

Ku-ring-gai Council Submission

Site compatibility Certificate - (SCC2021KURIN-3)

4-12 Neringah Avenue South, Wahroonga

1. Application

The Site Compatibility Certificate (SCC) application is in relation to the potential redevelopment of an existing seniors housing / health services facility development pursuant to the Vertical Villages provisions of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (SEPP HSPD) - Clause 45, comprising approximately 60 self-contained dwellings, 9 residential aged care facility beds, 18 palliative care beds, 90 car parking spaces within basement levels, associated amenities and landscaping.

2. Statutory Context

The SEPP HSPD was repealed by State Environmental Planning Policy (Housing) 2021 (SEPP Housing) on 26 November 2021. Schedule 7, Clause 3(1)(b) of the SEPP Housing provides for savings and transitional provisions for the continued application of site compatibility certificates under SEPP HSPD if the application for the certificate was made on or before the commencement date.

The SCC application was submitted on 28 June 2021 [Planning Portal]. The current version of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) at that time was made 25 June 2021 and therefore has been used for the review of this application.

The current version of the consolidated KLEP2015 was made 23 July 2021, which is after the application submission date, has been taken to be the LEP relevant to the application as no savings provision would apply. Similarly KDCP effective 28 June 2021 (the day of submission) has been taken to be the DCP relevant to the application for the purposes of this review.

3. Strategic Planning Context

Ku-ring-gai Local Strategic Planning Statement (KLSPS):

- Acknowledges that projections from DPIE indicate that Ku-ring-gai's population aged 65 and over will increase by 49% by 2036 highlighting the need for investigation into housing provision for this age group to enable ageing in place.
- LSPS set out approach for providing additional housing around centres that already provide retail and other services, and meet the criteria of the 30minute city with frequent and fast public transport within 400m.
- Wahroonga is identified as a Secondary Local Centre
 - Contains a local railway station and meets criteria for 30min access to a strategic centre
 - Supported by retail and other services predominantly utilised by a localised residential population
 - Housing Supply Timing 16-20year (2031-2036)
 - Investigation area 800m radius from railway station
- Principles for the location of additional housing:
 - Stage housing delivery around centres of retail and economic activity that are serviced by North Shore railway line, including provision of housing diversity, affordability and accessibility
 - Locate high density housing types within a 10min walk (800m radius) of Secondary Local Centres
- Highlighted the need to ensure the successful integration and interfacing of new housing and densities within the areas existing urban and landscape character
- LSPS Local Planning Priorities:
 - K3: Providing housing close to transport, services and facilities to meet the existing and future requirements of a growing and changing community
 - K4: Providing a range of diverse housing to accommodate the changing structure of families and households and enable ageing in place
 - K12: Managing change and growth in a way that conserves and enhances Ku-ring-gai's unique visual and landscape character

Consistency with LSPS:

The sites location within the Wahroonga Secondary Local Centre is consistent with the LSPS Local Planning Priority K3, as a location for higher density housing, however, is inconsistent in terms of the identified timing, with the LSPS noting the 16-20 year period of 2031-2036. The provision of

seniors housing is consistent with the LSPS Local Planning Priority K4 and increase in ageing population as projected by DPIE.

However, the purpose of the SCC is not to gain permissibility for seniors housing on the site – it is already permissible. The purpose of the SCC is to enable greater density on the site, and therefore it is not a question of use, but built form outcomes. A FSR of 1.8:1 would result in a built form outcome that does not successfully integrate into the existing and future character of the surrounding area, and therefore is inconsistent with Local Planning Priority K12.

Ku-ring-gai Housing Strategy (Adopted Council September 2020):

- Acknowledged the structural age change, with over 14,400 additional people over 50yrs in age are forecast to live in Ku-ring-gai by 2036. Approximately 4,000 of these additional people will be over 80yrs old, and more likely in the frail category
- In terms of housing needs for an ageing population the strategy noted:
 - Forecast growth in over 65s to 2036 results in approximately 387 additional aged care places likely to be required in order to provide the same ratio of places for frail aged population (as at 2016). While health and life expectancy is improving in older cohorts, this is likely offset by the significant increase in the over 85 population forecast in the frail category where there is a greater likelihood of requiring care in Ku-ring-gai LGA.
 - Many of Ku-ring-gai's older cohort chose to remain in their detached dwelling homes, suggesting the need to address housing options that enable this choice.
- Councils adopted Housing Strategy required all housing to be from existing capacity within existing zoning and planning controls.
- Housing Strategy notes that seniors housing developments will supplement the delivery of new dwellings from existing capacity, and seniors housing dwelling will be monitored and contribute to the dwelling targets.
- Housing Strategy assumed an average of 103 seniors housing dwellings and over 100 beds in aged care can be anticipated annually based on average of the previous 4 years.
- Housing Strategy Objectives:
 - To monitor the delivery of housing within areas close to services, cultural and community facilities and within a 10min walking distance to key public transport nodes
 - To encourage a mix of dwelling types and sizes
 - Monitor delivery of seniors housing as alternative dwelling which provides accommodation for the ageing population
 - To facilitate high quality housing that is responsive to Ku-ring-gai's local character
 - Ensure unique visual and landscape character is protected, and the impacts of new development is managed.

Consistency with Housing Strategy:

The provision of seniors housing is consistent with the Housing Strategy having regard for the housing needs of the ageing population, and consistent with the Housing Strategy objective to provide a mix of housing types. The location of the site is consistent with objective for the delivery of housing in areas close to service, cultural and community facilities and public transport.

However, the purpose of the SCC is not to gain permissibility for seniors housing on the site – it is already permissible. The purpose of the SCC is to enable greater density on the site, and therefore it not a question of use, but built form outcomes. A FSR of 1.8:1 would result in a built form outcome that does not successfully integrate into the existing and future character of the surrounding area, and therefore is inconsistent with objective relating to providing high quality housing that is responsive to the local character.

Additionally, the SCC is inconsistent with adopted housing strategy in that the SCC is seeking additional floorspace/density on the site – beyond the capacity of the existing controls. Councils adopted Housing Strategy required all new housing to be provided from existing capacity.

4. Site Context

The site is zoned part R2 Low Density Residential (at the south western corner) and part R4 High Density Residential (for the remainder of the site) under KLEP2015. The R2 portion of the site has a maximum building height of 9.5m and the R4 portion has a maximum building height of 17.5m. The R2 portion of the site has a maximum floor space ratio of 0.3:1 and the R4 portion has a maximum floor space ratio of 1.3:1. The R2 portion of the site is a listed heritage item (I1009 'Dwelling house' 3 Woonona Avenue). The site has a very small area of biodiversity mapped at its north eastern corner. The site is not affected by heritage conservation area, land reservation acquisition or riparian lands. It is noted that the partial R2 zoning of the subject site is not reflected in the description of the property in the application form.

The site is adjoined to the north(east) by 14 Neringah Avenue South, which is zoned R4 High Density Residential, with a maximum building height of 17.5m and a maximum floor space ratio of 1.3:1 (similar to the majority of the subject site) and is occupied by a recently completed (c2019) 5-6 storey residential flat building. The site is adjoined to the north(west) by 15-17 Woonona Avenue and to the south(west) by 1 Woonona Avenue, which are both zoned R2 Low Density Residential, with a maximum building height of 9.5m and a maximum floor space ratio of 0.3:1, and are occupied by strata-titled townhouse developments. The site is adjoined to the south by 1635 Pacific Highway, which is zoned SP2 Water Supply System, with no maximum building height or maximum floor space ratio, and is listed as a heritage item (I972 'Sydney Water Reservoir—Wa

5. Land uses and Permissibility

The proposed land uses are for self-contained dwellings and residential aged care facilities as a form of seniors housing under SEPP HSPD, and for palliative care facilities as a form of hospital and therefore health services facility under SEPP Infrastructure.

With regard to self-contained dwellings and residential aged care facilities, SEPP HSPD 4(1)(a) states that *'This Policy applies to land... that is land zoned primarily for urban purposes... but only if — development for the purpose of any of the following is permitted on the land — (i) dwelling-houses, (ii) residential flat buildings, (iii) hospitals...'*

Under KLEP2015 2.3 the portion of the site zoned R2 permits dwelling houses and hospitals, and the portion of the site zoned R4 permits residential flat buildings. Therefore the proposed self-contained dwellings and residential aged care facilities are permissible on the site.

Further, in relation to development for a 'vertical village', SEPP HSPD 45(1) states *'this clause applies to land to which this policy applies... on which development for the purposes of residential flat buildings is permitted.'* Therefore the proposed self-contained dwellings and residential aged care facilities are permissible as a 'vertical village' only on the R4 portion of the site. It appears that there may be a small encroachment (approximately 1.3m) of the proposed southern 'vertical village' building with the R2 zone [AR021] that is not permissible. This aspect should be addressed.

It is noted that, because SEPP HSPD 45(6) states *'A consent authority may only grant consent to a development application as referred to... if—... (i) the proposed development will deliver on-site support services for its residents'*. SEPP HSPD 45(12) defines 'on-site support services' as *'(a) 3 meals a day provided on a communal basis or to a resident's dwelling, and (b) personal care, and (c) home nursing units, and (d) assistance with housework'*, it may be more accurate to refer to the proposed development specifically as *'serviced self-care housing'* as defined by SEPP HSPD 13(3), rather than the broader term 'self-contained dwellings' which also includes 'in-fill self-care housing' (as defined by SEPP HSPD 13(2)) where on-site services cannot be provided.

With regard to the palliative care facilities, SEPP Infrastructure (57) states that *'Development for the purpose of health services facilities may be carried out... with consent on land in a prescribed zone.'* SEPP Infrastructure (56)(d1) and (56)(f) respectively state that 'prescribed zone' means R2 Low Density Residential and R4 High Density Residential. Therefore the proposed palliative care facilities are permissible on the site.

The objectives of the R4 High Density Residential zone are *'to provide for the housing needs of the community within a high density residential environment', 'to provide a variety of housing types*

within a high density residential environment', 'to enable other land uses that provide facilities or services to meet the day to day needs of residents' and 'to provide for high density residential housing close to public transport, services and employment opportunities.' The proposed self-contained dwellings and residential aged care facilities as forms of seniors housing are therefore considered to be consistent with the objectives of the zone from an urban design perspective. The small-scale palliative care facilities (18 beds)(noting they are also an existing use) are considered to be not inconsistent with the objectives of the zone from an urban design perspective.

6. Area subject to SCC Application

SCC Application report prepared by Ethos Urban notes: *the eastern portion of the site, which is the subject of this SCC application, is currently occupied by 'Neringah Hospital'.* (p7), which is illustrated by Figure 2 (below) which highlights in blue the eastern portion of the site.

A search of SCCs issued (https://www.planningportal.nsw.gov.au/site-compatibility-certificates?field_local_government_value=All&field_scc_status_value=All&field_project_address_value=&field_panel_reference_number_value=&page=1) does indicate that a SCC can nominate a specific portion or area of a site to which it applies – it does not have to be the whole site.

This area the subject of the SCC application needs to be clarified in conjunction with the calculation of site area, and subsequent floor space ratio (comments below).



 The Site  Proposed Development

7. Site Area Calculation

The submitted documentation has contradictory information regarding the site area.

Table 1 Numerical Summary of Indicative Development from the SCC Application Report outlines that the site area is 6,490sqm being the area of the eastern portion of the site (outlined in blue), however Appendix A Architectural Plans (excerpt table below) outlines the site area as whole part of site zoned R4 (inclusive of the existing residential care facility) being 8976sqm.

SITE AREA	10,770m²
WOONONA COTTAGE AREA (R2 ZONE)	1,794m²
DEVELOPMENT AREA (R4 ZONE)	8,976m²

The site areas detailed in the Architectural Plans are slightly higher than what Councils GIS system indicates:

Site Area from Geocortex	
4-10 Neringah	8278sqm
2 Neringah	1435sqm
12 Neringah	1011sqm
Total	10,724sqm
Woonona Cottage Area (R2 Zone)	1,795sqm
Development Area (R4 Zone)	(8278-1795 = 6483) 6483 + 1435 + 1011 = 8929sqm

8. Floor Space Ratio Calculation and Density

SEPP HSPD 24(1) states that '*This clause applies to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing... if—... (b) the development application involves buildings having a floor space ratio that would require the consent authority to grant consent under clause 45*'.

SEPP HSPD 45(2) states that '*...a consent authority may consent to a development application made pursuant to this Chapter to carry out development on land to which this clause applies for the purpose of seniors housing involving buildings having a density and scale (when expressed as a floor space ratio) that exceeds the floor space ratio (however expressed) permitted under another*

environmental planning instrument... by a bonus of 0.5 added to the gross floor area component of that floor space ratio.'

The proposed self-contained dwellings and residential aged care facilities are only permitted as a 'vertical village' on the R4 portion of the site (see LAND USES AND PERMISSIBILITY above). The permitted floor space ratio for the R4 portion of the land is 1.3:1. Under SEPP HSPD 45(2), the maximum floor space ratio for the site including the 0.5 bonus is therefore 1.8:1. The proposed floor space ratio is stated to be 1.6:1 (SCCA p15), however insufficient base information and documentation has been provided to substantiate this figure. This aspect should be addressed.

The site area of 'the part of the site that is proposed to be developed for the purposes of a vertical village' is stated to be 6,490m² (SCCA p6/Figure 2/Table 1), however this figure is considered to be incorrect for the purpose of determining the site area as it should include all of the R4 portion of the site. The building envelope calculation diagrams [AR030] state that the 'development area' of the site, being the R4 portion of the site, is 8,976m². This leaves the remaining R2 portion of the site to be 1,794m² in area. However, the shape and proportion of the R2 land shown in the building envelope calculation diagrams [AR030] does not appear to match the proportion of the R2 land shown in the KLEP2015 Land Zoning Map. This aspect should be verified.

The gross floor area of the existing residential aged care facility (the Wahroonga Building) is stated as being 3,736m² (SCCA p7), however no gross floor area calculation diagrams of the existing building appear to have been provided. This aspect should be verified. The gross floor area of the proposed new buildings in the indicative concept scheme is not stated. Based on the above figures, the proposed gross floor area of the new buildings should be 10,625m² ((8,976 x 1.6) - 3,736), however no gross floor area calculation diagrams of the proposed buildings appear to have been provided. This aspect should be verified. It is noted that all gross floor areas should be calculated in accordance with the definition at SEPP HSPD 3 which is significantly different to the KLEP2015 definition. It is noted that the measurement method described at SEPP HSPD 45(4) should also be taken into account.



9. Compatibility Assessment Pathway

SEPP HSPD 24(2) states that 'A consent authority must not consent to a development application to which this clause applies unless the consent authority is satisfied that the relevant panel has certified in a current site compatibility certificate that, the relevant panel's opinion — (a) the site of the proposed development is suitable for more intensive development, and (b) development for the purposes of seniors housing of the kind proposed in the development application is compatible with the surrounding environment having regard to (at least) the criteria specified in clause 25(5)(b).'

An assessment of the SCC application against the clause 25(5)(b) is outlined in the table below:

Clause 25(5)(b) assessment comments:

Clause 25(5)(b) Consideration	Comment
(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,	<p>It is not considered that the proposed development would have a detrimental impact on any significant environmental values, resources or hazards. The land is not:</p> <ul style="list-style-type: none"> - mapped area of biodiversity; - within an area of bushfire or flooding; - land that is known to be contaminated; or - land or known resources. <p>The site current contains an existing aged care facility and palliative care facility. It is considered that despite concerns with permissibility the use of the site as is intended by the SCC is acceptable. The proposed land use would not be deemed incompatible with the surrounding land uses, as they are medium to high density residential. The development / land use proposed is taken to be residential centric and therefore compatible.</p>

Clause 25(5)(b) Consideration	Comment
<i>(ii) the impact that the proposed development is likely to have on the uses that, in the opinion of the relevant panel, are likely to be the future uses of that land,</i>	It is considered that the development as is intended by the SCC is compatible with the use of the land, given the existing of the existing aged care facility located on the western part of the site.
<i>(iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,</i>	<p>The SCC Application and accompanying plans gives an overview as to how the proposed development is compliant or able to be compliant with the access requirements mandated by Clause 26. There is little detail about how this will actually be facilitated. There may be further works needed or required to ensure that the development meets the standards targeted by Clause 26. The proposal to regrade the laneway to make the local centre more accessible for the proposed development at 4 – 12 Neringah Avenue Wahroonga and for the broader community is supported in principal, however, careful consideration of the detailed design of the regrading work and its impact on adjoining property will need to be carefully considered (see further discussion under Public Domain works below).</p> <p>The suitability, extent and desirability of this should be clearly known and understood when deciding if and how the additional density sought under the SCC is acceptable.</p> <p>Importantly, pathway works are needed within Council land, which is not something that can be conditioned – detailed designs would be needed, as would Council's signature as a land owner to the application. Such works would likely have to be facilitated through a VPA. It is considered that the SCC where it relies on this upgrade not proceed until such time that Council provides its support for the proposed works, which it is not able to do, due to an absence of detailed design. Detailed design and supporting information / diagrams should be provided which clearly demonstrates how the necessary pathways and grades are achieved, or where they are not, what remedial work is needed. Given the prevailing topography and case law which establishes how the services are to be accessed, it is likely the more works in addition to those mentioned will be necessary.</p> <p>This issue alone is significant because the grant of a SCC somewhat obligates Council to allow the upgrade works to occur on its land. The SCC should not be approved or endorsed until such time that Council has considered and endorsed works on its land. It is noted that this would require a resolution of the Council. Notwithstanding this, it does not set aside or overcome the permissibility issues raised in earlier discussions.</p> <p>SEPP HSPD 25(7) States that a SCC 'may certify that the development to which it relates is compatible with the surrounding land uses only if it satisfies certain requirements specified in the certificate.' The resolution of</p>

Clause 25(5)(b) Consideration	Comment
	the issues associated with the proposed upgrade works and how they are to be delivered must be a requirement of any SCC issued.
(iv) <i>in the case of applications in relation to land that is zoned open space or special uses—the impact that the proposed development is likely to have on the provision of land for open space and special uses in the vicinity of the development,</i>	Not Applicable
(v) <i>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,</i>	<p>In assessing the impact of the bulk, scale, built form and character of the proposed development on surrounding land uses using SEPP HSPD, it is appropriate to consider the ‘design principles that should be followed to achieve built form that responds to the characteristics of its site and form’ as a framework (SEPP HSPD 2(2)(b)) noting these will also be a central concern of the eventual development application assessment (SEPP HSPD 32/SEPP HSPD 46(1)). In terms of urban design concerns, SEPP HSPD 33 ‘Neighbourhood amenity and streetscape’ states ‘<i>The proposed development should — (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... (c) maintain reasonable neighbourhood amenity and appropriate residential character by— (i) providing building setbacks to reduce bulk and overshadowing, and (ii) using building form and siting that relates to the site’s land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development...and (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...</i>’.</p> <p>It is noted that SEPP HSPD (3)(1) defines ‘streetscape’ as ‘the character of a locality (whether it is a street or precinct) defined by the spatial arrangement and visual appearance of built and landscape features when viewed from the street.’</p> <p>The bulk and scale issue cannot be considered in isolation of the two proposed buildings. It needs to be considered in the context of the wider site. The additional buildings proposed along with the existing residential aged care facility would result in 3 x 5 storey institution style buildings on the site. This development topology has the effect of changing the character of the surrounding area, as it would become, by scale, the dominate built form. It erodes in part the garden character that the local controls seek to retain, even through the higher density developments</p>

Clause 25(5)(b) Consideration	Comment
	<p>permitted by the zoning. Whilst some landscaping is proposed, the ratio proposed is not to the same extent that would be provided in the case of a residential flat building, which is the highest and best use of the land under the KLEP. The deficiency in landscape area can be directly attributed to additional GFA proposed, as no additional height is sought.</p> <p>Notwithstanding this, it is re-development of the site in the manner proposed is likely limited to that proposed in the current scheme, as substantive developments either side of the site exist, limiting opportunity for site expansion. Given this and the extent and type of land use currently on the site, it is considered that the proposal is not it of character nor of a general site arrangement which would have a detrimental impact on the surrounding locality.</p> <p>There is little detail on the impacts of the proposal from a built form view point – that is due to the absence of elevations. Key to the success of mitigating bulk impacts is a built form when mimics as best as possible the residential flat buildings either side of the development. The built form should mimic and replicate the design and proportions of residential flat developments that are otherwise permissible in the zone. A driver of this should be compliance with SEPP 65 (see below) for the independent living units and also to have the buildings appear as mixed use developments, rather than institutional buildings with apartments on top.</p> <p>It is noted that SEPP HSPD 24(3) states ‘Nothing in this clause — (a) prevents a consent authority from —... (ii) refusing to grant consent to a development application to which this clause applies by reference to the consent authority’s own assessment of the compatibility of the proposed development with the surrounding environment, or (b) otherwise limits the matters to which a consent authority may or must have regard (or of which a consent authority must be satisfied under another provision of this Policy) in determining a development application to which this clause applies.’ This allows the consent authority to also consider relevant provisions ‘outside’ of SEPP HSPD when making their assessment of the development application. It is therefore prudent to consider these provisions in the assessment of the site compatibility certificate application as this documentation is likely to strongly guide and ‘shape’ the future development application. In this instance the relevant provisions in addition to SEPP HSPD include (but may not be limited to) local controls KLEP2015 and KDCP Part 7 Residential Flat Buildings, as well as SEPP 65 and the Apartment Design Guide (see below for further detail). Assessment of the proposal against these provisions alongside SEPP HSPD assist in determining consistency with SEPP HSPD 33 and SEPP HSPD 25(5)(b) and ultimately whether the application is compatible with the surrounding development (SEPP HSPD 24(2)(b)).</p>

Clause 25(5)(b) Consideration	Comment
<i>(vi) if the development may involve the clearing of native vegetation that is subject to the requirements of section 12 of the Native Vegetation Act 2003—the impact that the proposed development is likely to have on the conservation and management of native vegetation,</i>	Not Applicable
<i>(vii) the impacts identified in any cumulative impact study provided in connection with the application for the certificate</i>	No cumulative impact study has been provided within the application

10. Other Considerations under SEPP HSPD

SEPP HSPD 40(2) requires that the size of the site must be at least 1,000m². The site area is 10,770m². This aspect is considered acceptable.

SEPP HSPD 40(3) requires a site frontage of at least 20m wide measured at the building line. The site frontage measured at the building line is approximately 133m. This aspect is considered acceptable.

SEPP HSPD 48(c) requires a minimum of 25m² of landscaped area per residential care facility bed. Whilst only 9 residential aged care facility beds are proposed (SCCA p4), it is unclear whether sufficient landscaped area will be provided when including the existing beds located in the Wahroonga Building. This aspect should be verified

SEPP HSPD 50(c) requires that a minimum of 30% of the site is to be landscaped. SEPP HSPD 50(d) requires that not less than 15% of the area of the site should be a deep soil zone with a minimum dimension of 3m. The deep soil area is stated to be 29% of the site [AR000], however this does not achieve the 50% deep soil (and therefore landscaped area) required by the local controls in order to achieve the desired future character and amenity of the area (see KDCP below).

SEPP HSPD 50(e) requires that the living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm at mid winter. It is unclear from the documentation provided whether the proposed buildings

are capable of meeting these solar access provisions. Solar access is a key residential amenity. This aspect should be verified. View from the sun diagrams should be provided.

It is premature to assess against the other relevant standards in SEPP HSPD such as those concerning accessibility and usability (SEPP HSPD 41/Schedule 3) and private open space provision (SEPP HSPD 50(f)).

11. Consideration under KLEP 2015

KLEP2015 2.3 and the Land Use Table describe the objectives of the zone. The proposal is considered to be consistent with (or not inconsistent with) the objectives for the R4 High Density Residential zone (see 5 Land Uses and Permissibility above). This aspect is considered acceptable from an urban design perspective.

The maximum building height under KLEP2015 4.3 is 17.5m. From the elevational and sectional information provided [AR110 and AR120], the proposal appears to be less than 17.5m in height using the definition of 'height' at SEPP HSPD 3 (SCCA p12). The proposal also appears that it may be less than 17.5m in height using the more onerous KLEP2015 definition of 'building height' which would mean that the actual height of the development would be consistent with the measurement of height of other buildings assessed under KLEP2015 such as the residential apartment development to the immediate north(east). This aspect appears to be acceptable from an urban design perspective, however height should be verified with a three-dimensional height plane diagram' which 'lifts' a copy of the ground level (existing) to the maximum building height to demonstrate whether any parts of the building protrude beyond the plane.

The maximum floor space ratio under KLEP2015 is 1.3:1. The maximum floor space ratio including the SEPP HSPD 45(2) bonus is 1.8:1. Insufficient information has been provided to be able to properly assess the proposed floor space ratio (see 8.Floor Space Ratio Calculation and Density above). This aspect should be addressed.

12. Considerations under KDCP Part 7 Residential Flat Buildings

The site is zoned R4 High Density Residential. The predominant likely future development type that can generally be expected within the R4 zone is residential flat buildings. KDCP Part 7 provides development controls for residential flat buildings and can be used as a guide to establishing an appropriate built form outcome that is compatible with the surrounding environment.

KDCP 7A.3 1 requires a street setback of 10m. The proposal generally provides a street setback of 10m to Neringah Avenue South with the exception of a protruding 2-storey component to the northern building which is approximately 11m in length with a street setback of approximately 3.5m

[AR100]. The breach of the street setback is justified as 'a minor component of the northern building' with a 'reduced setback which reflects the existing footprint of the Neringah Hospital building...' (SCCA p25), however it is considered that as the existing Neringah Hospital building is to be demolished, its existing setbacks are therefore no longer relevant and the desired future character of buildings situated with a garden setting dominated by canopy trees (KDCP 7A.3 Objectives 1, 3 and 14)(see also KDCP 7A.1 2 and KDCP 7A.2 6) should be delivered. This aspect should be addressed. Additionally, the protruding component is identified as 'community and neighbourhood amenity' [AR200]. It is considered that this element may appear to be non-residential in character and may appear unsympathetic within the streetscape. This aspect should be given further design consideration.

KDCP 7A.3 9 requires that side and rear setbacks at a zone interface to land which is zoned differently for lower density residential development should provide a minimum of 9m setback up to the fourth storey and a minimum of 12m for the fifth storey and above. The proposal provides approximately 8m setback at Levels 1 and 2 to the boundary of 15-17 Woonona Avenue (zoned R2) and approximately 9m to the boundary at Level 4 (the fifth storey) of 1 Woonona Avenue (zoned R2) [AR201]. This aspect should be addressed. Larger setbacks should be provided to minimise bulk and scale impacts on neighbouring development and provide a transition to lower density residential development (KDCP 7A.3 Objectives 9 and 13).

KDCP 7A.5 1 requires a maximum site coverage of 30%. The proposal appears to significantly exceed 30% site coverage (possibly over 50%) on the R4 portion of the site [AR200 and AR201](possibly up to 50%). This aspect should be addressed. A site coverage diagram should be provided. Site coverage is directly related to deep soil, the provision of canopy trees and achievement of the landscaped desired future character and amenity of the area (KDCP 7A.5 Objectives 1, 3 and 5).

KDCP 7A.6 1 requires that a minimum of 50% of the site should be deep soil landscaping. The proposal appears to have a significant shortfall of deep soil on the R4 portion of the site [AR200 and AR201](possibly under 30%). This aspect should be addressed. Deep soil is directly related to the provision of canopy trees and achievement of the landscaped desired future character and amenity of the area (KDCP 7A.6 Objectives 1, 2 and 7). It is noted that the ADG minimum requirement of 15% deep soil (ADG 3E-1 2)(SCCA p17) is not a matter to which SEPP 65 6A applies and does not make the KDCP provision of 50% of no effect. It is noted that the SEPP HSPD 50(d) provision for a minimum of 15% deep soil (SCCA p17) does not limit the matters to which the relevant panel may have regard in refusing to issue a site compatibility certificate (SEPP HSPD 46(2)) and the panel may still have regard to the KDCP provision.

13. Considerations under SEPP 65 and Apartment Design Guide

The proposal can be considered a 'mixed use development with a residential accommodation component' which consists of the erection of a new building with at least 3 or more storeys and at least four or more dwellings. Therefore, under SEPP 65 4(1), therefore it is considered that SEPP 65 applies to the seniors housing portion of the development (as per SEPP 4(2)). It is noted that SEPP 65 3(2) states that 'Words and expressions used in this Policy have the same meaning as they have in the standard local environment planning instrument...'. KLEP2015 defines 'mixed use development' as 'a building or place comprising 2 or more different land uses' which here can be taken to mean seniors housing and health care facilities. KLEP2015 also defines 'residential accommodation' as including 'seniors housing'.

ADG 3D-1 1 requires a communal open space with a minimum area equal to 25% of the site. The proposal does not appear to identify a communal open space for the serviced self-care housing component of the development. This does not meet SEPP 65 Design Quality Principle 5: Landscape. This aspect should be addressed. The communal open space should be located to achieve at least 2 hours direct sunlight during mid-winter (ADG 3D-1 2).

ADG 3F-1 5 requires that apartment buildings should have an increased separation distance of 3m when adjacent to a different zone that permits lower density residential to provide for a transition in scale and increased landscaping (see KDCP 7A.3 9 above). This does not meet SEPP 65 Design Quality Principle 2: Built form and scale. This aspect should be addressed.

ADG 4A-1 1 requires that the living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid winter. ADG 4A-1 3 requires that a maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter. It is unclear from the documentation provided whether the proposed buildings are capable of meeting these solar access provisions. Solar access is a key residential amenity. This does not meet SEPP 65 Design Quality Principle 6: Amenity. This aspect should be verified. View from the sun diagrams should be provided.

ADG 4B-3 1 requires that at least 60% of apartments are naturally cross ventilated. It is unclear from the documentation provided whether the proposed buildings are capable of meeting this ventilation provision. Natural cross ventilation is a key residential amenity. This does not meet SEPP 65 Design Quality Principle 6: Amenity. This aspect should be verified. Natural cross ventilation diagrams should be provided.

ADG 4C-1 1 requires a minimum floor-to-ceiling heights of 2.7m in habitable rooms. The proposal appears to provide 3.4m floor-to-floor heights [AR110] which are easily capable of achieving 2.7m floor-to-ceiling heights. This aspect is considered acceptable.

ADG 4F-1 1 requires that the maximum number of apartments off a circulation core on a single level is eight. The proposal appears to provide no more than eight units per core per floor [AR200 and AR201]. This aspect appears to be acceptable. This aspect should be verified by including indicative unit outlines on the concept plans.

14. Public Domain Works

Section 3.3 of the SCC application describes a need for upgrading works to the 'Archdale Walk' that links Neringah Avenue South with Coonanbarra Road. The proposal is to provide an access route to the Wahroonga local centre (Coonanbarra Road) that complies with Clause 26 of SEPP HSPD. The proposed walkway is through Council owned Archdale Park. This is the preferred route between the 4 – 12 Neringah Avenue proposal and Coonanbarra Road rather than the Council owned laneway beside Archdale Park. The laneway is narrow, somewhat concealed from view and the western entry to the laneway is steep.

SEPP HSPD Clause 26(2)(a) requires *'the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development that is a distance accessible by means of a suitable access pathway and the overall average gradient for the pathway is no more than 1:14, although the following gradients along the pathway are also acceptable—*

- (i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,*
- (ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,*
- (iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time'*

Although the path through Archdale Park does not meet Australian Standards (AS1428 – access to buildings) in both grades and path width, it does potentially comply with the requirements set out in clause 26. The eastern end of the laneway needs to be included in the pedestrian link to complete the pedestrian link between 4 – 12 Neringah Avenue and Coonanbarra Road. The eastern end of the laneway does not comply with the grading requirements of the SEPP. The landscape concept plan for the pedestrian link proposes to regrade the eastern section of the laneway that lies between Archdale Park and Coonanbarra Road and runs beside the Australia Post property, which lies immediately north of the laneway.

The regrading of the laneway can be achieved and would be desirable however, there are a number of issues that would need to be resolved in order for the laneway to be regraded, such as:

- The “accessible” entry to the post office will be impacted if the grades are changed (see attached photo). Adjustments the entry forecourt to the post office would be required.

- Retaining walls to support the regraded path would need to be constructed on the adjoining properties as the construction of the retaining walls within the laneway would reduce the width of the laneway, already only approx. 2m wide.
- A number of tall screening shrubs along the boundary of the adjoining property would be impacted by the regrading works.

The proposal to regrade the laneway to make the local centre more accessible for the proposed development at 4 – 12 Neringah Avenue Wahroonga and for the broader community is supported in principal, however, careful consideration of the detailed design of the regrading work and its impact on adjoining property will need to be carefully considered.

SEPP HSPD 25(7) States that a SCC *'may certify that the development to which it relates is compatible with the surrounding land uses only if it satisfies certain requirements specified in the certificate.'* The resolution of the issues associated with the proposed works for upgrading works to the 'Archdale Walk' that links Neringah Avenue South with Coonanbarra Road and how they are to be delivered must be a requirement of any SCC issued.

Further to this and relevant to the matters of character and setting is that of broader public domain works required to bring the site into conformity with the requirements of Clause 26. The application acknowledges the need for upgrading working within the adjacent Council reserve. However, additional works are also likely needed to the pathway network within the Wahroonga Town Centre. These works have the ability to (a) have an unknown impact on the natural environment through potential tree removal and impact but also influences how spaces and areas are used into the future. These attributes have the potential have to a greater impact on the character of an area than the built form itself.

15. Conclusion

Generally, the proposal for two new buildings containing serviced self-care housing, residential aged care facilities and palliative care facilities surrounded by landscaping will be more compatible with surrounding environment than the current institutional appearance of the Neringah Hospital building and open on-grade car parks. The proposed building height appears to be acceptable in terms of relating to the site's land form (SEPP HSPD 33(c)(ii)) and adopting building heights that are compatible in scale with adjacent development (SEPP HSPD 33(c)(iii)).

Notwithstanding this, the application is not supportable from an urban design perspective in its current form as it is not considered to be compatible with the surrounding environment (SEPP

HSPD 24(2)) as the bulk, scale, built form and character of the proposal will impact land in the vicinity of the development (SEPP HSPD 25(5)(b)) for the following reasons.

- The proposal has excessive site coverage and does not provide sufficient landscaped area and deep soil zones to achieve the desired future character and amenity of the area as expressed in the local controls so that new buildings contribute positively to the quality and identity of the area (SEPP HSPD 33(a)).
- The proposal protrudes into the street setback with an unsympathetic 2-storey non-residential component and does not maintain reasonable neighbourhood amenity and appropriate residential character (SEPP HSPD 33(d)).
- The proposal does not provide sufficient setbacks at the zone interface with lower density residential development and creates bulk that does not maintain reasonable neighbourhood amenity and appropriate residential character (SEPP HSPD 33(c)(i)).

It is noted that the pre-lodgement consultation with DPIE raised the key matter of 'the suitability of the proposed use and scale of the concept in its surrounding context' (SCCA p5).

The NSW Land & Environment Court Planning Principle on the compatibility of a proposal with surrounding development contained within *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191 ¶¶22-31 can also assist with the consideration of compatibility. The relevant parts of the Project Venture Planning Principle can be summarised as follows:

- Within an urban design context, the most apposite meaning of compatibility is 'capable of existing together in harmony' (¶22).
- In situations where planning controls envisage a change of character, compatibility, compatibility with the future character is more appropriate than with the existing (¶23).
- There are two major aspects to compatibility being physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked: '*Are the proposal's physical impacts on surrounding development acceptable?*' and '*Is the proposal's appearance in harmony with the buildings around it and the character of the street?*' (¶24).
- The physical impacts such as noise, overlooking and overshadowing can be assessed with relative objectivity (¶25).
- For new development to be visually compatible with its context, it should contain or at least respond to, the essential elements that make up the character of the surrounding urban environment. The most important contributor to urban character is the relationship of the built form to surrounding space, a relationship created by building height, setbacks and landscaping (¶26).
- Front setbacks and the way they are treated are an important element of urban character. Where there is a uniform building line, even small differences can destroy the unity (¶28).

- Landscaping is also an important contributor to urban character. In some areas landscape dominates buildings, in others buildings dominate the landscape. Where canopy trees define the character, new developments must provide opportunities for planting canopy trees (¶29).

Based on consideration of the Project Venture Planning Principle:

- The project is not considered to be compatible with the surrounding environment as it creates both unacceptable physical impacts on surrounding development and the appearance of the buildings will not be in harmony with the character of the street (¶24).
- The proposal creates physical impact as it does not provide sufficient setbacks at the zone interface with lower density residential development (¶25).
- The proposal creates visual impact as it protrudes into the street setback with an unsympathetic 2-storey non-residential component and does not respect the front setback (¶28), and
- Has excessive site coverage and does not provide sufficient landscaped area and deep soil zones for adequate opportunity to plant adequate canopy trees which are intended to dominate the buildings and define the desired future character of the area (¶29).

It is considered that this analysis provides support to the above by reaching the same conclusion was when assessed under SEPP HSPD. Additionally, the application does not provide sufficient information to enable the proper assessment of the proposed development. Insufficient base information and documentation has been provided to substantiate the proposed density and scale of the development (SEPP HSPD 45(2)). Building height should be verified with a three dimensional height plane diagram (KLEP2015 4.3). The potential to achieve solar access should be verified with view from the sun diagrams (SEPP HSPD 50(e)/ADG 4A-1 1 and 3). The potential to achieve natural cross ventilation should be verified with natural cross ventilation diagrams (ADG 4B-3 1). The number of serviced self-care housing dwellings per floor should be verified by including indicative unit outlines on the concept plans (ADG 4F-1 1). The provision of communal open space should be addressed (ADG 3D-1 1)

SEPP HSPD 25(7) States that a SCC *'may certify that the development to which it relates is compatible with the surrounding land uses only if it satisfies certain requirements specified in the certificate.'* The resolution of the issues associated with the proposed works for upgrading works to the 'Archdale Walk' that links Neringah Avenue South with Coonanbarra Road and how they are to be delivered must be a requirement of any SCC issued as it is fundamental to the ability of the site to meet the requirements of SEPP HSPD and in particular, Clause 26(2)(a).

Notwithstanding the issues raised in this submission, should a SCC be issued for this site, Council requests that it includes a requirement pursuant to Clause 25(7) that no development on the site

should proceed until the proponent and Council have agreed to the terms regarding the delivery of the upgrade works for the path of travel between Neringah Avenue South with Coonanbarra Road.

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