicant has provided identical comments to the objectives of R2 and R3 zones.

Councils has considered the above comments of the applicant on objectives of zones R2 and R3 and conclude that the objective to *provide a suitable visual transition between high density residential areas and lower density areas and ensure that a high level of residential amenity is achieved and maintained* because of the increased height will impact on adjoining properties to the east and north of the site. The addition of another level is not consistent with the objective to provide a low suitable scale residential character commensurate with the low density dwellings in the area.

4) Consistency with Clause 4.6 objectives

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development*
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances,*

It is considered that the application of the degree of flexibility is unwarranted in numerical and visual character sense. The proposed variation is primarily a direct result of increasing the number of units in the development. It is not appropriate in this instance to apply a degree of flexibility when applying variation in height of building controls given the above

discussion. Based on that discussion it is not conclusive that a better outcome would be achieved where the development varies the maximum building height standard.

5) Recommendation

With considerations to the discussion above, the proposed variation to Clauses 40(4)(a)-(b) of the Aged Care SEPP is not supported in this circumstance.

(b) State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

The proposal has been evaluated against the provisions of SEPP 65 which aims to improve the design quality of residential flat development. SEPP 65 requires the consent authority to consider the development against 9 key design quality principles and against the guidelines of the ADG.

While the proposal is not defined as a residential flat building, the typology resembles an RFB and the SEPP 65 requirements were considered by the Design Review Panel as the matrix to critique the building design.

The following table provides an assessment of the proposal in accordance with the 9 key design quality principles of SEPP 65, as follows:

Design Quality Principle	Comment
Principle One – 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.	<i>Frontage and access to the main building is predominantly driveways and has minimal visual amenity. The Panel recommends consolidated driveways to improve the entry sequence.</i>
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.	<i>This was adopted by the applicant incorporating landscaped pedestrian entry from Elizabeth Drive and a single storey pavilion style main entry to address Elizabeth Drive.</i>
Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.	<i>A central access spine from the entry to resident wings/units and external courts was added and a reduction from 121 to 116 rooms.</i>
Design 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.	<i>The Panel notes that the proposed built form has no coherent structure to the spatial planning and internal configuration to the site.</i>
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.	<i>The Panel questions the geometry of the built form and raises concern regarding the functional aspects of the planning considerations made for the design. The Panel recommends the applicant to incorporate hierarchical spatial planning to</i>

Design Quality Principle	Comment
<p>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.</p>	<p><i>help organise a better planning outcome.</i></p> <p><i>The Panel notes that the proposed built form can be improved to achieve a better solar access. The Panel requires the applicant to ensure maximum solar amenity and provide detailed sun eye diagrams (at hourly intervals) for winter, summer solstice and equinox time periods. The Panel recommends the applicant have a north-south aligned built form to maximise solar amenity to the habitable areas. The Panel raises concerns regarding the proportion of the proposed roof form of the building.</i></p> <p><i>The Panel recommends the architect produce a series of diagrams testing Siting Strategy, Planning Strategy, Traffic and circulation strategy and effective solar access and open landscape area strategies when reconsidering the design for the site.</i></p> <p><i>The Panel highly recommends the applicant to have the existing design peer reviewed by another architect.</i></p> <p><i>A peer review was conducted and the results presented to the DEP. However, the issues remain unresolved.</i></p>
Design Principle 3 – Density	
<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>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.</p>	<p><i>The Panel notes that the built form as it is currently presented appears quite substantial for the site and based on this design, does not support the overall density being proposed. The Panel requires the applicant to reconsider proposal and overall form for the site to justify the density being proposed on site.</i></p> <p><i>The applicant responded by:</i></p> <ul style="list-style-type: none"> <i>• Increases in Deep Soil landscaped area (from 3214 to 3719 m2) and common areas. Reduction of beds and rooms (11% of population)</i> <i>• Increased setbacks to 4.5m to the south and 6m to the north</i> <p><i>Second floor (third level) setbacks from neighbouring properties to 11.3m to the south elevation and 10.3m to the north elevation</i></p>
Design Principle 4 – Sustainability	
<p>Good design combines positive environmental, social and economic outcomes.</p>	<p><i>The Panel requires the applicant to consider the inland climate of Liverpool within the design of the built form and open spaces.</i></p>

Design Quality Principle	Comment
<p>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</p>	<p><i>The Panel recommends the applicant to consider appropriate materials for the building that would improve the overall thermal efficiency of the building and help achieve long term building resilience</i></p> <p><i>The Panel recommends the applicant to incorporate a full suite of sustainability measures like Photovoltaic Panels, water harvesting systems, site specific landscape design and any other initiatives that would improve the building's response to the local climate.</i></p>
Design Principle 5 – Landscape	
<p>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.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, and respect for neighbours' amenity and provides for practical establishment and long-term management.</p>	<p><i>The Panel notes that the proposed landscape solution to the site can be improved significantly. The Panel raises concern that the narrow landscape strip along the driveways will result in a poor landscape outcome to the entry to the site and requires the applicant to reconsider the overall approach to landscaping for the development.</i></p> <p><i>The Panel requires the applicant to engage a qualified AILA registered landscape architect to detail a site and climate specific landscape proposal for the site.</i></p> <p><i>The Panel requires the applicant to have a holistic approach to landscape design and consider direct solar access, indirect access to light (i.e. light reflected through other surfaces) and visual access to landscaped areas and the sky to improve the overall experience of the biophilia.</i></p> <p><i>The Panel notes that the site could benefit from a landscaped lawn area where the residents could enjoy the outdoors when the weather is permitting.</i></p>
Design Principle 6 – Amenity	
<p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</p> <p>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.</p>	<p><i>The Panel notes that the solar amenity being provided within the site is very poor and highly deficient. The Panel requires the applicant to improve the level of solar amenity for the site/built form.</i></p> <p><i>The Panel requires the applicant to consider alternative built form orientation to improve the solar amenity for the site. The Panel also requires the applicant to indicate the level of solar access for the open spaces being proposed within the development.</i></p> <p><i>The Panel notes the privacy of rooms to be an issue and requires this to be reconsidered as part of the redesign of the proposal.</i></p>

Design Quality Principle	Comment
Design Principle 7 – Safety	
<p>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.</p> <p>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.</p>	<p><i>The Panel raises concern regarding the design of the vehicular access through Elizabeth Drive and the overall design of the vehicular movements within the site. The Panel requires the applicant to redesign the vehicular movement strategy for the site which the applicant did by removal of the upper loop road and all vehicular access to the basement level is through a straight ramp from Elizabeth Drive.</i></p> <p><i>Future landscaping and lighting design around the buildings as well as public and private open spaces will provide good passive surveillance and enhance the security of the area. Security systems like access control, CCTV, and emergency and nurse call systems will also be integrated throughout the development.</i></p>
Design Principle 8 – Housing Diversity and Social Interaction	
<p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>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.</p>	<p><i>The proposed development provides housing choice through varied apartment sizes and the type of development proposed generally.</i></p> <p><i>The communal open spaces and public street interface will encourage social interaction amongst residents and the community.</i></p> <p><i>Dedicated residential communal open spaces are provided on various parts of the development to support the communal life of the building.</i></p> <p><i>The floor layout of the building encourages social interaction along the common corridors and lift lobbies as well as a COS on the Ground Floor Level.</i></p>
Design Principle 9 – Aesthetics	
<p>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.</p> <p>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.</p>	<p><i>The DEP notes that the homogeneity of the built form is not acceptable and needs to be reconsidered.</i></p> <p><i>The Panel requires the applicant to reconsider the overall approach to built form to achieve a better design outcome. While there were some amendments to bulk and reduction and overall scale including reduction of roof form, addition of roof terraces and alternative materials selections.</i></p>

(d) State Environmental Planning Policy (Resilience and Hazards) 2021

The proposal has been assessed under the relevant provisions of SEPP (Resilience and Hazards) 2021, specifically Chapter 4 – Remediation of Land, as the proposal involves the development of land to accommodate a change of use with the potential under the former SEPP 55 guidelines to be a site that could be potentially contaminated.

The objectives of SEPP (Resilience and Hazards) 2021 are:

- *to provide for a statewide planning approach to the remediation of contaminated land.*
- *to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.*

Pursuant to the above SEPP, Council must consider:

- whether the land is contaminated.
- if the land is contaminated, whether it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the proposed use.

Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, Council is required to undertake a merit assessment of the proposed development. The following table summarises the matters for consideration in determining development application.

Clause 4.6 - Contamination and remediation to be considered in determining development application	Comment
(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	Contamination matters have not yet been satisfied by the development.
(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	As above
(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.	As above

The proposal has not provided satisfactory information to demonstrate that the site is suitable for residential use and is in accordance with SEPP (Resilience and Hazards).

(e) State Environmental Planning Policy (Biodiversity and Conservation) 2021.

The subject land is located within the Georges River Catchments and as such, Chapter 11 – Georges River Catchment of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, formerly the Greater Metropolitan Regional Environmental Plan No. 2 – Georges River, applies to the application.

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 generally aims to maintain and improve the water quality and river flows of the Georges River and its tributaries.

When a consent authority determines a development application, planning principles are to be applied (Clause 11.5). Accordingly, a table summarising the matters for consideration in determining development applications (Clause 11.6 and Clause 11.7), and compliance with such is provided below

Clause 11.6 General Principles	Comment
(a) the aims, objectives and planning principles of this plan,	The plan aims generally to maintain and improve the water quality and river flows of the Georges River and its tributaries.
(b) the likely effect of the proposed plan, development or activity on adjacent or downstream local government areas,	Stormwater matters have not yet been satisfied by the development.
(c) the cumulative impact of the proposed development or activity on the Georges River or its tributaries,	Stormwater matters have not yet been satisfied by the development.
(d) any relevant plans of management including any River and Water Management Plans approved by the Minister for Environment and the Minister for Land and Water Conservation and best practice guidelines approved by the Department of Urban Affairs and Planning (all of which are available from the respective offices of those Departments),	The site is located within an area covered by the Liverpool District Stormwater Management Plan, as outlined within Liverpool City Council Water Strategy 2004.
(e) the <i>Georges River Catchment Regional Planning Strategy</i> (prepared by, and available from the offices of, the Department of Urban Affairs and Planning),	Stormwater matters have not yet been satisfied by the development.
(f) all relevant State Government policies, manuals and guidelines of which the council, consent authority, public authority or person has notice,	The application was not required to be referred to the Natural Resource Access Regulator (NRAR).

(g) whether there are any feasible alternatives to the development or other proposal concerned.	No. The site is located in an area nominated for residential development.
When this Part applies the following must be taken into account:	Planning principles are to be applied when a consent authority determines a development application.
Clause 11.7 Specific Principles	Comment
(1) Acid sulfate soils	The land is not identified as containing acid sulphate soils on LLEP 2008 Acid Sulphate Soil mapping.
(2) Bank disturbance	No bank disturbance is proposed.
(3) Flooding	The site is not flood affected.
(4) Industrial discharges	Not applicable.
(5) Land degradation	The proposed development is unlikely to cause land degradation.
(6) On-site sewage management	The site will be connected to a reticulated sewer system.
(7) River-related uses	Not applicable.
(8) Sewer overflows	Not applicable.
(9) Urban/stormwater runoff	Stormwater matters have not yet been satisfied by the development.
(10) Urban development areas	The area is within an Urban Release Area.
(11) Vegetated buffer areas	Not applicable.
(12) Water quality and river flows	Erosion and sediment control and salinity measures to be implemented in construction.
(13) Wetlands	Not applicable

It is considered that the proposal does not satisfy all the relevant provisions of the SEPP (Resilience and Hazards) 2021 and cannot be supported on this basis.

(f) Liverpool Local Environmental Plan 2008

(i) Permissibility

Discussed above as permissible in both R2 and R3 zones.

(ii) Objectives of the zone

The objectives of the R2 – Low Density Residential zone 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.*
- *To provide a suitable low scale residential character commensurate with a low dwelling density.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development is **not** consistent with the objectives of the R2 zone in that it does not provide a suitable low scale residential character commensurate with existing and future low density of neighbouring properties and general area. High level of amenity is not achieved if the proposed development in its current form is allowed to proceed.

The objectives of the R3 – Medium Density Residential zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development is **not** consistent not with the objectives of the R3 medium density zone in that it does not provide a suitable visual transition high and low density areas. The adjoining single storey dwellings along Elizabeth Drive will be presented with a backdrop of a 3 storey development of height and scale that is not compatible with the existing or future vision of the R3 zone. Likewise to the rear, along Woodlands Road, the surrounding dwellings will be dwarfed by the imposing presence of the proposed development.

(iii) Principal Development Standards

The LLEP 2008 contains a number of principal development standards which are relevant to the proposal. An assessment of the application against the relevant standards is provided below.

Clause	Provision	Comment
Clause 4.3 Height of Buildings	Maximum to ceiling = 8 Provided = 9.5m to ceiling of upper most level, Maximum to roof Ridge = 8.5 Provided 12.539m (roof ridge line RL 27.538m – RL14.999)	Does not comply Clause 4.6 Variation sought and discussed above.
Clause 4.4 Floor Space	Maximum FSR of 1:1 (with bonus)	Complies

Ratio	Provided=0.96	
Clause 4.6 Exceptions to development standards	<p>Clause 4.6 variation sought for exceeding the maximum height, which is discussed above.</p> <p>The justification provided is not sufficient to support the application</p>	
Clause 5.21 – Flood Planning	<p>2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <p>(a) is compatible with the flood function and behaviour on the land, and</p> <p>(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and</p> <p>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</p> <p>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</p>	<p>Complies</p> <p>The proposed development is within the PMF of the Georges River floodplain. As this is a critical use/residential care facility, flood related development controls are required to be addressed. The applicant has proposed to construct the facility with a ground floor level above the PMF level, which satisfies Council's requirements.</p>
Clause 7.8A Flood Risk Management	<p>Development consent must not be granted to development for any of the following purposes on land to which this clause applies unless the consent authority is satisfied that the development is consistent with any relevant floodplain risk management plan adopted by the Council in accordance with the Floodplain Development Manual, and will not, in flood</p>	<p>Complies</p> <p>The site is flood affected and a Flood Risk Management Report was submitted with the application. Council Flood Engineer has reviewed the report and the plans and has provided conditions of consent.</p>

	events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land	
Clause 7.14 Minimum Building Street Frontage	Development consent must not be granted to development for the purposes of any of the following buildings, unless the site on which the buildings is to be erected has at least one street frontage to a public street (excluding service lanes) of at least 24 metres: - any residential flat building.	Complies Street frontage exceeds 24m.

(h) State Environmental Planning Policy (Transport and Infrastructure) 2021

The subject site has a frontage to a classified road, being Elizabeth Drive, therefore the provisions of the Transport and Infrastructure SEPP 2021 are to be considered.

Considerations	Comments
2.118. Development with frontage to classified road	
<p>The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:</p> <p>Where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and</p> <p>The safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:</p> <ul style="list-style-type: none"> (i) the design of the vehicular access to the land, or (ii) the emission of smoke or dust from the development, or (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and <p>The development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.</p>	<p>Does not comply.</p> <p>The development proposes vehicular access to the land via Elizabeth Drive (classified Road).</p> <p>The application was referred to Transport for NSW who do not support the proposed development in its current form.</p> <p>In this regard, it is likely that the proposed development would not uphold the safety and efficiency of the ongoing operation of the classified road and would adversely affect this roadway.</p>
2.119. Impact of road noise or vibration on non-road development	
<p>If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:</p> <ul style="list-style-type: none"> - In any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am, - Anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or 	<p>Does not comply.</p> <p>The proposed development is for seniors housing development which would be used for the purposes of residential accommodation.</p> <p>Acoustic matters have not yet been satisfied by the development. Therefore, it cannot be determined if appropriate measures can be taken to ensure that LAeq levels are not exceeded for the residential component of the development.</p>

hallway)—40 dB(A) at any time. In this clause, <i>freeway</i> , <i>tollway</i> and <i>transitway</i> have the same meanings as they have in the <i>Roads Act 1993</i> .	
2.120 Impact of road noise or vibration on non-road development	
(1) This section applies to development specified in Column 1 of the Table to Schedule 3 that involves— (a) new premises of the relevant size or capacity, or	Does not comply. The proposal involves erection of new premises with basement carparking which is listed in Column 1. In terms of size and capacity, the proposed development falls likely in the 50 or more motor vehicles per hour. The application was referred to Transport for NSW and matters have not yet been satisfied by the development. Therefore, it cannot be determined if appropriate measures can be taken to ensure that LAeq levels are not exceeded for the residential component of the development

The proposed development is not considered to be consistent with the relevant provisions of the SEPP (Infrastructure) 2007.

6.2 Section 4.15(1)(a)(ii) - Any Draft Environmental Planning Instrument

No draft Environmental Planning Instruments applies to the site.

6.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The application has been assessed against the controls of the LDCP 2008, particularly Part 1: *General Controls for all Development*.

The tables below provides an assessment of the proposal against the relevant controls of the LDCP 2008.

LDCP 2008 Part 1: General Controls for All Development

Development Control	Provision	Comment
Section 2 - Tree Preservation	Controls relating to the preservation of trees	Complies There are several non-significant trees located on site that will be removed as part of the proposal. An Arborist Report was submitted. The proposal was reviewed by Councils Natural Environment Landscape Officer, who was supportive of the proposed tree removal.
Section 3 - Landscaping and Incorporation of Existing Trees	Controls relating to landscaping and the incorporation of existing trees.	Complies As above.
Section 4 - Bushland and Fauna Habitat Preservation	Controls relating to bushland and fauna habitat preservation	Not applicable
Section 5 -	Controls relating to	Not applicable

Development Control	Provision	Comment
Bush Fire Risk	development on bushfire prone land.	The development site is not identified as being bushfire prone land.
Section 6 - Water Cycle Management	Stormwater runoff shall be connected to Council's drainage system by gravity means. A stormwater drainage concept plan is to be submitted.	Does not Comply Stormwater matters have not yet been satisfied by the development.
Section 7 - Development Near a Watercourse	If any works are proposed near a water course, the Water Management Act 2000 may apply, and you may be required to seek controlled activity approval from the NSW Office of Water.	Not applicable The development site is not within close proximity to a water course.
Section 8 - Erosion and Sediment Control	Erosion and sediment control plan to be submitted.	Complies An erosion and sediment control details have been submitted. Appropriate conditions could be imposed regarding the implementation of erosion and sediment control during construction works if consent were granted.
Section 9 - Flooding Risk	Provisions relating to development on flood prone land.	Complies The development site is affected by flooding. This aspect has been reviewed by Council's Flood Engineers who have raised no issues subject to conditions
Section 10 - Contaminated Land Risk	Provisions relating to development on contaminated land.	Does not Comply Contamination matters have not yet been satisfied by the development.
Section 11 - Salinity Risk	Provisions relating to development on saline land.	Complies The applicant has submitted a site investigation report that confirms the site soils are not saline. Therefore, a salinity management response plan is not required.
Section 12 - Acid Sulphate Soils	Provisions relating to development on acid sulphate soils	Not applicable The site is not affected by acid sulphate soils.
Section 13 - Weeds	Provisions relating to sites containing noxious weeds.	Not applicable The site is not identified as containing noxious weeds.
Section 14 - Demolition of Existing Development	Provisions relating to demolition works	Complies Demolition plan provided.
Section 15 - On Site Sewage Disposal	Provisions relating to OSMS.	Not applicable OSMS is not proposed.
Section 16 - Aboriginal Archaeology	An initial investigation must be carried out to determine if the proposed development or activity occurs on land	Not applicable Based on the location and the previous uses of the site it is unlikely that the site contains archaeological finds or relics.

Development Control	Provision	Comment
	potentially containing an item of aboriginal archaeology.	
Section 17 - Heritage and Archaeological Sites	Provisions relating to heritage sites.	Not applicable There are no heritage items at the site nor is the site in a heritage conservation zone.
Section 18 - Notification of Applications	<i>Repealed – Replaced with Liverpool Community Participation Plan 2019</i>	Application was notified.
Section 19 - Used Clothing Bins	Provisions relating to used clothing bins.	Not Applicable The DA does not propose used clothing bins.
Section 20 - Car Parking and Access	Residential Development Car Parking Requirements: <ul style="list-style-type: none"> - 1 space per small / 1-bedroom apartment - 1.5 spaces per medium / 2-bedroom dwelling - 2 spaces per large / 3-bedroom dwelling - 1 space per 4 units or part thereof, for visitors 	Not applicable Car parking has been provided in accordance with the Seniors Housing SEPP, which takes precedence over the DCP. See discussion in Section 6.1 Housing SEPP
	1 bicycle space per 2 units for residents	Not applicable No bicycle spaces are provided, however given the nature of the development, such a requirement is not considered necessary.
	1 bicycle space for visitors per 10 units	
Section 21 - Subdivision of Land and Buildings	Provisions relating to the subdivision of land.	Not applicable The DA does not propose the subdivision of land.
Section 22 and Section 23 - Water Conservation and Energy Conservation	New dwellings are to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX).	Complies Basix do not apply to seniors housing. However, the application complies with Section J of the NCC. Conditions of consent will be imposed to ensure compliance water and energy conservation
Section 24 - Landfill	Minimisation of cutting and filling, not in conjunction with a DA.	Not applicable Cut and fill included with DA.
Section 25 - Waste Disposal and Re-use Facilities	Provisions relating to waste management during construction and on-going waste.	Complies During Construction: A waste management plan has been submitted. Conditions of consent will be imposed to ensure that compliance with the WMP is achieved during construction. On-going Waste Management: The development will contract a waste provider to maintain refuse areas and collect the waste from the site. This is acceptable and can be controlled via

Development Control	Provision	Comment
		conditions of consent.
Section 26 - Outdoor Advertising and Signage	Provisions relating to signage.	Not Applicable The DA does not propose any signage.
Section 27 - Social Impact Assessment	A comprehensive social impact comment shall be submitted for residential flat buildings greater than 20 units.	Complies A social impact comment was submitted as part of the proposal, and no issues are raised with regards to social matters.

6.4 Section 4.15(1)(a)(iiia) - Any Planning Agreement or any Draft Planning Agreement

No planning agreement relates to the site or proposed development.

6.5 Section 4.15(1)(a)(iv) – The Regulations

The Environmental Planning and Assessment Regulations 2000 requires the consent authority to consider the provisions of the National Construction Code (NCC). If approved, appropriate conditions of consent will be imposed requiring compliance with the NCC.

6.6 Section 4.15(1)(b) – The Likely Impacts of the Development

(a) Natural and Built Environment

Built Environment

It is considered that the proposed development is out of character with the existing and desired character of development in the locality. It is not consistent with some objectives of the R3 and R2 Zones. As identified by the DEP, multiple deficiencies in the site design are problematic for amenity with regards to adjoining sites and for future residents of the subject proposal.

Natural Environment

The proposal is also inconsistent with the provision of State Environmental Planning Policy (Resilience and Hazards) 2021 and the provisions Chapter 11 (Georges River Catchment) of the State Environmental Planning Policy (Biodiversity and Conservation) 2021. Accordingly, the development is likely to have an unacceptable impact on the natural environment.

(b) Social Impacts and Economic Impacts

It is considered that until site design matters are met by the proposal, it is likely to have an unreasonable social impact.

The development will result in a positive economic impact, through the provision of employment generated during the construction of the development and the running of the

facility and on-going building maintenance.

6.7 Section 4.15(1)(c) – The Suitability of the Site for the Development

The site is not considered suitable to accommodate the proposed development. The development is inconsistent with various objectives and provisions of State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021 and the provisions Chapter 11 (Georges River Catchment) of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 and until these matters are resolved by the applicant the site is not suitable for the proposal.

6.8 Section 4.15(1)(d) – Any submissions made in relation to the Development

(a) Internal Referrals

The following comments have been received from Council's Internal Departments:

Department	Comments
Building	No objections.
Engineering	Not supported.
Environmental Health	Not supported.
Landscaping	No objections, subject to conditions.
Natural Resources	No objections.
Traffic and Transport	No objections, subject to conditions.
Flooding	No objections, subject to conditions.
Waste Management	No objections
Urban Design	Not supported.
Community Planning	No objections, subject to conditions.
City Economy	No objections.

(b) External Referrals

Department	Comments
TfNSW	Response to referral dated 19 April 2021 did not support the proposal. Matters have not yet been satisfied by the development.
Endeavour Energy	Matters have not yet been satisfied by the development.
Sydney Water	No objections. Recommendations dated 30 March 2021 provided.

(c) Community Consultation

In accordance with the Community Participation Plan 2019, the application was notified for a 14-day period, from 26 March 2021 to 13 April 2021. There were 2 submissions received in relation to the proposed development. This is summarised below:

Bus stop relocation

Concern was raised regarding the relocation of the bus stop that may impact frontage of an adjoining property.

Council Comment: The revised application noted that the bus stop will remain in its current location.

Sale of the property and carparking

A historical issue of the sale of the land from Council. The opinion raised was the measly amount of the sale in 2012. More benefit for the community if it remained a carpark. This has resulted in lack of parking by multiple businesses that are struggling in this location due to the lack of parking and infrastructure. Businesses count on this car park to attract customers to park and visit the area

Council Comment: The issue raised is historical. The site is now occupied by an aged care facility to which the subject proposal is seeking to redevelopment for the same purpose.

Suitability of the site for aged housing

The site is not suitable for a senior and disability housing. It adjoins a classified road. We are sitting on a main thoroughfare connecting Liverpool to the outer south west suburbs, with large trucks and transport 24 hours a day. Exposing seniors and the disabled to this sort of commotion is not the best way to live out their twilight years.

Council Comment: Acoustic matters have not yet been satisfied by the development. The amended DA architectural design is unclear on the treatment of windows with regard to screening for privacy between units facing each other and to the rear yards of adjoining development consisting of dwelling houses along Elizabeth Drive and Woodlands Road.

6.9 Section 4.15(1)(e) – The Public Interest

It is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar non-compliant development in the locality and therefore the subject site is not considered suitable for the proposed development and not in the public interest.

7. CONCLUSION

In conclusion, the following is noted:

- The proposed development is inconsistent with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 (repealed SEPP No. 55 – Remediation of Land) in that unsatisfactory evidence has been submitted to satisfy the consent authority that the land is free from contamination and will be suitable for the proposal, pursuant to Sections 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979;
- The proposed development does not comply with the Environmental Planning & Assessment Act 1979 – Division 4.8 – Integrated Development, Section 4.46 in that Transport for NSW do not support the proposed development in its current form and therefore do not provide concurrence pursuant to Section 138 of the Roads Act 1993;
- The proposed development does not comply with the Housing SEPP development standards including Cl 33 Neighbourhood Amenity and Streetscape; Cl 34 Visual and acoustic privacy; Cl 35 Solar Access and Design for Climate; 36 Stormwater; 40 Minimum sizes and building height and Cl 48 Parking;
- The development application be refused as the proposed development does not comply with the development standard for maximum building height in Clause 40 of State Environmental Planning Policy (Housing for Seniors or People with a Disability)

2004. The proposed variation is not justified having regard to the matters in clause 4.6(3) and (4) of LLEP 2008.

- The proposed development is inconsistent with the objectives of the R3 – Medium Density Residential zone as per the Liverpool Local Environmental Plan 2008 as the development does not ensure that a high level of residential amenity is achieved and maintained pursuant to Section 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
- Insufficient information has been submitted with the proposed development that demonstrates consistency with the provisions of State Environmental Planning Policy (Transport and Infrastructure) 2021, 2.118 Development with frontage to classified road, 2.119 Impact of road noise or vibration on non-road development and 2.121 Traffic Generating development, pursuant to Section 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979;
- The proposed development does not achieve satisfactory compliance with the controls stipulated in the Liverpool Development Control Plan 2008, Part 1 – General Controls for all Development, pursuant to Section 4.15(1)(a)(iii), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, in terms of the following sections:
 - Section 6 – Water Cycle Management
 - Section 10 – Contaminated Land Risk
- Inconsistent and insufficient information has been submitted to allow Council to carry out a full assessment of the application. In this regard, an inadequate response has been received to Council's requests for additional information pursuant to Section 4.15(1)(a)(iv), 4.15(1)(b) and 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.
- The proposed development is not considered to be acceptable having regard to the concerns raised from internal referrals within Council, pursuant to the provisions of Clause 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.
- Insufficient information has been submitted with the proposed development in order to satisfy the provisions Chapter 11 (Georges River Catchment) of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 pursuant to Section 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
- It is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar non-compliant development in the locality and therefore the subject site is not considered suitable for the proposed development, pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.

8. RECOMMENDATION

That the proposed demolition of existing buildings and structures, construction and operation of a seniors housing development involving 116 room residential care facility in a three-storey building over a basement, together with associated facilities, access, and landscaping under State Environmental planning Policy (Housing for Seniors or People with a Disability) 2004 be refused.